

FONKOZE USA, INC.
A New York Not-for-Profit Corporation

AMENDED AND RESTATED BYLAWS

ARTICLE 1 – DEFINITIONS

Section 1.1. Definitions.

The following terms used in these Bylaws shall have the meanings set forth below:

- A. “Act” means the New York Not-for-Profit Corporation Law, as amended.
- B. “Board” means the Board of Directors of the Corporation.
- C. “Corporation” means Fonkoze USA, Inc.
- D. “Director” means an individual serving on the Board.
- E. “Entire Board” means the total number of Directors that would be entitled to vote if there were no vacancies in the Board.

ARTICLE 2 – PURPOSES

Section 2.1. Purposes.

The purposes of the Corporation are set forth in its Certificate of Incorporation.

ARTICLE 3 – OFFICES

Section 3.1. Offices.

The registered office of the Corporation shall be located in New York. The Corporation may have any number of other offices at such places as the Board may determine.

ARTICLE 4 – SEAL

Section 4.1. Seal.

The Corporation may use a Corporate Seal. The Corporate Seal shall bear the name of the Corporation, the year of its incorporation, and the words “Corporate Seal, New York.”

ARTICLE 5 – MEMBERS

Section 5.1. No Members.

The Corporation shall have no members entitled to vote on any matter or for any other reason.

ARTICLE 6 – BOARD OF DIRECTORS

Section 6.1. Board of Directors.

The business and affairs of the Corporation shall be managed under the direction of the Board. The powers of the Corporation shall be exercised by, or under the authority of, the Board except as otherwise provided by the Act, the Certificate of Incorporation, these Bylaws, or a resolution adopted by the Board.

Section 6.2. Qualifications of Directors.

Each Director shall be a natural person at least 18 years of age who need not be a resident of New York. A Director may not be an employee of the Corporation.

Section 6.3. Number and Election of Directors.

The Board shall consist of a minimum of five (5) and a maximum of twenty (20) Directors. The Directors shall be elected by the Board at the annual meeting of the Board by a majority of votes, when a quorum is present.

Section 6.4. Term of Office; Term Limits.

Each Director shall be elected for a term of three (3) years and shall hold office until the later of: (a) the expiration of the term for which he or she was elected or until his or her successor has been elected and qualified, or (b) his or her earlier death, resignation, or removal.

A Director may serve no more than three (3) consecutive three (3) year terms, followed by a one (1) year mandatory roll-off; provided, however, that a Director may continue to serve one (1) additional term if such Director is currently serving as an Officer of the Corporation. After a one (1) year absence from the Board, the former Director will be eligible for another term on the Board.

Section 6.5. Procedure for Nomination of Candidates for Director.

The chair of the meeting shall announce at the annual meeting of the Board the number of Directors to be elected at the meeting, shall declare that the nominations of candidates for election as Director are open, and shall call for nominations from the floor. Any Director who is entitled to vote at the meeting may make nominations. Nominations need not be seconded. After nominations have been made, the chair of the meeting shall, on motion, declare the nominations closed, and thereafter no further nominations may be made. After the nominations have been closed, the Directors shall cast their votes.

Section 6.6. Vacancies.

Vacancies in the Board, including vacancies resulting from: (a) an increase in the number of Directors, or (b) the death, resignation, or removal of a Director, shall be filled by a majority vote of the remaining Directors then in office, or by a sole remaining Director. Each person so elected shall be a Director to serve until the next annual meeting at which the election of Directors is in the regular order of business, and until his or her successor is elected or qualified.

Section 6.7. Removal of Directors.

Any Director may be removed from office, with cause, by a majority vote of the Board at any meeting of the Board. If any Director is removed, the resulting vacancy may be filled by the Board at the same meeting.

Section 6.8. Resignations.

Any Director may resign at any time by giving written notice to the Secretary. The resignation shall be effective upon receipt by the Secretary or at such subsequent time as may be specified in the notice of resignation.

Section 6.9. Compensation of Directors.

Members of the Board are volunteering their time and talents and shall serve without monetary compensation.

Section 6.10. Voting Rights.

Each Director shall be entitled to one (1) vote.

ARTICLE 7 – COMMITTEES

Section 7.1. Establishment and Powers of Board Committees.

The Board may, by resolution adopted by a majority of the Entire Board, establish an Executive Committee and other committees to consist of three or more Directors of the Corporation (each a “Board Committee”). Any Board Committee, to the extent provided in the resolution of the Board, shall have and may exercise all of the powers and authority of the Board, except that no Board Committee, including the Executive Committee, shall have any power or authority as to the following:

- (a) The filling of vacancies on the Board or in any committee;
- (b) The fixing of compensation of the Directors for serving on the Board or on any committee;
- (c) The authorization of indemnification for expenses;
- (d) The amendment or repeal of the Bylaws or the adoption of new Bylaws;
- (e) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;
- (f) Action on matters committed by the Bylaws or by resolution of the Board to another Board Committee;
- (g) The election or removal of Officers and Directors;
- (h) The approval of a merger or plan of dissolution;
- (i) The filing of a petition for judicial dissolution;
- (j) The authorization of a transaction involving the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; or
- (k) The approval of amendments to the Certificate of Incorporation.

Section 7.2. Term.

Each Board Committee shall serve at the pleasure of the Board.

Section 7.3. Executive Committee.

The Executive Committee shall be composed of Officers of the Corporation and appointed by a majority of the Entire Board. The Executive Committee shall be authorized to act for the Board between its regular meetings. Except as otherwise provided by these Bylaws or by resolution of the Board, the Executive Committee shall have and may exercise all of the powers and authority of the Board in the management of the Corporation.

Section 7.4. Finance and Audit Committee.

- (a) Finance and Audit Committee. The Finance and Audit Committee shall be composed of Independent Directors. The Finance and Audit Committee shall oversee the Corporation's (a) accounting and financial operations; (b) reporting processes; and (c) the audit of the Corporation's financial statements. The Finance and Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, shall review the results of the audit and any related management letter with the independent auditor. The Finance and Audit Committee shall perform the following additional duties:
- (1) Prior to the audit's commencement, review with the independent auditor the scope and planning of the audit;
 - (2) Upon completion of the audit, review and discuss with the independent auditor:
 - (A) any material risks and weaknesses in internal controls identified by the auditor;
 - (B) any restrictions on the scope of the auditor's activities or access to requested information;
 - (C) any significant disagreements between the auditor and management; and
 - (D) the adequacy of the Corporation's accounting and financial reporting processes;
 - (3) Annually consider the performance and independence of the independent auditor;
 - (4) Review the financial policies manual;
 - (5) Review any policies related to endowment management and the administration of any endowment;
 - (6) Oversee the adoption of, implementation of, and compliance with the Conflict of Interest and Whistleblower Policies described in Articles 11 and 12 herein; and
 - (7) Report on the Finance and Audit Committee's activities to the Board.
- (b) Definitions. For purposes of this Article and Article 11:
- (1) "Affiliate" means any entity controlled by, in control of, or under common control with the Corporation;
 - (2) "Independent Director" means a Director who: (i) is not, and has not been within the last three (3) years, an employee of the

Corporation or a Key Person of the Corporation or an Affiliate of the Corporation, and does not have a Relative who is, or has been within the last three (3) years, a Key Person of the Corporation or an Affiliate of the Corporation; (ii) has not received, and does not have a Relative who has received, in any of the last three (3) fiscal years, more than ten thousand (\$10,000) dollars in direct compensation from the Corporation or an Affiliate of the Corporation (other than reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director); and (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a Relative who is a current officer of or has a substantial financial interest in, any entity that has made payments (excluding charitable contributions) to, or received payments (excluding charitable contributions) from, the Corporation or an affiliate of the Corporation for property or services in an amount which, in any of the last three (3) fiscal years, exceeds the lesser of twenty-five thousand (\$25,000) dollars or two (2%) percent of such entity's consolidated gross revenues;

- (3) "Key Person" means any person who, other than a Director or Officer, whether or not an employee of the Corporation, who (i) has responsibilities, or exercises power or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of Directors and Officers; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, income or expenses of the Corporation; or (iii) alone or with others controls or determines a substantial portion of the Corporation's capital expenditures or operating budget; and
- (4) "Relative" of an individual means his or her: (i) spouse, ancestors, brothers and sisters (by whole or half blood), children (natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-children; or (ii) domestic partner.

Section 7.5. Committees of the Corporation.

The Board may, in its discretion, establish one or more committees of the Corporation ("Committees of the Corporation"), the membership of which shall not be limited to Directors. Members of Committees of the Corporation shall be elected or appointed in the same manner as Officers of the Corporation, but Committees of the Corporation shall not have the authority to bind the Board. The provisions of these Bylaws and the Act applicable to Officers generally shall apply to members of Committees of the Corporation. No advisor to the Corporation shall receive, directly or indirectly, any salary or compensation for any service rendered to the Corporation as a member of a Committee of the Corporation. Examples of Committees of the Corporation include fundraising, strategic planning, special events, and other advisory committees.

Section 7.6. Advisory Board.

The Board may create an Advisory Board (the "Advisory Board"), the members of which shall be selected by the Board and shall serve at the will of, and may be removed by, the Board at any time. The number of persons serving on the Advisory

Board shall be determined by the Board. At the request of the Board, the Advisory Board may make recommendations and provide advice to the Board relating to the mission, purposes and operations of the Corporation or such other matters as the Board shall determine. The recommendations of the Advisory Board are to be suggestive only and not binding in any respect upon the Officers or the Board. Advisory Board members shall not have any fiduciary duties to the Corporation and shall not be compensated for service as Advisory Board members.

Section 7.7. Committee Organization.

Except as otherwise provided by the Board, each committee shall have a chair who shall preside over committee meetings, and each committee shall establish its own operating procedures. Each committee is strongly encouraged to keep regular minutes of its proceedings and report the same to the Board at each regular meeting, provided that, if a committee does not have minutes prepared prior to a regular meeting, it shall provide a report detailing its proceedings to the Board at such regular meeting. Each committee shall determine its times and places of meetings.

ARTICLE 8 – MEETINGS OF DIRECTORS

Section 8.1. Place of Meetings.

The Board may hold its meetings at such places as the Board may appoint or as may be designated in the notice of the meeting.

Section 8.2. Annual Meeting.

Unless the Executive Committee provides by later resolution for a different time, the annual meeting of the Board, for the election of Directors and the transaction of any other business which may be brought before the meeting, shall be fixed by the Board on an annual basis. Immediately after each annual election of Directors, the newly constituted Board shall meet without prior notice at the place where the election of Directors was held, or at any other place and time designated in a notice given as provided in Section 10.1 for the purposes of organization, election of Officers, and the transaction of other business.

Section 8.3. Regular Meetings.

The Board may hold its regular meetings at such place and time as shall be designated by resolution of the Board. The Board shall have at least one regular meeting each year. The Board shall transact such business as may properly be brought before its meetings. Notice of regular meetings need not be given if such meetings are fixed by the Board.

Section 8.4. Special Meetings of the Board.

The Chairperson or any Officer may call special meetings of the Board which shall be held at such time and place as shall be designated in the call for the meeting. Five (5) days' notice of any special meeting shall be given to each Director pursuant to

Section 10.1 or by telephone. Such notice shall state the time and place of such special meeting but need not state the purpose of the special meeting.

Section 8.5. Quorum.

A majority of the Entire Board shall constitute a quorum for the transaction of business. The acts of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the acts of the Board.

Section 8.6. Participation in Meetings.

One (1) or more Directors may participate in a meeting of the Board or a committee thereof by means of conference telephone or similar communications equipment or by electronic video screen communication; however, Directors are encouraged to attend Board meetings in person. Participation in a meeting pursuant to this Section shall constitute presence in person at the meeting so long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

Section 8.7. Organization.

Every meeting of the Board shall be presided over by the Chairperson, or in the absence of the Chairperson, the Vice Chairperson, or in the absence of the Chairperson and the Vice Chairperson, a chair chosen by a majority of the Directors present. The Secretary, or in his or her absence, a person appointed by the chair, shall act as secretary.

Section 8.8. Consent of Directors in Lieu of Meeting.

Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting, if all members of the Board or the committee consent, either in writing or electronically, to the adoption of a resolution authorizing the action. If in writing, the consent must be executed by the Director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. Such resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Board or committee.

ARTICLE 9 – OFFICERS

Section 9.1. Number.

The Board shall select all officers for the Corporation (each officer an “Officer,” and collectively, “Officers”). The Officers of the Corporation shall include a Chairperson,

a Secretary, and a Treasurer. The Officers may include one or more Vice Chairpersons, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other Officers as the Board may determine by resolution. The same person may hold any number of offices, except the offices of Chairperson and Secretary. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities, and duties.

Section 9.2. Qualifications of Officers.

The Officers shall be natural persons at least eighteen (18) years of age. Officers must be Directors.

Section 9.3. Election and Term of Office.

The Officers of the Corporation shall be elected by the Board at any meeting of the Board for a term of one (1) year. Each Officer shall hold office until: the later of (a) the expiration of the term for which he or she was elected or until his or her successor has been elected and qualified, or (b) until his or her earlier death, resignation, or removal.

Section 9.4. Removal of Officers.

The Board may remove any Officer by majority vote whenever in its judgment the best interests of the Corporation will be served.

Section 9.5. Vacancies.

Vacancies in Officer positions resulting from: (a) the creation of additional Officer positions, or (b) the death, resignation, or removal of an Officer, shall be filled by a majority vote of the Directors, even if less than a quorum of Directors are present. Each person so elected shall be an Officer to serve for the balance of the term.

Section 9.6. Resignations.

Any Officer may resign at any time by giving notice (either written or electronic) to the Secretary. The resignation shall be effective upon receipt by the Secretary or at such subsequent time as may be specified in the notice of resignation.

Section 9.7. The Chairperson.

The Chairperson shall have general supervision over the business and operations of the Corporation, subject to the control of the Board. The Chairperson shall chair all meetings of the Board and the Executive Committee. The Chairperson shall execute in the name of the Corporation, deeds, mortgages, bonds, contracts, and other instruments authorized by the Board, except in cases where the execution thereof shall

be expressly delegated by the Board to some other Officer or agent of the Corporation. In general, the Chairperson shall perform all duties incident to the office of Chairperson and such other duties as may be assigned by the Board.

Section 9.8. Vice Chairpersons.

In the absence or disability of the Chairperson or when so directed by the Chairperson, any Vice Chairperson may perform all the duties of the Chairperson, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chairperson. Each Vice Chairperson shall perform such other duties as may be assigned by the Board or the Chairperson.

Section 9.9. The Secretary.

The Secretary shall attend all meetings of the Board. The Secretary shall ensure that all votes of the Board and the minutes of the meetings of the Board are kept in a book or books maintained for that purpose. The Secretary shall ensure that required notices of meetings of the Board are given and that all records and reports are properly kept and filed by the Corporation. The Secretary shall be the custodian of the seal of the Corporation. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board or by the Chairperson.

Section 9.10. Assistant Secretaries.

In the absence or disability of the Secretary or when so directed by the Secretary, any Assistant Secretary may perform all 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. Each Assistant Secretary shall perform such other duties as may be assigned by the Board, the Chairperson, or the Secretary.

Section 9.11. The Treasurer.

The Treasurer shall be responsible for corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. The Treasurer shall have full authority to receive and give receipts for all money due and payable to the Corporation, and to endorse checks, drafts, and warrants in its name and on its behalf, and to give full discharge for the same. The Treasurer shall deposit all funds of the Corporation, except such as may be required for current use, in such banks or other places of deposit as the Board may designate. In general, the Treasurer shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board or the Chairperson.

Section 9.12. Assistant Treasurers.

In the absence or disability of the Treasurer or when so directed by the Treasurer, any Assistant Treasurer may perform all 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. Each Assistant Treasurer shall perform such other duties as may be assigned by the Board, the Chairperson, or the Treasurer.

Section 9.13. Compensation of Officers.

The Officers of the Corporation are volunteering their time and talents and will serve without monetary compensation.

ARTICLE 10 - NOTICE

Section 10.1. Notice.

Whenever notice is required to be given to any person, it may be given to the person, either personally or by sending a copy by first class or express mail, postage prepaid, by courier service, charges prepaid, by facsimile transmission, or by email, to his or her address (or to his or her facsimile number or email address) appearing on the books of the Corporation or, in the case of Directors, supplied by him or her to the Corporation for the purposes of notice. If the notice is sent by mail or courier service, it shall be deemed to have been given when deposited in the United States mail or with a courier service for delivery to that person or, in the case of facsimile or email, when sent. A notice of meeting shall specify the place, day, and hour of the meeting and any other information required by the Act. Except as otherwise provided by the Act or these Bylaws, when a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting, or of the business to be transacted at an adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

Section 10.2. Written or Electronic Waiver.

Whenever any notice is required to be given, a written or electronic waiver of notice, whether submitted before or after the time stated, shall be deemed equivalent to the giving of the notice. If in writing, the waiver must be executed by the person entitled to the notice by signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the person entitled to the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

Section 10.3. Waiver by Attendance.

Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

ARTICLE 11 – CONFLICTS OF INTEREST

Section 11.1. Conflicts of Interest.

No contract or transaction between the Corporation or its Affiliate and one or more of its Directors, Officers, Key Persons, or their Relatives, or between the Corporation and any other entity in which one or more Directors, Officers, Key Persons,

or their Relatives have a relationship or interest shall be void or voidable solely for such reason, if:

- (a) The material facts as to the relationship or interest and as to the contract or transaction are disclosed in good faith as required by the Corporation's Conflict of Interest Policy;
- (b) The Finance and Audit Committee or the Board, in keeping with the Corporation's Conflict of Interest Policy, determines that such contract or transaction is fair, reasonable, and in the Corporation's best interest at the time or such determination;
- (c) Prior to entering into such contract or transaction, the Finance and Audit Committee or the Board, in keeping with the Corporation's Conflict of Interest Policy, considers alternative contracts or transactions to the extent available;
- (d) The Finance and Audit Committee or the Board, in keeping with the Corporation's Conflict of Interest Policy, approves the contract or transaction by not less than a majority vote of the committee members present at the meeting; and
- (e) The Finance and Audit Committee or the Board, in keeping with the Corporation's Conflict of Interest Policy, contemporaneously documents in writing the basis for such approval, including its consideration of any alternative transactions; provided, however, that:
 - (1) the person with the conflict of interest is not present at or participate in the Board or committee deliberation or vote on the matter giving rise to the conflict; and
 - (2) the person with the conflict of interest has not made any attempt to influence improperly the deliberation or voting on the matter giving rise to the conflict.

Section 11.2. Conflict of Interest Policy.

The Corporation shall adopt a Conflict of Interest Policy to ensure that its Directors, Officers, and Key Persons act in the Corporation's best interest and comply with applicable legal requirements including, without limitation, the requirements of Section 715 of the Act.

ARTICLE 12 - WHISTLEBLOWER POLICY

Section 12.1. Whistleblower Policy

The Corporation shall adopt a Whistleblower Policy to protect from retaliation persons who report suspected improper conduct. Under such policy, no Director, Officer, employee, or volunteer of the Corporation who in good faith reports any action or suspected action taken by or within the Corporation that is illegal, fraudulent, or in

violation of any adopted policy of the Corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.

**ARTICLE 13 – INDEMNIFICATION OF DIRECTORS, OFFICERS, AND OTHER
AUTHORIZED OFFICERS; INSURANCE**

Section 13.1. Scope of Indemnification.

- (a) General rule. The Corporation shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an indemnified capacity, including, without limitation, liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:
 - (1) where such indemnification is expressly prohibited by applicable law;
 - (2) where the conduct of the indemnified representative has been finally determined:
 - (a) to constitute bad faith or to be the result of active and deliberate dishonesty within the meaning of the Act or any provision of law sufficient in the circumstances to bar indemnification against liabilities arising from the conduct; or
 - (b) to be based upon or attributable to the receipt by the indemnified representative from the Corporation of a personal benefit to which the indemnified representative is not legally entitled; or
 - (3) to the extent such indemnification has been finally determined in a final adjudication to be unlawful.
- (a) Partial payment. If an indemnified representative is entitled to indemnification in respect of a portion, but not all, of any liabilities to which such person may be subject, the Corporation shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.
- (b) Presumption. The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the indemnified representative is not entitled to indemnification.
- (c) Definitions. For purposes of this Article:
 - (1) “indemnified capacity” means any and all past, present, and future service by an indemnified representative in one or more capacities as a Director, Officer, employee or agent of the Corporation, or, at the request of the Corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise;

- (2) “indemnified representative” means any and all Directors and Officers of the Corporation and any other person designated as an indemnified representative by the Board of Directors of the Corporation (which may, but need not, include any person serving at the request of the Corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise):
- (3) “liability” means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense, of any nature (including, without limitation, attorneys’ fees and disbursements); and
- (4) “proceeding” means any threatened, pending, or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Corporation, a class of its security holders or otherwise.

Section 13.2. Proceedings Initiated By Indemnified Representatives.

Notwithstanding any other provision of this Article, the Corporation shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counterclaims or affirmative defenses) or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the Directors in office. This Section does not apply to a reimbursement of expenses incurred in successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this Article.

Section 13.3. Advancing Expenses.

The Corporation shall pay the expenses (including attorneys’ fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in **Section 12.1** or the initiation of or participation in which is authorized pursuant to **Section 12.2** upon receipt of written assurance by or on behalf of the indemnified representative to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the Corporation pursuant to this Article or otherwise. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.

Section 13.4. Insurance: Securing of Indemnification.

To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the Corporation shall maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or use any other mechanism or

arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate. Absent fraud, the determination of the Board of Directors with respect to such amounts, costs, terms, and conditions shall be conclusive against all security holders, Officers and Directors and shall not be subject to voidability. To the extent that such insurance coverage provides a benefit to the insured person, the Corporation's payment of premiums with respect to such insurance shall be provided in exchange for the services rendered by the insured person.

Section 13.5. Prior Notice for Indemnification.

An indemnified representative shall submit to the Secretary a written request for indemnification.

Section 13.6. Contribution.

If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the Corporation shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

Section 13.7. Permissible Indemnification of Directors, Officers, Etc.

To the extent that an authorized representative of the Corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in 722 and 723 of the Act or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection therewith.

Section 13.8 Scope of Article.

The rights granted by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution, or advancement of expenses may be entitled under any statute, agreement, vote of members or disinterested Directors or otherwise both as to action in a indemnified capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this Article shall continue as to a person who has ceased to be an indemnified representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators, and personal representatives of such a person.

Section 13.9. Reliance of Provisions.

Each person who shall act as an indemnified representative of the Corporation shall be deemed to be doing so in reliance upon the rights provided under this Article. Nothing herein this Article should be deemed a contract between the Corporation and the representative.

ARTICLE 14 – ANNUAL REPORT

Section 14.1. Annual Report.

The Chairperson and Treasurer shall present to the Board at a regular or special meeting not more than six (6) months after the close of the immediately preceding fiscal year a report, verified by the Chairperson and Treasurer or by a majority of the Board, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following:

- (a) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year immediately preceding the date of the report.
- (b) The principal changes in assets and liabilities, including the trust funds, during the year immediately preceding the date of the report.
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the Corporation; and
- (d) The expenses or disbursement of the Corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the Corporation.

The annual report for the Board shall be filed with the minutes of the meeting of the Board at which it was presented.

ARTICLE 15 – TRANSACTION OF BUSINESS

Section 15.1. Real Property.

(a) The Corporation shall make no purchase of real property nor sell, mortgage, exchange, lease away or otherwise dispose of its real property, unless authorized by the vote of a majority of the Board or of a majority of a committee authorized by the Board, except that if such property would constitute all, or substantially all, of the assets of the Corporation, then the vote of two-thirds (2/3) of the Entire Board shall be required or, if there are twenty-one (21) or more Directors, the vote of a majority of the Entire Board shall be sufficient.

(b) If the Corporation authorizes a committee to act pursuant to paragraph

(a) of this Section, such committee shall promptly report any actions taken to the Board, and in no event after the next regularly scheduled meeting of the Board.

Section 15.2. Negotiable Instruments.

All checks or demands for money and notes of the Corporation shall be signed by such Officer or Officers as the Board may designate.

ARTICLE 16 – CORPORATE RECORDS

Section 16.1. Bookkeeping; Recordkeeping.

The Corporation shall keep: (a) an original or duplicate record of the proceedings of the Board, Board Committees, and Committees of the Corporation, (b)

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the original or a copy of its Bylaws, including all amendments thereto to date, certified by the Secretary of the Corporation, (c) a list of the names and business addresses of its current Board and Officers, (d) a copy of the most recent annual reports delivered to state and federal officials, and (e) appropriate, complete, and accurate books or records of account, at its registered office or at its principal place of business.

Section 16.2. Transparency.

The Corporation shall ensure that its IRS Form 990, annual reports and financial statements are complete and accurate and are posted to the Corporation's website or otherwise made available to the public.

ARTICLE 17 - AMENDMENTS

Section 17.1. Amendments.

The Bylaws of the Corporation may be amended by a vote of two-thirds (2/3) of the Entire Board at any meeting after notice of such purpose has been given.

ARTICLE 18 - FISCAL YEAR

The fiscal year of the Corporation shall begin on January 1 and end on December 31, or such other date as determined by the Board.

Approved and Adopted by the Fonkoze USA Board of Directors: January 19, 2023