BYLAWS

of

KALAMAZOO FOUNDATION FOR EXCELLENCE

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BYLAWS

OF

KALAMAZOO FOUNDATION FOR EXCELLENCE

(A Michigan Nonprofit Corporation)

ARTICLE I - OFFICES

Section 1.01 **Name.** The name of the corporation is as stated above (hereinafter referred to as the "Corporation").

Section 1.02 **Resident Agent and Registered Office.** The Resident Agent and Registered Office of the Corporation shall be a person and a location in the State of Michigan stated in the Articles of Incorporation. The Board of Directors, with the approval of the Kalamazoo City Commission (the "City Commission"), may change the Resident Agent and/or Registered Office at any time.

The Board of Directors may authorize the Corporation to qualify to do business in such foreign states as the Board of Directors determines are necessary for the Corporation to conduct its affairs.

The Board of Directors may designate the Corporation's resident agent and/or registered office in any State, and may change this at any time. Upon any change in the resident agent or registered office of the Corporation in any State, the President shall cause to be filed in such State an appropriate form containing the name of the new resident agent and/or new address of the registered office and such other information as may be required to accomplish the change.

Section 1.03 **Business Offices.** The Corporation may have business offices at such places as the Board of Directors may determine.

ARTICLE II - PURPOSE

Section 2.01 **General.** The purposes of the Corporation are as set forth in Article II of the Articles of Incorporation of the Corporation.

ARTICLE III - ORGANIZATION

Section 3.01 **Organization.** The Corporation shall be a non-stock corporation, organized on a directorship basis pursuant to the Michigan Nonprofit Corporation Act, P.A. 162 of 1982, and any amendments thereto ("Act").

Section 3.02 **Subject to Laws.** The Corporation is a nonprofit corporation formed by the City Commission of the City of Kalamazoo pursuant to MCL 117.4o of the Home Rule City Act (P.A. 1909, No. 279, §4o) and is subject to all local, state and federal laws that apply to the City of Kalamazoo (sometimes referred to as the "City"). The Corporation is a "public body" for purposes of Michigan's Open Meetings Act ("OMA"), MCL 15.261-.275 and is subject to

the terms of the OMA. The Corporation is a "public body" for purposes of Michigan's Freedom of Information Act ("FOIA"), MCL 15.231-.246 and is subject to the terms of the FOIA.

ARTICLE IV - BOARD OF DIRECTORS

Section 4.01 **Functions**. Except as specifically provided in the Corporation's Articles of Incorporation or these Bylaws, the business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. All rights, powers, duties and responsibilities relative to the management and control of the Corporation's property, activities and affairs are vested in the Board of Directors. In addition to the power and authority expressly conferred upon it by these Bylaws and the Articles of Incorporation, the Board of Directors may take any lawful action on behalf of the Corporation which is not by law or by the Articles of Incorporation or by these Bylaws required to be taken by some other party.

The persons who serve on the Board of Directors are referred to as "Directors."

Unless specifically authorized by the Board, a Director serving on the Board of Directors shall not become involved in the day-to-day operations of the Corporation or ask any staff member to conduct any task that has not been authorized by the Board.

The Directors shall have the right, with the advice and consent of the City Commission to select, hire, supervise and fire an Executive Director for the Corporation who shall be responsible for the Corporation's day-to-day operations in consultation with the Corporation's Officers, including the hiring and termination of employees and agents (if any) to carry out the work of the Corporation, establishing their duties, and performing any duties and functions as are specified by the Board or by any person to whom the Board has given authority to supervise and direct the Executive Director.

To obtain the "advice and consent" of the City Commission requires that the Board of Directors provide such information to the City Commission as it may request about the action to be taken and that the City Commission give its prior approval to this action before it is acted upon by the Board of Directors.

With respect to obtaining the City Commission's advice and consent concerning the selection, hiring, supervision and firing of an Executive Director, the Board of Directors shall provide the City Commission with information it requests about potential candidates to be hired for an Executive Director position, and about the Executive Director's job performance and about any plan to terminate the employment of the Executive Director. The Board of Directors shall not take action to hire or fire the Executive Director or significantly alter the duties of this position until after this is first approved by the City Commission.

The Corporation shall be responsive to the needs of the City of Kalamazoo. This requires that the Officers and Directors of the Corporation maintain a close and continuous working relationship with the City Commission, as required by the Corporation's Articles of Incorporation.

Section 4.02 **Number, Selection.**

Until the Corporation is recognized as a tax exempt organization by the Internal Revenue Service, the Incorporators shall constitute the Board of Directors of the Corporation. Upon such recognition by the Internal Revenue Service, and within sixty (60) days of receipt of the actual written notice from the Internal Revenue Service of such tax-exempt status, a regularly elected Board of Directors shall be constituted in the manner set forth in these Bylaws and the Articles of Incorporation.

The Board of Directors shall then consist of fifteen (15) members. The number of Directors may be increased or decreased only with the concurrence of the Michigan Attorney General Charitable Trust division or its successor.

The Directors serving on the fifteen (15) member Board of Directors shall be elected by those persons who signed the Corporation's Articles of Incorporation (the "Incorporators") from those persons whom the City Commission has nominated to fill these positions using the procedure set forth below. Thereafter all Director positions, except those of the *Ex officio* Directors, shall be filled by vote of the Board of Directors following nomination by the City Commission.

If within sixty (60) days of receipt of the written notice from the Internal Revenue Service of tax-exempt status, the Incorporators have not been provided with the names of all persons who are to be elected to serve on the fifteen (15) member Board of Directors, the Incorporators shall elect those persons who have been nominated by the City Commission even though they may number less than fifteen.

A. **City Directors.** The City Directors consist of (1) the Mayor of the City of Kalamazoo and the City Manager of the City of Kalamazoo (these positions are referred to as "*Ex officio* Positions," and the persons holding these *Ex officio* Positions are referred to as "*Ex officio* Directors") who shall have full voting and participatory rights as Directors, (2) two (2) persons who are current Commissioners on the City Commission (the Commissioners who are elected to the Board are referred to as the "Commission Directors"), and (3) one person nominated and elected by the City Commission who shall be chosen from the Kalamazoo community, who shall not be directly connected to any of the Stakeholder Groups or their members (the "At-Large City Director"), nor be an employee or elected official of the City.

For the first fifteen (15) member Board of Directors, upon the incorporation of the Corporation, the City Commission shall provide the Incorporators with the names of the *Ex officio* Directors, the Commission Directors and the At-Large City Director and the initial term of office for the Commission Directors and the At-Large City Director. The Incorporators shall elect those persons as part of the first fifteen (15) member Board of Directors to the terms designated for each.

As the initial terms of office for the Commission Directors and the At-Large City Director expire or as positions held by Commission Directors or the At-Large City Director become vacant or are about to become vacant, all future appointments to these positions shall be made by the City Commission. The City Commission shall nominate people to be considered to

fill the position(s) of Commission Director and/or At-Large City Director and shall vote to nominate persons to fill any vacant positions.

B. **Stakeholder Directors**. The Board of Directors shall consist of ten (10) positions reserved for Stakeholder Directors. The City Commission shall nominate the Stakeholder Directors using the following procedure:

1. Each Stakeholder Director shall represent one of the eight groups/sectors (each group is herein referred to as a "Stakeholder Group"). Each Stakeholder Group shall be composed of individuals, organizations and businesses that play important roles in the City of Kalamazoo. It is the intent of the Corporation that the Stakeholder Directors be of current relevance to the City of Kalamazoo and be primarily the product of local leadership and control. From time to time, the Board may recommend to the City Commission the restructuring and identification of Stakeholder Groups to reflect this intent.

2. A Governance Facilitator such as the Kalamazoo Community Foundation shall be responsible for coordination, identification, and selection of persons as Stakeholder Directors to be nominated to the Board of Directors of the Corporation for election as Directors. Members comprising each Stakeholder Group shall be convened by the Governance Facilitator at least 60 days prior to the Corporation's Annual Meeting, or as otherwise provided in these Articles, for the purpose of caucusing to reach consensus on the representatives whom the Governance Facilitator shall present to the City Commission as recommended candidates at least 30 days prior to the Annual Meeting of the Corporation, to elect Directors. The Governance Facilitator shall conduct the Stakeholder recommendation process to achieve diversity across sectors, diverse perspectives, and abilities to conduct the duties of the Board.

3. In turn, the City Commission shall make the formal nomination from those recommended representatives of each Stakeholder Group constituency to the Board of Directors for election pursuant to the Articles of Incorporation or Bylaws. The City Commission shall review the candidates' qualifications and shall formally nominate them to serve as Stakeholder Directors on the Board of Directors. The City Commission may vote to reject any recommended candidate, in which case the Governance Facilitator shall propose a new candidate for the City Commission to review and to nominate as a Stakeholder Director.

4. For the first fifteen (15) member Board of Directors, using the procedure described above, the names of the persons selected to be the City Directors and Stakeholder Directors shall be communicated to the Incorporators together with the initial term of office for each Stakeholder Director, and the Incorporators shall elect these persons as the initial City Directors and Stakeholder Directors for designated staggered terms. After the initial fifteen (15) member Board of Directors has been elected by the Incorporators, all future elections of Stakeholder Directors shall be made as described above.

5. If a Stakeholder Director's term of office as a Director is about to expire or if the Director's position held by a Stakeholder Director is vacant or about to become

vacant, the Stakeholder Group that nominates persons to this Director position shall be convened by the Governance Facilitator. The nominee can be the person who is currently serving as a Stakeholder Director, provided, however, that this person is not barred from being reelected and serving an additional term, as described in Section 4.04 hereinafter.

6. The Governance Facilitator shall prepare and adopt a procedure for selecting Stakeholder nominees. If a Stakeholder Group fails to nominate a candidate for a Stakeholder Director position, then the Governance Facilitator may propose a nominee to fill the Stakeholder Director position.

7. Initially the Stakeholder Directors, for the purpose of the Articles of Incorporation and Bylaws, shall include representation from the following community constituencies:

a. Affinity Organizations Stakeholder. The stakeholder representing local affinity organizations as may be identified from time to time by the City Commission, shall be drawn from a group of persons representing nonprofit organizations whose mission or purpose as stated in its Articles of Incorporation is to advocate for and/or provide supportive services to local families and individuals; provided, however, the representative shall not include a person from any of the other Stakeholder Groups as herein identified.

b. Arts Community Stakeholder. The stakeholder from the local arts community shall be drawn from a local nonprofit art, music or performing arts organization.

c. Business/Banking Stakeholder. The stakeholder representing the business and banking community shall be a respected business person whose principal place of business is located in the City of Kalamazoo. Preference shall be given to someone involved in banking and financial institutions that have a significant corporate presence in the City of Kalamazoo, which may include national banks, state chartered banks, state chartered trust banks, and credit unions.

d. Education Stakeholder. The education stakeholder shall be drawn from local educational institutions including, but not limited to, Kalamazoo Public Schools, Kalamazoo Valley Community College, Kalamazoo College, Western Michigan University (including the Stryker School of Medicine and Cooley Law School), and other private educational institutions as may be identified from time to time by the City Commission.

e. Faith-Based Organizations Stakeholder. The faith-based organizations stakeholder shall include local ministers or laypersons from local religious institutions, churches, mosques, synagogues, and such other faith-based providers of religious and social services as may be identified from time to time by the City Commission.

f. Healthcare Stakeholder. The healthcare stakeholder shall be drawn from representatives of Borgess Hospital Corporation, Bronson Methodist Hospital, and other major providers of healthcare services operating within the City of Kalamazoo as may be identified from time to time by the City Commission.

g. Housing Sector Stakeholder. The housing sector stakeholder shall be drawn from nonprofit and for-profit entities whose core function or purpose is the provision of affordable housing.

h. Neighborhood Stakeholder. The three (3) neighborhood stakeholders shall be drawn from persons living in three neighborhoods in the City of Kalamazoo with an organized neighborhood association. Best efforts shall be made to seek stakeholders from the various neighborhoods on a revolving basis, with priority given to those neighborhoods where at least 51% of households have incomes at or below 80% of the area median income. No organized neighborhood association shall have more than one (1) representative on the Board at one time.

Section 4.03 Qualifications.

At least nine (9) Directors shall be residents of the City of Kalamazoo.

The At-Large City Director shall be a registered elector of the City of Kalamazoo.

A Stakeholder Director shall be a resident of the City of Kalamazoo or an employee, officer, director, or executive of a Stakeholder business or entity.

No person may serve as a City Director or Stakeholder Director if he or she is a disqualified person as defined by the Code or its Regulations, a person who could cause the Corporation to be determined a private foundation, or a person in default to the City of Kalamazoo.

Section 4.04 Terms of Office.

Those City Directors who are *Ex officio* Directors shall serve on the Board of Directors for as long as they hold the position that makes them *Ex officio* Directors. This may result in an *Ex officio* Director serving on the Board of Directors for an indeterminate period of time. If a person ceases to hold a position that allows him or her to be an *Ex officio* Director (regardless of how this occurs or the reason for such action), such person shall immediately cease to be an *Ex officio* Director and shall cease to serve on the Board of Directors. When this person's replacement is chosen or elected this replacement shall assume the *Ex officio* Director position held by his/her predecessor.

Each Commissioner elected as a Commission Director shall serve a term established by the City Commission, but which shall not be longer than such Commissioner's current term of office as a Commissioner. If a person ceases to be a City Commissioner, either through expiration of his or her term of office as a Commissioner or otherwise, this person shall also

cease to be a Commission Director and this person's position as Commission Director shall become vacant and the City Commission shall appoint a Commissioner to serve as Commission Director. If a Commissioner who previously served as a Commission Director is reelected to the City Commission, he or she may be reelected to the Board of Directors as a Commission Director. There is no limit on the length of time that a Commission Director can serve on the Board; provided, however, the Commission may adopt a resolution to limit the length of time that a Commissioner can serve on the Board of Directors.

Those persons elected as Stakeholder Directors and as the At-Large City Director (the Stakeholder Directors and At-Large City Director are collectively referred to as the "General Directors" and individually as a "General Director") shall each serve on the Board for a three (3) year term with the terms of one-third of the General Directors expiring each year. To accomplish this, one-third of the initial General Directors shall serve for a one year term; one-third shall serve for a two year term and one-third shall serve for a three year term, with the City of Kalamazoo, acting through the City Commission, designating which of the initial General Directors will serve terms of one, two or three years. As the terms of the General Directors expire, those persons elected to fill these positions shall be elected for three (3) year terms. The City Commission, using the procedure set forth in Section 4.02, shall nominate to elect and/or appoint General Directors to fill the positions that are vacated or about to become vacant.

If, at the end of a General Director's scheduled term of office, the City Commission has not nominated a candidate to fill this Director's position, either by renomination of the current General Director (if the General Director can be reelected and is not subject to term limits as provided herein) or by nomination of a new person recommended by the Governance Facilitator to serve in this position, the General Director shall continue to serve until the Board of Directors votes to fill this position.

A General Director may serve two (2) consecutive three year terms. Except as provided herein, after a General Director has served two (2) consecutive three year terms, this General Director must wait one year before he/she can be reelected or reappointed as a General Director. If a General Director serves two (2) consecutive full terms, but one of these terms is less than three (3) years, then this General Director may be reelected for a third consecutive term of three (3) years and then must wait one year before he/she can be reelected or reappointed as a General Director.

Section 4.05 Meetings.

The Board of Directors may, by resolution, set the date, time and place for regular meetings of the Board as is necessary to conduct the business of the Corporation. The Board shall use its best efforts to meet at least three (3) times per year, including the annual meeting.

The annual meeting of the Board of Directors of the Corporation shall be held in April of each year on a date, time and place determined by the Board of Directors. The Board shall also meet in September or October for the purpose of determining the amount of the grant that the Corporation shall make to the City of Kalamazoo for the upcoming fiscal year. A Board decision on the amount of the grant to be made to the City of Kalamazoo shall be made on or before October 31 of each year so that the City Manager can incorporate the amount of the grant into the proposed budget for the City's upcoming year that will be prepared in November.

Payment of the grant shall be made by the Corporation to the City in cash on or before February 15 of each year.

The Board shall not schedule a meeting for a day that the City's business offices (City Manager, Treasurer, Assessor, and Clerk) are closed to the public, including weekends and holidays scheduled by the City, or for a date on which elections are scheduled. At any meeting, the Board may consider any business that is properly brought before the meeting. If less than a quorum of Directors attends a previously scheduled meeting, then the matters that were to be considered at such meeting may be taken up by the Board at any later regular or special meeting.

Special meetings of the Board of Directors may be called by the Secretary of the Corporation upon the request of the President or two (2) of the Directors.

Meetings of the Board of Directors shall be open to the public, as required by the OMA (except for closed sessions permitted by the OMA). Meetings shall be held in a place available to the general public.

Those persons attending a meeting may exercise those rights established by the OMA, subject to such reasonable rules and regulations that are established by the Board that are consistent with the OMA, including rules and regulations to minimize the possibility of disrupting the meeting.

Section 4.06 **Notice of Meetings**. Public notice of the date, time and place of a meeting of the Board shall be given by the secretary of the Corporation or such other officer designated by the Board. The notice shall contain such information as is required by the OMA and shall be posted at the locations and within the times required by the OMA based on the type of meeting being held (e.g., regular, special, rescheduled, recessed).

In addition to the public notice of a meeting, Directors shall be given notice of any meeting as follows:

A. For a regular meeting (including the meetings to be held in April, September or October), notice of the date, time and place of the meeting must be given at least ten (10) days before the date of the meeting through any combination of the following: (i) notice given personally, either orally or in writing, including notice given by telephone by speaking directly with the Director in person; (ii) notice given by electronic transmission (as described in Section 10.05 below); (iii) notice given by mail that contains proper postage; or (iv) notice given through a reputable overnight courier.

B. For a meeting that is not a regular meeting, notice of the date, time and place of the meeting shall be given to Directors on or before the time that the notice for the meeting is posted for purposes of the OMA. In no event, shall the notice be given less than eighteen (18) hours before the scheduled starting time of the meeting. The notice under this Section 4.06B shall be given through any combination of the following: (i) notice given personally, either orally or in writing, including notice given by telephone by speaking directly with the Director in person; or (ii) notice given by electronic transmission (as described in Section 10.05 below).

If a purpose of any Director meeting is to vote to amend the Corporation's Articles of

Incorporation or Bylaws, then notice of the meeting shall be given to all Directors as stated in Section 11.01.

The notice of a meeting sent to the Directors may include such other documents and materials as may be relevant to the topics to be discussed and/or voted on at the meeting, with any of the Officers or the Executive Director deciding what documents and materials to include for each meeting.

If the Board decides that a Director may participate in a meeting by conference call, this shall be stated in the notice of the meeting, together with instructions that the Director can use to join the meeting by conference call.

Notwithstanding the foregoing, no notice need be given to any person who submits a signed waiver of notice before or after a meeting.

Section 4.07 **Resignation**. A Director may resign at any time by giving written notice to the Board or to the President or Secretary of the Corporation. Unless otherwise specified in the resignation, the resignation shall take effect upon receipt, and the acceptance of the resignation shall not be necessary to make it effective.

If an opening on the Board results from the resignation of a Commission Director or the At-Large City Director, a replacement may be nominated by the City Commission. If an opening on the Board results from the resignation of a Stakeholder Director, the Stakeholder Group that nominated the Stakeholder Director who resigned shall replace this person and present its recommended replacement to the City Commission, which shall act as provided in Section 4.02 above.

Section 4.08 **Removal**. A Commission Director and the At-Large City Director may be removed as a Director at any time at the direction of the City Commission, and a replacement may be appointed by the City Commission.

A Stakeholder Director may be removed at any time with or without cause if at least seventy five percent (75%) of the total number of Directors vote in favor of such removal. Upon the removal of a Stakeholder Director, the Governance Facilitator may recommend a replacement from the same Stakeholder Group that nominated the Stakeholder Director who was removed to the City Commission, which shall act on these as provided in Section 4.02 above.

Section 4.09 **Quorum**. The physical presence of a majority of the total number of Directors at the location of the meeting shall constitute a quorum for the transaction of business. Directors who participate in the meeting through conference call or other types of remote communication shall not be counted in determining if a quorum is present. In the absence of a quorum, a majority of the Directors present may reschedule a meeting for a date certain. Notice of the rescheduled meeting shall be given pursuant to the terms of these Bylaws and the OMA.

Section 4.10 **Voting**. All decisions of the Board of Directors and all deliberations of the Board of Directors constituting a quorum shall be subject to the OMA.

The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless a greater vote is required by law, by the Articles

of Incorporation or by these Bylaws. Directors must be present in person to vote (including being present by conference call or other means of remote communication). No proxy voting is allowed and Directors cannot send persons to act in their place and Directors may not vote by phone poll or other means that does not require a meeting of the Board of Directors.

Section 4.11 **No Action by Written Consent**. All decisions of the Board of Directors and committees shall be made at a meeting open to the public. The Board of Directors and any committee created by these Bylaws or by the Board of Directors are not permitted to take action to approve any matter by any form of written consent.

Section 4.12 **Increasing the Number of Directors**. The number of Directors may be increased or decreased only with the concurrence of the Michigan Attorney General's Charitable Trust division or its successor.

Section 4.13 **Compensation of Directors**. A Director, as such, shall not be compensated for the performance of services for the Corporation, but may, by resolution of the Board of Directors, receive reasonable reimbursement for actual, reasonable, and necessary expenses incurred by the Director in his or her capacity as a Director. A Director may also be compensated for duties or services he/she performs that are beyond the scope of his/her duties as a Director, with the payment being subject to the provisions of Article VIII below.

Section 4.14 **Discharge of Duties**. A Director or Officer shall discharge the duties of that position in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he or she reasonably believes is in the best interests of the Corporation. In discharging his or her duties, a Director or Officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

A. one or more Directors, Officers, or employees of the Corporation, or of a domestic or foreign corporation or business organization under joint control or common control, whom the Director or Officer reasonably believes to be reliable and competent in the matters presented;

B. legal counsel, public accountants, engineers, or other persons as to matters the Director or Officer reasonably believes are within the person's professional or expert competence;

C. a committee of the Board of which he or she is not a member if the Director or Officer reasonably believes that the committee merits confidence.

A Director or Officer is not entitled to rely on information described in subsections (a), (b) or (c) above if he or she has knowledge concerning the matter in question that makes reliance otherwise unwarranted.

If a Director or Officer is subject to the Uniform Prudent Management of Institutional Funds Act, MCL 451.921 to 451.931 (the "UPMIFA"), the Director, in discharging his/her duties under such act shall conform to the standards of the UPMIFA .

Section 4.15 **Directors' Liability for Corporate Actions**. Directors who vote for or concur in any of the actions described in Section 551(1) of the Act, including, making a loan to a Director or Officer of the Corporation or to a subsidiary that is contrary to the Act, are jointly and severally liable to the Corporation for its benefit or for the benefit of its creditors for any legally recoverable injury suffered by the Corporation or those creditors as a result of the action in an amount that does not exceed the difference between the amount paid or distributed and the amount that lawfully could have been paid or distributed. A Director is not liable under this section if he or she complied with the requirements of Section 542 of the Act.

Section 4.16 **Presumption of Director's Concurrence in Absence of Dissent**. If a Director is present at a meeting of the Board of Directors, or an executive committee of which he or she is a member, and action on a corporate matter referred to in Section 4.15 of this Article is taken at that meeting, the Director is presumed to concur in that action unless his or her dissent is entered in the minutes or unless he or she files a written dissent to the action with the person acting as secretary of the meeting before or promptly after the adjournment of the meeting. The right to dissent does not apply to a Director who voted in favor of the action.

A Director, who is absent from a meeting of the Board of Directors or an executive committee of which he or she is a member, and action on a corporate matter described in Section 4.15 is taken at that meeting, the Director is presumed to concur in the action unless he or she files his or her dissent with the secretary of the Corporation within a reasonable period of time after he or she has knowledge of the action.

Section 4.17 **Minutes of Meetings.** Minutes shall be taken for all meetings of the Board of Directors and committees. The minutes shall document the action taken at the meeting, when it was taken and who made the motions and the decisions that were made and any information required to show how decisions complied with any policies of the Corporation, including the conflict of interest and compensation policies. The person who records such minutes shall use his or her best efforts to prepare written minutes and circulate these to the Board or committee by the later of the following dates: the next meeting of the Board or committee or sixty (60) days after the date of the meeting.

Section 4.18 **Report to Directors.** The Corporation, at least once each calendar year, shall prepare or have prepared a report of the Corporation for the preceding fiscal year and present the report at the annual meeting of the Board of Directors and such other times as the Board may direct. The report shall include all of the following for the Corporation's preceding fiscal year:

A. Its income statement.

B. Its year-end balance sheet, including trust funds and funds restricted by donors or the Board.

C. Its statement of source and application of funds, if the Corporation prepared that statement.

D. Any other information required by the Act.

E. A written notice addressed to the City Manager and Mayor of the City of Kalamazoo describing the type and amount of all of the support the Corporation provided to the City during the Corporation's taxable year immediately preceding the taxable year in which the written notice is provided.

F. A copy of the Corporation's Form 990, "Return of Organization Exempt from Income Tax", or other annual information return required to be filed under Section 6033 of the Internal Revenue Code.

G. An annual report from the City Manager of the City of Kalamazoo to reflect its use of funds received from the Corporation for the previous fiscal year and a report regarding projects and initiatives undertaken with the funds distributed by the Corporation.

The report may be distributed by electronic transmission or by making the report available for electronic transmission. If the report is distributed electronically, the Corporation shall provide the report in written form to a Director on request.

On or before the date that the report is provided to the Corporation, a copy of the report shall be provided to the City Commission and to such person(s) as the City Commission may designate.

Section 4.19 **Examination of Books and Records.** A Director may examine any of the Corporation's books and records for a purpose reasonably related to his or her position as a Director. A Director wishing to examine any books and records shall submit a notice to the Secretary of the Corporation that he or she wishes to examine books and records and attempt to reasonably describe the books and records to be inspected. The Corporation shall use its best efforts to gather the requested books and records for examination. The examination shall take place at the office of the Corporation, unless the Board or President selects another location that is reasonably near to the Corporation's office. The Corporation shall allow the examination to be conducted within a reasonable period of time following receipt of the notice from the Director asking to examine the books and records. The Board may adopt additional procedures for the examination of books and records by a Director.

ARTICLE V - OFFICERS

Section 5.01 **Officers.** The Officers of the Corporation shall be a President, a Treasurer and a Secretary and may include the office of Vice President, which is optional (the preceding positions are referred to collectively as the "Officers"). The Officers shall be elected by the Board of Directors at its first meeting and at each annual meeting thereafter. The Board of Directors of the Corporation may from time to time elect or appoint other Officers including Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board may deem advisable, and such Officers shall have such authority, and shall perform such duties as from time to time may be prescribed by the Board of Directors. Any two or more offices, except that

of President and Secretary, may be held by the same person. In addition to the powers and duties of the Officers of the Corporation as set forth in these Bylaws, the Officers shall have such authority and shall perform such duties as from time to time may be determined by the Board of Directors. No Officer shall execute, acknowledge or verify any instrument in more than one capacity if the instrument is required by law or the Articles of Incorporation or Bylaws to be executed, acknowledged or verified by two (2) or more Officers.

Each Officer shall be elected for a term extending until the next annual meeting of the Board of Directors or until his or her resignation or removal.

In voting to elect Officers, each Officer position shall be elected by a plurality of the votes cast at an election.

Section 5.02 **President**. The President shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Board of Directors. Unless otherwise provided by resolution of the Board of Directors, the President shall have the power and authority, on behalf of the Board of Directors, to perform all acts, execute and deliver all documents, contracts, instruments, papers and certificates of every conceivable kind and character and take all steps that the President may deem necessary or desirable to effectuate the actions and policies of the Board. The President shall also perform such other duties and functions as shall be assigned to him or her from time to time by the Board of Directors. He or she shall be *ex officio*, a member of all standing committees.

Section 5.03 **Vice President**. The position of Vice President is optional and is not required. The Board of Directors may create one or more Vice President positions and elect persons to fill these positions. A Vice President shall have such powers and perform such duties as shall from time to time be assigned by these Bylaws or by the Board of Directors. In the event the President is absent, unavailable or no longer in office, then the Vice President shall perform the duties and exercise the powers of the President (if there is more than one Vice President, then the Vice President designated by the Board to perform the duties of the President shall serve in place of the President); however, the Vice President shall not terminate or change the duties of any employees, change any committee appointments, or undertake any other material action normally performed by the President unless the Board approves or unless the Board officially elects the Vice President as President.

Section 5.04 **Secretary**. The Secretary shall give, or cause to be given, notice of all meetings of the Board, and all other notices required by law and these Bylaws. The Secretary shall have the responsibility for maintaining the official minutes and records of the Corporation, except such financial records that are the responsibility of the Treasurer, which shall at all times remain the property of the Corporation and be open to inspection by any Officer. The Secretary shall perform such other duties as may be assigned by the President or the Board. The Secretary may utilize the services of the staff of the Kalamazoo City Clerk when performing these duties (especially matters requiring compliance with the OMA), and may also appoint an Assistant Secretary.

Section 5.05 **Treasurer**. The Treasurer shall have the responsibility for the financial records of the Corporation, which shall at all times remain the property of the Corporation and be open to inspection by any Officer. The Treasurer shall be responsible for the

receipt, custody and disbursement of the Corporation's funds, under procedures, rules and orders established by the Board. The Treasurer shall report the financial condition of the Corporation at meetings of the Board and such other reports as may be directed by the Board or President. The Treasurer shall also assist in preparing the report described in Section 4.18 that is to be presented at the annual meeting of the Board. The Treasurer may utilize the services of the City of Kalamazoo Finance Director when performing these duties.

Section 5.06 **Giving of Bond by Officers**. All Officers of the Corporation, if required to do so by the Board of Directors, shall furnish bonds to the Corporation for the faithful performance of their duties, in such penalties and with such conditions and security, as the Board shall require. The Corporation shall assume the cost of providing any bond required hereunder.

Section 5.07 **Compensation of Officers**. No Officer of the Corporation shall be compensated for the performance of services for the Corporation, but may, by resolution of the Board of Directors, be reimbursed for actual, reasonable and necessary expenses incurred in his or her capacity as an Officer.

Section 5.08 **Resignations**. Any Officer may resign at any time by giving written notice to the Board of Directors or to the President of the Corporation. Any such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the resignation shall be immediately effective on receipt and acceptance of such resignation shall not be necessary to make it effective.

Section 5.09 **Removal**. Any of the Officers designated in Section 5.01 of this Article V may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation will be served thereby, by the vote of a majority of the total number of Directors.

Section 5.10 **Vacancies**. If there is a vacancy in any Officer position, the vacancy may be filled by the Board of Directors. Any person elected to fill a vacancy shall serve until the next election of Officers by the Directors and shall exercise the full power and authority of the Officer position to which he/she is elected.

Section 5.11 **Discharge of Duties; Reliance on Reports**. An Officer shall discharge his or her duties as an Officer, and shall be entitled to rely on reports, etc., in the same manner as specified for a Director in Section 4.14.

ARTICLE VI - COMMITTEES

Section 6.01 **General**. In addition to those committees specifically required to be established by these Bylaws, the Board of Directors may designate standing committees and special committees with such duties and powers as it may provide in order to carry out the programs and purposes of the Corporation.

All committees shall provide advice and/or recommendations to the Board of Directors on matters involving the purpose and/or objective of the committee. Committees shall not exercise any of the power or authority of the Board of Directors and shall not make decisions, as this is defined in the OMA. All decisions shall be made by the Board of Directors.

All committees shall perform under the direction of the Board of Directors those functions described in these Bylaws or determined from time to time by the Board. If a committee is created by the Board of Directors, the Board resolution that creates the committee shall state the purposes of the committee, the terms and qualifications of committee members, and the ways in which committee members are selected and removed. Membership on committees can include individuals who are and are not Directors or Officers of the Corporation.

The President, with the consent of the Board of Directors, shall designate the persons to serve on each committee, fill vacancies on committees, and serve as Chairperson of the committee. Each committee shall make such reports of its activities to the Board of Directors as the Board may request. Each member of a committee serves at the pleasure of the Board and may be removed at any time by vote of the Board of Directors.

The City Commission shall have the right to designate one or more persons to serve on committees.

Section 6.02 **Finance.** A Finance Committee shall be established which shall include the Corporation's Treasurer, the City's Finance Director, or similar position (or a person appointed by the City's Finance Director), the City Manager and two (2) Stakeholder Directors. This committee shall: recommend short and long term financial goals for the Corporation; prepare on a timely basis and monitor an annual budget for the Corporation that is aligned with the Corporation's purpose and priorities; recommend financial policies and ensure compliance with those financial policies adopted by the Board of Directors; make recommendations on the deposit and/or investment of the Corporation's funds; identify short-term and long-term financial challenges before they become urgent issues; review the performance of investments and make recommendations on changes in investments and investment advisors; recommend the selection of an auditor to prepare annual audited financial statements, 990s and other reports and tax filings and meet with the auditor to review and discuss these; meet prior to the September meeting of the Board of Directors to review the Corporation's finances and speak with representatives of the City of Kalamazoo to discuss its need for funding for the upcoming year and its plans for aspirational projects and make a recommendation to the Board of Directors on the amount of a grant that the Corporation shall make that year to the City of Kalamazoo based on any written agreement among the City, the Corporation and the major donors to the Corporation and any gift instruments under which donors have made donations to the Corporation. In addition to meeting prior to the September Board of Directors meeting the Finance and Grant Making Committee may meet at other times as it determines is necessary or as may be requested by the Board of Directors or the President.

If it believes it is necessary, the Finance Committee may create an investment subcommittee and an audit subcommittee and establish their mission and purpose and rules of operation and assign to them various duties concerning the investment and management of the Corporation's assets and the work with the Corporation's auditor.

Section 6.03 **Executive Committee.** An Executive Committee shall be established which shall include the President, Treasurer, Secretary, and a City Director and a representative of the Finance Committee (in addition to the Treasurer). The Executive Committee shall meet prior to the scheduled Board of Directors meetings in April, September or October to prepare the agendas for these meetings and to plan for these meetings and make recommendations to the

Board on matters concerning the Corporation and its operations and programs. The Executive Committee may meet at other times as it determines is necessary or as may be requested by the Board of Directors or the President. The Executive Committee shall undertake such matters as may be assigned to it by the Board of Directors and also identify strategic issues for Board discussion, recommend committees that should be created, work to develop and recruit new leadership on the Board and make recommendations to the Board on best governance practices that can be implemented by the Board of Directors.

Section 6.04 **Powers**. Any committee shall exercise such powers and perform such duties as are permitted by the Act and stated in these Bylaws or as the Board of Directors may, from time to time authorize; however, no committee shall have the power or authority to:

A. Amend the Articles of Incorporation.

B. Adopt an agreement of merger or conversion.

C. Amend the Bylaws of the Corporation.

D. Fill vacancies in the Board of Directors.

E. Declare a distribution authorized under Section 301 of the Act.

F. Take any other action prohibited by law, the Articles of Incorporation or these Bylaws.

Section 6.05 **Rules for Committees**. The Board of Directors may adopt rules regarding the conduct of committees and their meetings, including rules for the calling of meetings, quorum requirements and voting. To the extent it is not inconsistent with the rules adopted by the Board of Directors or the requirements of these Bylaws that apply to committees, each committee may establish its own rules to govern the conduct of its activities.

ARTICLE VII - INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

Section 7.01 **Indemnification: Claims by Third Parties**. The Corporation shall, to the fullest extent permitted by law, indemnify in full any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a Director, Officer, employee, nondirector volunteer or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, nondirector volunteer or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself

create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

Section 7.02 **Actions by or in Right of the Corporation**. The Corporation shall, to the fullest extent permitted by law, indemnify in full any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a Director, Officer, employee, nondirector volunteer or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with the action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the Corporation unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for expenses which the court considers proper.

Section 7.03 **Expenses**. To the extent that a Director, Officer, employee, nondirector volunteer or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 7.01 and 7.02 of this Article or in defense of any claim, issue or matter in the action, suit or proceeding, the Corporation shall indemnify such person against expenses (including actual and reasonable attorneys' fees incurred in connection with the action, suit or proceeding and in any action suit or proceeding brought to enforce the mandatory indemnification provided herein.

Section 7.04 **Determination of Indemnification**. Except as otherwise provided in Section 564a(5) of the Act, unless ordered by the court, the Corporation shall indemnify a Director, Officer, employee, nondirector volunteer or agent under Sections 7.01 and 7.02 only if authorized in the specific case based on a determination that indemnification of the Director, Officer, employee, nondirector volunteer or agent is proper in the circumstances because that person has met the applicable standard of conduct set forth in Sections 7.01 or 7.02 and based on an evaluation that the expenses and amounts paid in settlement are reasonable. The Corporation shall make a determination and evaluation under this Section in one of the following ways:

A. By a majority vote of a quorum of the Board of Directors consisting of Directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

B. If the Board of Directors is unable to obtain a quorum under subdivision (A), then by majority vote of a committee that is duly designated by the Board and that consists solely of two or more Directors who are not at the time parties or threatened to be made parties to the action, suit or proceeding.

C. By independent legal counsel in a written opinion, which counsel shall be selected in one of the following ways: (i) By the Board of Directors or a committee of directors in a manner prescribed in subdivision (A) or (B); or (ii) If a quorum of the Board of Directors cannot be obtained under subdivision (A) and a committee cannot be designated under subdivision (B), by the Board of Directors.

In the designation of a committee under subsection (B) or in the selection of independent legal counsel under subsection (C)(ii), all Directors may participate.

The Board of Directors shall authorize payment of indemnification in any of the ways permitted by Section 564a(4)(a) of the Act.

Section 7.05 **Indemnification for Limited Liability of Director.** To the extent that the Corporation's Articles of Incorporation eliminate or limit the liability of a Director under Section 209(1)(c) of the Act, the Corporation shall indemnify the Director for expenses and liabilities described in that subsection without a determination that the Director has met the standard of conduct set forth in Sections 7.01 or 7.02. Any indemnification under this Section is subject to the restrictions and limits set forth in Section 564a(5) of the Act.

Section 7.06 **Advancement of Expenses.** The Corporation may, in the complete discretion of the Board of Directors, pay or reimburse the reasonable expenses incurred by a Director, Officer, employee, nondirector volunteer or agent of the Corporation or a person that is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another domestic corporation, foreign corporation, domestic business corporation, foreign business corporation, partnership, limited liability company, joint venture, trust or other enterprise, whether for profit or not, that is a party or threatened to be made a party to an action, suit or proceeding in advance of final disposition of the proceeding if the person furnishes the Corporation a written agreement executed personally or on the person's behalf, to repay the advance if it is ultimately determined that the person did not meet the standard of conduct, if any, required by the Act for the indemnification of a person under the circumstance. Such an agreement must be an unlimited general obligation of the Director, Officer, employee, nondirector volunteer or agent but may be unsecured. The Corporation may accept such agreement without reference to the financial ability of the person to make repayment.

The Corporation shall evaluate the reasonableness of advances under this Section in the manner described in in Section 7.04 above and make an authorization of payment in any of the ways permitted by Section 564a(4)(a) of the Act.

Section 7.07 **Partial Indemnification.** If an Indemnitee seeks indemnification under Section 7.01 or 7.02 for a portion of expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Corporation shall if the Indemnitee meets the requirements of Section 7.04, indemnify the Indemnitee for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the Indemnitee is entitled to be indemnified.

Section 7.08 **Liability Insurance.** The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, nondirector volunteer, or agent of the Corporation, or that is or was serving at the

request of the Corporation as a director, officer, partner, trustee, employee, nondirector volunteer or agent of another foreign or domestic corporation, foreign or domestic business corporation, limited liability company, partnership, joint venture, trust or other enterprise, for profit or nonprofit, against any liability asserted against the person and incurred by the person in that capacity or arising out of the person's status as such, whether or not the Corporation has the power to indemnify the person against liability under the provisions of the Act, as amended.

If the Corporation's Articles of Incorporation include a provision that eliminates or limits the liability of a Director under Section 209(1)(c) of the Act, the Corporation may purchase insurance on behalf of a Director from an insurer owned by the Corporation, but insurance purchased from that insurer may insure a Director against monetary liability to the Corporation only to the extent to which the Corporation could indemnify the Director under Section 564a of the Act.

Section 7.09 **Definitions.** For purposes of this Article VII, the terms "corporation", "fines", "other enterprises", "serving at the request of the Corporation" shall be defined as set forth in the Act.

Section 7.10 **Articles of Incorporation Control.** The provisions contained in this Article VII are intended to augment, clarify or detail the indemnification of Officers, Directors, employees and agents except as provided to the contrary in the Articles of Incorporation, which Articles shall be controlling.

ARTICLE VIII - CONFLICTS OF INTEREST

Section 8.01 **Provisions Regarding Payment of Compensation and Property Transfers; Conflicts of Interest.** The Corporation's Directors, officers, managers and key employees interact and do business with members of the community served by the Corporation. While acting on behalf of the Corporation, they have a duty to not advance their personal interests and to conduct their affairs in a manner that will avoid conflicts of interest with the Corporation.

The Board of Directors shall create and enforce a Conflicts of Interest Policy that establishes policies and procedures for determining when a Director, Officer or other person has a conflict of interest and which specifies procedures for reviewing, voting upon and performing any contract or transaction with such an interested person or with an entity in which such person has an interest.

At a minimum any conflict of interest policy must take into consideration the requirements of: (a) Section 301 of the Act, which prohibits a corporation from making a direct or indirect transfer of money or other property or incurring indebtedness to or for the benefit of its directors or officers without adequate consideration, and (b) Internal Revenue Code Section 4958 and the Treasury Regulations promulgated thereunder, which prohibits "excess benefit transactions" between the Corporation, as an entity that is tax exempt under Internal Revenue Code Section 501(c)(3), and persons who are Disqualified Persons (as defined in Code Section 4958 and the Treasury Regulations promulgated thereunder) or between the Corporation and a domestic or foreign corporation, domestic or foreign business corporation, firm or association of any type or kind, in which one or more Disqualified Persons are directors, employees or are

otherwise interested. This requires that payments under a compensation arrangement must be reasonable and transfers of property or the right to use property must be at a fair market value.

In making a decision involving whether a compensation arrangement is reasonable or whether a transfer of property or the right to use property is at fair market value, the Board of Directors shall use its best efforts to try and meet the rebuttable presumption that the transaction or contract is not an excess benefit transaction, as described in Treasury Regs. §53.4958-6, including: (i) that the compensation arrangement or the terms of the property transfer be approved in advance by the Board of Directors, or other authorized body, that is composed entirely of individuals who do not have a conflict of interest with respect to the compensation arrangement or property transfer; (ii) before the Board of Directors (or other authorized body) votes to approve this contract or transaction, the Board of Directors (or other authorized body) shall attempt to obtain appropriate data as to comparability from which it can determine if the compensation arrangement in its entirety is reasonable or the property transfer is at fair market value; (iii) the person who is the subject of the conflict of interest shall not be present during the discussion and shall not vote on the transaction; and (iv) at the meeting where the vote is taken, the Board of Directors (or other authorized body) must contemporaneously document how it reached its decisions, by including in the minutes of the meeting:

A. the terms of the transaction and the date it was approved;

B. the members of the Board of Directors (or other authorized body) who were present during the debate on the transaction that was approved and who voted for it;

C. the comparability data obtained and relied upon and how the data were obtained;

D. any actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the Board of Directors (or other authorized body) but who had a conflict of interest with respect to the decision on the transaction; and

E. if the Board of Directors (or other authorized body) determines that reasonable compensation for a specific arrangement or fair market value in a specific property transfer is higher or lower that the range of comparability data obtained, the Board (or other authorized body) must record the basis for its determination.

To the extent additional guidance is needed by the Board of Directors regarding transactions involving persons with an interest in a contract or transaction involving the Corporation or about requirements and/or procedures under Internal Revenue Code Section 4958 or the Regulations for Code Section 4958, the Board shall consult legal counsel for insight and guidance regarding the requirements of Section 4958 and its Regulations and to determine the steps it should take to meet the requirements for the rebuttable presumption.

ARTICLE IX - FISCAL POLICIES

Section 9.01 **Fiscal Year/Accounting Methods**. The fiscal year of the Corporation shall be consistent with the fiscal year for the City. The Board of Directors shall also determine the particular accounting methods and principles to be followed by the Corporation.

Section 9.02 **Management of Funds**. Endowment funds received by the Corporation pursuant to a gift instrument shall be managed consistent with the standards set forth in the uniform prudent management of institutional funds act, MCL 451.921 *et seq.*

Section 9.03 **Amount of the Annual Distribution to the City.** The Corporation shall make an annual distribution to the City authorized by majority vote of Board of Directors members present at a meeting and voting, provided that a quorum is present, in an amount that is:

A. Equal to the difference between the amount that the City would have received in real estate tax and personal property tax revenue for the fiscal year-in-question calculated using a millage rate of 19.2705 mills ($19.2705 per $1000 of taxable value) less the amount of real and personal property taxes that the City is budgeted to receive for the fiscal year-in-question under the City's proposed millage rate, so as to provide the City a tax rate that is correlative to other municipalities in the Kalamazoo area, plus,

B. $4 million for budget fiscal 2019 and thereafter adjusted annually by the Municipal Cost Index developed by the *American City & County Magazine*, or another credible model addressing the price of the unique market basket of goods and services purchased by local governments, so as to address the structural revenue imbalance to City finances due to the shortcomings of Michigan's municipal finance system, and

C. Additional annual distributions may be approved and made by the Corporation if requests are (i) consistent with the purposes set forth in Article II in the Articles of Incorporation of this Corporation; and, (ii) consistent with donor intent as specified in the Statement of Donor Intent. Distributions to multi-year or exceptional programs or projects shall continue to be part of the distributions allowed in this Section 9.03 until their completion as provided in the original request and shall be included in the distribution amount under Section 9.03 C. In the event that a requested distribution to the City under this Section 9.03C is not approved, the reasons for disapproval are to be set forth in writing which shall be based on a determination by a majority of the Board of Directors membership that the requested distribution would be (i) detrimental to the continued fiscal health of the Corporation and/or (ii) inconsistent with the Statement of Donor Intent executed on a date contemporaneous with the Articles of Incorporation.

Section 9.04 **Required Distribution.** The Corporation by an affirmative vote of its Board of Directors membership present at a meeting and voting, provided that a quorum is present at the meeting where the vote is held, shall authorize a distribution to the City of an amount which is at least 3.5% of the fair market value of the Corporation's investment assets, or the amount of the annual distribution to the City contained at Section 9.03, whichever is greater.

Section 9.05 **Payment of Annual Distribution.** The Corporation shall tender its annual distribution to the City by February 15 of each year.

Section 9.06 **Third Party Fiduciary.** A third party fiduciary, such as the Kalamazoo Community Foundation, shall be engaged to act as custodial agent for the assets of the Corporation. Further, such fiduciary may provide space for the meetings of the Board of Directors of the Corporation.

ARTICLE X - MISCELLANEOUS PROVISIONS

Section 10.01 **Contracts, Conveyances, Etc**. Unless otherwise directed by the Board of Directors, all conveyances, contracts and instruments of transfer and assignment shall be specifically approved by the Board of Directors and shall be executed on behalf of the Corporation by such Officers or agents as may be specifically authorized by the Board of Directors.

Section 10.02 **Execution of Instruments**. Unless otherwise designated by the Board of Directors, all Corporation instruments and documents including, but not limited to, checks, drafts, bills of exchange, acceptances, notes or other obligations or orders for the payment of money shall be signed by such Officers of the Corporation as from time to time are designated by resolution of the Board of Directors. The Board of Directors may also require that checks or drafts be signed by two (2) or more persons.

Section 10.03 **Borrowing**. No loans or borrowings and no renewals of any loans or borrowings, or pledges of assets, grant of a security interest in assets, or guaranty of indebtedness owed by a third party, or issuance of bonds or other obligations, except those entered into in the ordinary and normal course of business, shall be entered into by the Corporation or contracted on behalf of the Corporation except as authorized by the Board of Directors of the Corporation after receiving the advice and consent of the City Commission, as described in Section 4.01. When authorized to do so, any Officer or agent of the Corporation may effect loans and advances for the Corporation from any bank, trust company or other institution or from any firm, Corporation or individual, and for such loans and advances may make, execute and deliver promissory notes or other evidences of indebtedness and liabilities of the Corporation. When authorized to do so, any Officer or agent of the Corporation may pledge, hypothecate or transfer, as security for the payment of any and all loans, advances, indebtedness and liabilities of the Corporation any and all stocks, securities and other personal property at any time held by the Corporation and to that end may endorse, assign and deliver the same. The authority contained in this Section 10.03 shall be express and confined to specific instances.

Section 10.04 **Deposits**. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, credit unions or other depositories as the Board of Directors may select (collectively a "Depository"). Any Depository must meet the qualifications established by the City, from time to time, for the deposit of its own funds. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation shall be endorsed, assigned and delivered by such person or persons and in such manner as may from time to time be designated by the Board of Directors.

Section 10.05 **Method of Giving Notices**. Any notice required by statute or by these Bylaws to be given by the Corporation to the Directors, Officers or other person entitled to receive notice (a "Recipient"), unless otherwise provided herein or in any statute, shall be given by any of the methods permitted by these Bylaws. It is not required to use a specific type of notice, even if requested by the person who is sending or receiving the notice. The Corporation may use more than one method of notice in any instance.

When a notice or communication is required or permitted by these Bylaws to be given by mail, it shall be mailed, except as otherwise provided in these Bylaws or the Act, to the Recipient at his or her last known address on record with the Corporation. The notice or communication is given by mail when deposited, with proper postage prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. The mailing shall be by first class mail except where otherwise provided in the Act.

Notice by telephone shall be deemed given when it is told directly to the Recipient; it shall not be sufficient to leave notice on an answering machine or with a family member of the Recipient.

Notice by reputable overnight courier shall be addressed to the address which the Corporation has on record for the Recipient, which notice is deemed to be given on the business day following the day such notice is delivered to the courier in a prepaid envelope.

For purposes of these Bylaws, the term "electronic transmission" shall be defined to mean any form of communication that meets all of the following:

A. It does not directly involve the physical transmission of paper.

B. It creates a record that may be retained, retrieved and reviewed by the Recipient; and,

C. It may be directly reproduced in paper form by such recipient through an automated process.

This includes, without limitation, notice given by facsimile telecommunication and electronic mail and other methods approved for use by the Board of Directors.

When a notice or communication is permitted by the Act to be given by electronic transmission, the Corporation may send notice using such means of electronic transmission as it selects and may send it to any electronic address or telephone number that is registered to the Recipient, except as provided below. The notice or communication is given when electronically transmitted to the Recipient at an electronic address or telephone number registered to the Recipient. If a Recipient notifies the Corporation in writing that he or she does not want to receive notice by electronic transmission or if a notice sent by electronic transmission is reported to be undeliverable or not sent, then the Corporation shall use another form of notice when sending notices to this Recipient. If a Recipient notifies the Corporation in writing that he or she wants to receive notice only pursuant to certain a type(s) of electronic transmission or only wants electronic transmissions sent to certain electronic addresses or telephone numbers, the Corporation shall comply with this request, provided that the Corporation is not required to use a method of electronic transmission that has not been approved for use by the Board of Directors.

An affidavit of the Secretary or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the giving of such notice by the form stated in the affidavit.

The Corporation may select those forms of electronic transmission that it wishes to utilize for sending and receiving notices and other communications. The Corporation may also rescind, modify or limit the use of any method of electronic transmission for sending and receiving notices. A Director and any other person entitled to send or receive a notice or communication is limited to sending and receiving notice and other communications to and from the Corporation only through those forms of electronic transmission approved by the Board of Directors. A Director or other person may not require that the Corporation use a form of electronic transmission that the Board of Directors has not elected to use.

Section 10.06 **Corporate Seal**. The Corporation shall have the right to adopt a corporate seal.

Section 10.07 **Headings and Parenthetical Insertions**. The Article and Section headings included in these Bylaws have been used solely for convenience and shall in no event act as or be used in conjunction with the interpretation of these Bylaws.

Section 10.08 **Severability**. Each and every paragraph, sentence, term and provision of these Bylaws shall be considered severable in that, in the event a court finds any paragraph, sentence, term or provision to be invalid or unenforceable, the validity and enforceability, operation, or effect of the remaining paragraphs, sentences, terms, or provisions shall not be affected, and these Bylaws shall be construed in all respects as if the invalid or unenforceable matter had been omitted.

Section 10.09 **Conflict with Statute**. In the event any Article or Section of these Bylaws shall conflict with the Michigan Non-Profit Corporation Act, the Act shall control.

ARTICLE XI - AMENDMENTS; RULES AND POLICIES

Section 11.01 **Amendments**.

A. Subject to its Articles of Incorporation, the Corporation's Bylaws may be altered or amended by the affirmative vote of three quarters (3/4) of all Directors then in office, which must include the affirmative vote of a majority of the City Directors present at the meeting, provided a quorum exists and that notice of the meeting has been given to all Directors at least twenty one (21) days before the meeting together with a copy of the proposed amendment.

The type of notice shall be that which is allowed for a regular meeting of the Board of Directors, as provided in Section 4.06A.

B. Any such amendment to these Bylaws can only be effective with the concurrence of the City Commission and the approval of the Michigan Attorney General's Charitable Trust Division or its successors.

Section 11.02 **Rules, Regulations and Policies**. The Directors may adopt additional rules, regulations and policies, general or specific, for the conduct of meetings, and additional rules, regulations and policies, general or specific, for the conduct of the affairs of the Corporation provided, however, no such additional rule, regulation or policy shall be inconsistent with or in contravention of any provision of the Articles of Incorporation or these Bylaws.

We certify that the foregoing Bylaws were adopted by the Corporation on the 25th day of August, 2017.

Date: August 25, 2017

Bobby J. Hopewell, Incorporator

Date: August 25, 2017

James K. Ritsema, Incorporator

I certify that the foregoing Bylaws were ratified by the Board of Directors of the Corporation on the _____ day of _____, 2017

Date: _____ _____

, Secretary

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