

**AMENDED AND RESTATED BYLAWS OF  
NEW HANOVER COMMUNITY ENDOWMENT, INC.  
May 18, 2023**

**ARTICLE I  
DEFINITIONS**

In these Amended and Restated Bylaws (“Bylaws”), unless otherwise provided, the following terms shall have the following meanings:

(1) “Act” shall mean the North Carolina Nonprofit Corporation Act as codified in Chapter 55A of the North Carolina General Statutes and as amended from time to time.

(2) “Appointing Entity” shall mean either the Successor Local Hospital Board or the County (collectively, the “Appointing Entities”).

(3) “Articles of Incorporation” shall mean the Corporation’s Articles of Incorporation, including amended and restated Articles of Incorporation and Articles of Merger.

(4) “Corporation” shall mean New Hanover Community Endowment, Inc.

(5) “County” shall mean New Hanover County, North Carolina.

(6) “Successor Local Hospital Board” shall mean the governing board of Novant Health Coastal Region, LLC.

(7) “Supermajority Vote” shall mean a vote of approval by at least Sixty-Seven Percent (67%) of the Corporation’s board of directors.

Unless the context otherwise requires, any other terms used in these Bylaws shall have the meaning assigned to them elsewhere herein or in the Act to the extent defined therein.

**ARTICLE II  
OFFICES**

**SECTION 1. Principal Office:** The principal office of the Corporation shall be located at such place as may be determined from time to time by the board of directors.

**SECTION 2. Registered Office:** The registered office of the Corporation required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

**SECTION 3. Other Offices:** The Corporation may have offices at such other places, within the State of North Carolina, as the board of directors may from time to time determine, or

as the affairs of the Corporation may require.

### **ARTICLE III PURPOSES**

**SECTION 1. Purposes:** The corporation is formed exclusively for charitable, scientific or educational purposes under Section 501(c)(3) of the Code including supporting the public health needs and certain social welfare projects in New Hanover County.

In furtherance, but not in limitation, of the foregoing charitable purposes, the Corporation shall:

(a) Accept, hold, invest, reinvest, and administer any gifts, grants, bequests, devises, benefits of trusts, and property of any sort, without limitation as to value or amount, and apply the income and principal thereof, as the Corporation's board of directors may from time to time determine; and

(b) Alone or in cooperation with other persons, organizations, or institutions, conduct any and all other activities and do any and all acts and things which may be necessary, useful, suitable, or proper in connection with or for the furtherance, accomplishment, or attainment of such purposes as are lawful for a corporation formed under the North Carolina Nonprofit Corporation Act and for a corporation which qualifies for tax-exempt status under Sections 501(c)(3) and 501(a) of the Code.

**SECTION 2. Policies:** The fundamental policies of the Corporation shall be:

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1 of this Article.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(c) The Corporation shall not carry on any activities not permitted to be carried on by (i) a corporation exempt from income tax under Sections 501(c)(3) and 501(a) of the Code, or (ii) a corporation contribution to which are deductible under Sections 170(c), 2055, and 2522 of the Code.

(d) At any time when the Corporation is a private foundation as defined in Section 509 of the Code:

(i) The Corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under

Section 4942 of the Code.

(ii) The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code.

(iii) The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Code.

(iv) The Corporation shall not make any investment in such manner as to subject the Corporation to tax under Section 4944 of the Code.

(v) The Corporation shall not make any taxable expenditures as defined in section 4945(d) of the Code.

(e) The Corporation shall not engage in any activities that are not in furtherance of the purposes specified in Section 1 of this Article.

#### **ARTICLE IV BOARD OF DIRECTORS**

Pursuant to the Articles of Incorporation and Section 55A-8-01 of the Act, all corporate powers shall be exercised by a board of directors.

**SECTION 1. General Powers:** All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, its board of directors.

**SECTION 2. Number of Directors:** Except for temporary periods caused by vacancies or pending appointments, the board of directors shall be comprised of thirteen (13) directors: six (6) directors appointed by the Successor Local Hospital Board, five (5) directors appointed by the County, and two (2) additional directors, each of whom shall satisfy one or more of the qualification requirements set forth in Section 3(b) of Article IV of these Bylaws (“**Reserved Directors**”). Each of the Reserved Directors shall be selected and appointed by a majority vote of the Corporation’s board of directors. No elected official and no member of the Successor Local Hospital Board shall be allowed to serve as a director until at least Two (2) years after the person has ceased to serve as an elected official or on the Successor Local Hospital Board, as the case may be.

**SECTION 3. Qualifications:**

(a) All board members shall be residents of New Hanover County and shall be subject to the satisfaction of applicable governance best practices, core competencies, and diversity considerations. Authorities that appoint members to the board should consider the community demographics and characteristics at large at the time by giving serious and deliberate consideration to the balance of gender, race, and ethnicity in each and every one of its appointees. The appointing authorities will equally consider a range of professional and life experiences of its appointees to include prior service to the community, effective governance for public and private corporations,

and stewardship of resources to include all forms of community and organizational assets. Competencies of every board member and candidate should include:

(1) Demonstrated leadership within the community with complex decision-making experiences.

(2) Shared governance responsibilities with a demonstrated capacity to work collaboratively with a group that is purposely constructed to represent the community in all manners possible.

(3) Demonstrated professionalism in the individuals' chosen careers or volunteerism that meets the high standard and conduct of what is expected and becoming for persons serving the public and community at large.

(4) Commitment to the values and principles of the foundation itself including a commitment to advancing the complicated work of the foundation, the ability to represent positively and effectively the work of the foundation, and a passion for helping solve intractable community problems.

(5) Diversity that fairly and equitably ensure gender, racial, and ethnicity considerations as well as lived experiences reflecting different rates of educational attainment, economic prosperity, and social mobility.

(b) In addition to the qualifications and competencies described in Section 3(a) of this Article IV, any individual serving as a Reserved Director shall have demonstrable, substantive, and reasonably recent experience working for or on behalf of a charitable or nonprofit entity, or in a professional field or position, focusing on matters that are consistent with the mission of the Corporation or are in furtherance of programs or issues generally supported or addressed by the Corporation, including, but not limited to, one or more of the following areas;

(1) Public health;

(2) Providing support and services to underserved populations; and

(3) Promotion of racial equity and justice.

**SECTION 4. Term of Directors.** The term for each director will be Three (3) years and each director may serve no more than Three (3) consecutive terms. The term of a director appointed to fill a vacancy shall expire at the time the term he or she is filling would have expired. After a director has served Three (3) consecutive terms, the director must have at least a One (1) year break in service before the director can serve on the board again.

**SECTION 5. Resignation:** A director may resign at any time by communicating his or her resignation to the Corporation. A resignation is effective when it is communicated unless the notice specifies a later effective date or subsequent event upon which it will become effective.

**SECTION 6. Removal:** All directors shall serve to term. However, the board of directors by Supermajority Vote may remove a director with or without cause.

**SECTION 7. Vacancies:** Any vacancy occurring in the board of directors, including, without limitation, a vacancy resulting from the death, resignation, retirement or removal of a director, shall be filled by the applicable Appointing Entity that appointed the director who last held the vacated position; provided, however, that any vacancy occurring with respect to a Reserved Director shall be filled by a majority vote of the Corporation's board of directors. The term of a director appointed to fill a vacancy shall expire upon the original expiration of the previous director's term; however, such director thereafter may serve up to Three (3) consecutive Three (3) year terms.

**SECTION 8. Chairpersons of the Board:** There shall be a chairperson and vice chairperson of the board of directors elected by the directors from their number at the annual meeting of the board of directors. The chairperson shall preside at all meetings of the board of directors and perform such other duties as may be directed by the board of directors. In the absence of the chairperson, the vice chairperson shall preside. In the absence of the chairperson and the vice chairperson, a member of the board of directors appointed by the chairperson shall preside.

**SECTION 9. Compensation:** The directors shall not receive any stated salary or compensation for their services as such, but the board of directors may provide for the payment of all expenses incurred by directors in attending meetings of the board and the reimbursement of expenses incurred on behalf of the Corporation.

**SECTION 10. Autonomy:** Except for the authority to appoint directors of the Corporation, the Appointing Entities shall not, nor shall any other third party, have any right or authority: (1) to participate in the governance of the Corporation, (2) to participate in the management of the Corporation, or (3) to direct to itself or to any third party a Fund Distribution from the Corporation.

## ARTICLE V MEETINGS OF DIRECTORS

**SECTION 1. Regular Meetings:** A regular, annual meeting of the board of directors shall be held on the First Thursday in December of each year, or such other day determined by the board of directors, or if that day is a legal holiday, on the next succeeding business day for the transaction of such business as may be properly brought before the meeting. In addition, the board of directors may provide, by resolution, the time and place, either within or without the State of North Carolina, for the holding of additional regular meetings.

**SECTION 2. Special Meetings:** Special meetings of the board of directors may be called only by or at the request of the Chairperson of the Board or any three directors. Such meetings may be held either within or without the State of North Carolina, as fixed by the person or persons calling the meeting.

**SECTION 3. Notice of Meetings:** Annual and regular meetings of the board of directors may be held as schedule by the Board. Any person or persons calling a special meeting of the board of directors shall, at least five (5) days before the meeting, give notice of the meeting to the board of directors by any usual means of communication, including by telephone, mail, electronic mail, private carrier, facsimile transmission, or other form of wire or wireless communication. Such notice may be oral and need not specify the purpose for which the meeting is called unless required by the Act, the Articles of Incorporation or these Bylaws.

**SECTION 4. Waiver of Notice:** Any director may waive notice of any meeting before or after the date and time stated in the notice. The waiver shall be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records. A director's attendance at or participation in a meeting waives any required notice to him or her unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or to transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**SECTION 5. Quorum:** A majority of the number of directors in office immediately before the meeting begins shall constitute a quorum for the transaction of business at any meeting of the board of directors.

**SECTION 6. Manner of Acting:** A majority vote of the Corporation's board of directors shall be the act of the board of directors unless a different vote is required by the Act, the Articles of Incorporation or these Bylaws. For clarity, "a majority vote of the Corporation's board of directors" shall mean the affirmative vote of a majority of the directors then in office. The adoption or modification of policies and procedures regarding the investment or distribution of the Corporation's endowment assets (the "Endowment Assets"), and the termination of an investment manager to invest and manage the Endowment Assets, shall require a Supermajority Vote. Further, the establishment or modification of the Endowment Assets, or the amendment or modification of any governing documents applicable to the Endowment Assets (e.g. Bylaws, Articles of Incorporation), shall require a Supermajority Vote.

**SECTION 7. Presumption of Assent:** A director of the Corporation who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (a) he or she objects at the beginning of the meeting, or promptly upon his or her arrival, to holding it or transacting business at the meeting; (b) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he or she files written notice of his or her dissent or abstention with the presiding officer of the meeting before its adjournment or with the Corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**SECTION 8. Participation in Meetings:** Any or all of the directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting.

**SECTION 9. Action Without Meeting:** Action which may be taken at a board of directors

meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records. Such action is effective when the last director signs the consent, unless the consent specifies a different effective date. Any such written consent may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including, but not limited to, pdf; any authorization, acknowledgment, or consent delivered via electronic mail; or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**SECTION 10. Committees:** The board of directors may create committees of the board and appoint directors to serve on them. The creation of a standing committee of the board must be approved by a majority of the number of directors in office when the action is taken. The creation of a special committee of the board for one or more specific, time-limited functions may be proposed by the Chairperson of the Board and shall be approved by a majority of the directors present at a meeting of the board at which a quorum is present.

To the extent authorized by law and granted to the committee by the board of directors, committees shall have and may exercise all of the authority of the board of directors in the management of the Corporation, except that a committee may not: (a) authorize a direct or indirect transfer of money or other property to or for the benefit of the Corporation's directors or officers, or to or for the benefit of transferees in liquidation under Article 14 of the Act (other than creditors); (b) recommend or approve dissolution or merger or the sale, pledge or transfer of all or substantially all of the Corporation's assets; (c) fill vacancies on any committee of the board of directors; or (d) adopt, amend, or repeal the Articles of Incorporation or Bylaws.

Each committee of the board must have three or more directors as members. In proposing committee members for approval by the Board, the Chairperson of the Board shall consider opportunities to help Board members to develop expertise and the breadth of knowledge to understand the complexity of the organization's governance. Each committee member shall serve at the pleasure of the board of directors. Members of special committees shall serve for the duration of the committee. All standing committee members shall be appointed annually. A director may serve on more than one standing committee at a time, but no director shall serve on any one committee for more than six (6) consecutive full terms without a break in service of at least one (1) year. Terms shall begin on a January 1 and shall end on a December 31. Despite the expiration of a standing committee member's term, the standing committee member shall continue to serve until their successor is appointed.

Vacancies in standing committees shall be filled by individuals nominated by the Chairperson of the Board and appointed by the board of directors. Vacancies created by expiring terms shall be filled no later than the end of January of the term year. The Chairperson of each standing committee shall be nominated by the Chairperson of the Board and approved by the Board, serving for a one-year term. The Chairperson of a standing committee shall be eligible for re-appointment; provided, that no standing committee Chairperson shall serve more than two (2) consecutive full terms. Each standing committee shall have a Vice Chairperson who shall fulfill the duties of the Chairperson of the committee in the absence or disability of the Chairperson of the committee. The Vice Chairperson of the committee shall be selected by the committee from

among its members.

Conflicts between or among recommendations of standing committees shall be resolved by action of the board of directors.

## **ARTICLE VI OFFICERS**

**SECTION 1. Officers of the Corporation:** The officers of the Corporation shall consist of a President and CEO, a Secretary, a Treasurer, and such Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as the board of directors may from time to time appoint. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

**SECTION 2. Appointment and Term:** The officers of the Corporation shall be appointed by the board of directors or by a duly appointed officer authorized by the board of directors to appoint one or more officers or assistant officers. Each officer shall hold office until his or her death, resignation, retirement, removal, disqualification or until his or her successor is appointed and qualifies. The appointment of an officer does not itself create contract rights for either the officer or the Corporation.

**SECTION 3. Compensation of Officers:** The compensation of all officers of the Corporation shall be fixed by or under the authority of the board of directors, and no officer shall serve the Corporation in any other capacity and receive compensation therefor unless such additional compensation shall be duly authorized.

**SECTION 4. Removal:** Any officer may be removed by a vote of a majority of the board of directors at any time with or without cause; but such removal shall not itself affect the officer's contract rights, if any, with the Corporation.

**SECTION 5. Resignation:** An officer may resign from his or her officer position at any time by communicating his or her resignation to the Corporation, orally or in writing. A resignation is effective when it is communicated unless it specifies in writing a later effective date. If a resignation is made effective at a later date that is accepted by the Corporation, the board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date. An officer's resignation does not affect the Corporation's contract rights, if any, with the officer.

**SECTION 6. Bonds:** The board of directors may by resolution require any officer, agent, or employee of the Corporation to give bond to the Corporation, with sufficient sureties, conditioned on the faithful performance of the duties of his or her respective office or position, and to comply with such other conditions as may from time to time be required by the board of directors.

**SECTION 7. President and CEO:** The President and CEO shall be the principal executive officer of the Corporation and, subject to the control of the board of directors, shall in general supervise and control all of the business and affairs of the Corporation. He or she shall



have the authority to sign any contracts, deeds, mortgages, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution of such contracts or instruments shall be expressly delegated by the board of directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general he or she shall perform all duties incident to the office of President and CEO and such other duties as may be prescribed by the board of directors from time to time.

**SECTION 8. Vice Presidents:** In the absence of the President and CEO or in the event of his or her death, inability or refusal to act, the Vice Presidents in the order of their length of service as Vice Presidents, unless otherwise determined by the board of directors, shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon that office. Any Vice President may sign contracts, deeds, mortgages, or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution of such documents or instruments shall be expressly delegated by the board of directors or these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise signed or executed. A Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or the board of directors.

**SECTION 9. Secretary:** The Secretary shall: (a) keep the minutes of the meetings of the board of directors and of all committees of the board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) maintain and authenticate the books and records of the Corporation; (e) attest the signature or certify the incumbency or signature of any officer of the Corporation; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the board of directors.

**SECTION 10. Assistant Secretaries:** In the absence of the Secretary or in the event of his or her death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretary, unless otherwise determined by the board of directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, the President, or the board of directors.

**SECTION 11. Treasurer:** The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in accordance with the provisions of Section 4 of Article VII; (c) maintain appropriate accounting records as required by law; (d) prepare, or cause to be prepared, an annual financial statement in accordance with Section 2 of Article IX; and (e) in general, perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the board of directors.

**SECTION 12. Assistant Treasurer:** In the absence of the Treasurer or in the event of his or her death, inability or refusal to act, the Assistant Treasurers, in the order of their length of

service as Assistant Treasurer, unless otherwise determined by the board of directors, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer. They shall perform such other duties as may be assigned to them by the Treasurer, the President, or the board of directors.

## **ARTICLE VII CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**SECTION 1. Contracts:** The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**SECTION 2. Loans:** No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

**SECTION 3. Checks and Drafts:** All checks, drafts or other orders for payment of money, issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

**SECTION 4. Deposits:** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as may be selected by or under the authority of the board of directors.

**SECTION 5. Fund Distributions:** The Corporation shall not assign, transfer or otherwise convey any Endowment Assets except as permitted under applicable law and authorized in accordance with the Articles of Incorporation and these Bylaws.

The Corporation and the officers are prohibited from allowing the Endowment Assets to be used as collateral or to be pledged as any form of security for any type of loan or guarantee. All distributions from the Endowment Assets (“Fund Distributions”) must be made pursuant to and accompanied by a Plan of Accountability to ensure that the Fund Distribution is used in full for the designated purposes (the “Plan of Accountability” or “POA”). The POA shall be accepted, agreed upon and signed by the individual at the recipient organization who will be responsible for the use of the funds and for accounting the funds. The POA shall require that the individual provide an acceptable and complete accounting to the Corporation, submitted and signed under penalty of perjury. Further, the misuse of the funds by any person, or the failure of the responsible person to provide a complete accounting within six (6) months after the end of the year in which the Fund Distribution occurred, may result in both civil and criminal penalties.

The POA is the Corporation’s agreement with the recipient organization that describes the purposes for the use of the funds, the commitments by the officers and other leaders of the recipient organization, the expectations of the Corporation and how the Corporation will verify the proper use of the funds.

Fund Distributions shall take the form of grants and other financial support for projects and initiatives of non-profit, governmental or community organizations that are specifically focused on, and shall use such funds exclusively in furtherance of, the explicit purposes of the Corporation. For the avoidance of doubt, 100% of all Fund Distributions shall be used exclusively for purposes benefiting the residents of New Hanover County and region (the "Defined Beneficiaries"). The specific purposes of the Corporation shall be to make available Fund Distributions to support community wellbeing and other public purposes that are consistent with the then-current County Strategic Plan and for the benefit of the Defined Beneficiaries. In the event a Fund Distribution is made in furtherance of purpose typically funded by a governmental agency, it is intended that such Fund Distribution shall be made only to supplement such governmental agency funding and that such Fund Distribution shall not be used to replace or substitute for governmental funding of such projects.

Fund Distributions shall only be paid pursuant to the strictly prescribed purposes and rules detailed in the Articles of Incorporation, these Bylaws, and the grant policy adopted by the Corporation's board of directors.

**SECTION 6. Unitrust Formula:** At any time when the Corporation is a public charity as defined in Section 509 of the Code, the annual Fund Distributions shall be no more than a unitrust amount calculated as follows:

(1) In each calendar year the Fund Distributions shall be no more than a unitrust amount equal to Four Percent (4%) of the average of the net fair market value of the Endowment Assets' value as of the first business day of the calendar year and of the four preceding calendar years of the Corporation (or such lesser number of preceding years that may exist for each of the first five years of distributions).

(2) The unitrust amount shall be distributed in whatever portions or installments as deemed appropriate by the Corporation.

(3) If any assets are added to the Endowment Assets in the future, the unitrust amount for the year in which the addition is made shall be increased in case of addition by an amount equal to Four Percent (4%) of that proportion of the fair market value of the assets added, valued as of the date or dates of the addition, that the number of days in the period that begins with the day of the addition and ends with the last day of the calendar year bears to the number of days in the calendar year. The net fair market value of the assets for the first business day of the calendar year of any such addition and of the preceding tax year shall each be increased by the amount of the addition for purposes of determining the unitrust amount for years following such year.

(4) If the Corporation holds assets for which a fair market value cannot be readily ascertained, the Corporation shall use valuation methods that it considers reasonable and appropriate in valuing such assets.

(5) In compliance with Section 36E-4(a), North Carolina General Statutes, in making a determination to appropriate from the endowment fund for expenditure, the Corporation shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors: (1) the duration and preservation of the endowment fund; (2) the purposes of the Corporation and the endowment fund; (3) general economic conditions; (4) the possible effect of inflation or deflation; (5) the expected total return from income and the appreciation of investments; (6) other resources

of the Corporation; and (7) the investment policy of the Corporation.

## ARTICLE VIII INDEMNIFICATION

**SECTION 1. Right to Indemnification:** Any person who at any time serves or has served as a director or officer of the Corporation, or at the request of the Corporation is or was serving as an officer, director, agent, partner, trustee, administrator, or employee of any other foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, shall have the right to be indemnified by the Corporation to the fullest extent permitted by law in the event he or she is made, or is threatened to be made, a party to any threatened, pending or completed civil, criminal, administrative, investigative or arbitral action, suit or proceeding and any appeal therein (and any inquiry or investigation that could lead to such action, suit or proceeding), whether or not brought by or on behalf of the Corporation, seeking to hold him or her liable by reason of the fact that he or she is or was acting in such capacity. The Corporation shall not, however, indemnify any person against liability or expenses the person may incur on account of his or her activities which were, at the time taken, known or believed by the person to be clearly in conflict with the best interests of the Corporation, or if the person received an improper personal benefit. In addition, the Corporation shall not indemnify any person against liability or expenses the person may incur on account of his or her activities if such indemnification would (i) be a taxable expenditure under Section 4945 of the Code (or the corresponding provision of any subsequent United States tax laws), (ii) constitute an act of self-dealing under Section 4941 of the Code (or the corresponding provision of any subsequent United States tax laws) or (iii) jeopardize the Corporation's exemption from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code (or the corresponding provisions of any subsequent United States tax laws). The board of directors may provide such lawful indemnification for the employees and agents of the Corporation as it deems appropriate and as are consistent with the restrictions expressed in this Section 1.

The rights of those receiving indemnification hereunder shall, to the fullest extent from time to time permitted by law, cover (a) reasonable expenses, including without limitation all attorneys' fees actually and necessarily incurred by him or her in connection with any such action, suit or proceeding, (b) all reasonable payments made by him or her in satisfaction of any judgment, money decree, fine (including an excise tax assessed with respect to an employee benefit plan), penalty, or settlement for which he or she may have become liable in such action, suit or proceeding; and (c) all reasonable expenses incurred in enforcing the indemnification rights provided herein.

Expenses incurred by anyone entitled to receive indemnification under this Section 1 in defending a proceeding may be paid by the Corporation in advance of the final disposition of such proceeding as authorized by the board of directors in the specific case or as authorized or required under any provisions in these Bylaws or by any applicable resolution or contract upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation against such expenses.

**SECTION 2. Payment of Indemnification:** The board of directors of the Corporation shall take all such action as may be necessary and appropriate to authorize the Corporation to pay the indemnification required by this Article VIII, including without limitation, making a determination that indemnification is permissible in the circumstances and a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him or her.

**SECTION 3. Binding and Nonexclusive:** Any person who at any time after the adoption of this Article VIII serves or has served in any of the described capacities for or on behalf of the Corporation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Any repeal or modification of these indemnification provisions shall not affect any rights or obligations existing at the time of such repeal or modification. The rights provided for herein shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Bylaw.

The rights granted herein shall not be limited by the provisions contained in Section 55A-8-51 of the Act (or any successor provision).

## ARTICLE IX GENERAL PROVISIONS

**SECTION 1. Seal:** The corporate seal of the Corporation shall consist of two concentric circles between which is the name of the Corporation and in the center of which is inscribed "CORPORATE SEAL" or "SEAL;" and such seal, as impressed or affixed on the margin hereof, is hereby adopted as the corporate seal of the Corporation

**SECTION 2. Records and Reports:** All of the Corporation's records shall be maintained in written form or in another form capable of conversion into written form within a reasonable time.

The Corporation shall keep as permanent records minutes of all meetings of the board of directors, a record of all actions taken by the board of directors without a meeting, and a record of all actions taken on behalf of the Corporation by a committee of the board of directors in place of the board of directors. The Corporation shall maintain appropriate accounting records.

The Corporation shall keep a copy of the following records at its principal office: (a) the Articles of Incorporation and all amendments to them currently in effect; (b) these Bylaws and all amendments to them currently in effect; (c) the annual financial statements described below, prepared during the past three years; and (d) a list of the names and business addresses of its current directors and officers.

The Corporation shall prepare, or cause to be prepared, and maintain at least three (3) years of annual audited financial statements for the Corporation that include a balance sheet as of the end of the fiscal year and statement of operations for that year. The financial statements may be

prepared for the Corporation on the basis of generally accepted accounting principles or on such other basis as the Treasurer may deem reasonable.

On a quarterly basis, the Corporation shall publish a report summarizing grants and other distributions made by the Corporation, which reports shall be made available to the public via the Corporation's website or other similar means. Such reports shall include the following information relative to the Corporation's activities for the immediately preceding quarter: (1) the amount and recipient of each grant, (2) description of grant purposes, (3) description of grant selection criteria, and (4) the amount by which each issued grant has been drawn down. In addition, the President and CEO shall hold a meeting at least semiannually to answer questions from the public regarding the Corporation's actions.

**SECTION 3. Fiscal Year:** The fiscal year of the Corporation shall end on December 31 of each year.

**SECTION 4. Severability:** Should any provision of these Bylaws become ineffective or be declared to be invalid for any reason, such provision shall be severable from the remainder of these Bylaws and all other provisions of these Bylaws shall continue to be in full force and effect.

**SECTION 5. Tax Terms:** References in these Bylaws to the "Code" mean the federal Internal Revenue Code of 1986 as it may be amended from time to time. References to Sections of the Code include references to corresponding provisions of any subsequent United States tax laws.

**SECTION 6. Amendments to Bylaws:** These Bylaws may be amended by a Supermajority Vote of the board of directors.

**SECTION 7. Amendments to Articles of Incorporation:** The Articles of Incorporation may be amended by a Supermajority Vote of the board of directors.

**SECTION 8. Uniform Electronic Transactions Act:** Any actions or transactions by, with, between, or among directors, officers, and employees of the Corporation may be conducted in accordance with the provisions of the Uniform Electronic Transactions Act as enacted and as amended from time to time by the North Carolina General Assembly (the "NCUETA"). Such actions shall include, without limitation, a director's consent to action taken without meeting, which consent may be in electronic form and may be delivered by electronic means. Any notice required or permitted under these Bylaws or by applicable law may be communicated by electronic means, and, in such event, the time and place of sending and receipt of such notice shall be determined in accordance with the applicable provisions of the NCUETA. Any reference in these Bylaws to "written" or "in writing" shall be deemed to include a communication in electronic form delivered by electronic means in accordance with the NCUETA. Any reference in these Bylaws to "sign" or "signature" shall be deemed to include an electronic signature in accordance with the NCUETA.

**SECTION 9. Restricted Funds; Use of Corporate Funds:** No funds received by donation, bequest, or any other means shall be diverted from the uses to which such funds are

restricted, if any, by the donor, testator, or testatrix. In the event that such restricted use is contrary to or in conflict with the purposes of the Corporation and such restrictions cannot be removed or reformed through lawful process, such gift or bequest shall be disclaimed. No funds of the Corporation shall be used for any purpose other than to effect the purposes of the Corporation.