



# PROSPERITY DENVER FUND

## PROSPERITY DENVER FUND (a Colorado nonprofit corporation) BYLAWS

Dated effective this 21st day of March, 2019

### ARTICLE I OFFICES

Section 1.1. Business Offices. The principal office of the corporation shall be located in the City and County of Denver, Colorado (the "City").

Section 1.2. Registered Office. The registered office of the corporation required by the Colorado Revised Nonprofit Corporation Act (the "Act") to be maintained in Colorado may be, but need not be, the same as the principal office if in Colorado, and the address of the registered office may be changed from time to time by the board of directors or by the officers of the corporation.

### ARTICLE II NO MEMBERS

Section 2.1. No Members. The corporation is incorporated as a nonprofit, non membership organization. There are no members. References in these Bylaws to "members," committees, or other categories of persons are common usage and do not refer to the legal term "member" as used in the Act.

### ARTICLE III BOARD OF DIRECTORS

Section 3.1. General Powers. The business and affairs of the corporation shall be managed under the direction of its board of directors, except as otherwise provided in the Act, the articles of incorporation or these Bylaws.

Section 3.2. Number, Nomination, Classes.

- (a) The number of directors of the corporation shall be seven (7) directors, six (6) of whom shall be appointed by the Mayor (the "Mayor") of the City (the "Mayor Appointed Directors") and confirmed by the City Council of the City

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(the "City Council"), and one (1) of whom shall be a member of the City Council and appointed by the City Council (the "City Council Appointed Director"). The Mayor Appointed Directors shall be appointed by the Mayor, but shall not take office until confirmed by the City Council by resolution. The City Council Appointed Director shall be appointed by the City Council and shall always be a member of the City Council.

- (b) The corporation shall appoint the initial directors to the board of directors (the "Initial Directors") to serve from the date the Articles of Incorporation are filed with the Colorado Secretary of State's office and shall continue to serve until at least four (4) directors are appointed in accordance with these Bylaws. The Initial Directors are permitted to act on behalf of the corporation only for purposes of (i) holding meetings with the public, (ii) preparing for and the planning of the corporation's business operations (including but not limited to staffing, infrastructure, investments, and establishing a timeline, policies and procedures), and (iii) negotiating the tax revenue contract between the City and the corporation (the "Tax Revenue Contract"); provided that the Initial Directors shall be prohibited from executing the Tax Revenue Contract or otherwise binding the corporation to any contracts, agreements, liabilities or other obligations.

Section 3.3. Staggered Board. The terms of the directors shall be staggered in accordance with the following provisions: The total number of directors shall be divided into three groups, with each group containing one-third of the total, as near as may be. The terms of directors in the first group shall expire at the first annual directors' meeting after their appointment, and the terms of the directors in the second group shall expire at the second annual directors' meeting after their appointment, and the terms of directors in the third group shall expire at the third annual directors' meeting after their appointment. Upon the expiration of the initial staggered terms, directors shall be appointed for terms of three years to succeed those whose terms expire. No director may serve more than two consecutive terms but may be reappointed after one year absence from service as director.

Section 3.4. Qualifications of Directors. Directors must be natural persons at least 18 years of age and must also demonstrate an interest in the purposes of the corporation. In addition to the foregoing, the corporation shall evaluate and select candidates for appointment to the board of directors in accordance with the criteria outlined below focusing on the skills, experience, expertise, backgrounds, and other characteristics that should be represented on the board of directors to enhance its effectiveness. Candidates for appointment to the board of directors should meet at least one of the following criteria:

- (a) Financial and/or accounting expertise with detailed knowledge of the industry or relevant industry experience;
- (b) Legal expertise with detailed knowledge of the industry or relevant industry experience;
- (c) Marketing and communications expertise with detailed knowledge of the industry or relevant industry experience;
- (d) Experience in higher education or Student Success Services (aka "wraparound services"), with a preference for first-generation college graduates or individuals with experience working with first-generation students in higher education;
- (e) Experience with financial aid administration, scholarship administration or other reimbursement-based programs; or
- (f) Experience in, or a deep understanding of, workforce development, with a preference for workforce development in higher education or other educational institutions.

Other director criteria may be established by the board of directors from time to time, at its discretion. Notwithstanding anything contained in Section 3.2, no individual may serve as a director of the corporation if such individual also serves as an officer, director, shareholder, employee or agent of any institution of higher education or other nonprofit organization receiving funds from the Denver College Affordability Fund (a "Disqualified Director"). If any director becomes a Disqualified Director, the person(s) who designated such director shall take such actions as are necessary to remove the Disqualified Director from the board of directors and appoint a replacement director who is not a Disqualified Director.

Section 3.5. Vacancies. Any director may resign at any time by giving written notice to the chair of the board or to the secretary (or such individual acting as the secretary). Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any director may be removed in the manner set forth in these Bylaws. Any vacancy occurring in the board of directors may be filled in accordance with these Bylaws. A director elected to fill a vacancy shall be appointed for the unexpired term of such director's predecessor in the office. Notwithstanding the foregoing, the term of office of a director (excluding a director who is removed, who resigns or who otherwise ceases to be a director before the expiration of his or her term) shall continue until his or her successor has been appointed and confirmed in accordance with these Bylaws.

Section 3.6. Removal. Any director appointed by the Mayor (including any initial director) may be removed by the Mayor at any time, with or without cause, upon written notice by the Mayor to the secretary of the corporation. Any director appointed by the City

Council may be removed by the City Council at any time, with or without cause, upon written notice by the City Council to the secretary of the corporation. No action of the corporation taken prior to the removal of a director shall be affected by the subsequent removal of such director.

Section 3.7. Regular Meetings. Regular meetings of the board of directors shall be held for the transaction of such business as may come before the board. In general, but subject to exceptions as determined by the board, regular meetings shall be held at least quarterly.

Section 3.8. Annual Meetings. The annual meeting of the board of directors shall be held on such date and at such time and at such place as the chair may determine. The annual meeting of the board of directors shall be for the purpose of transacting such business as may come before the meeting. Failure to hold an annual meeting shall not constitute a forfeiture by the corporation.

Section 3.9. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chair or two or more directors for the purpose of electing officers and for the transaction of such other business as may come before the meeting. The board of directors may provide by resolution the time and place, within the State of Colorado, for the holding of additional regular meetings.

Section 3.10. Public Notice. All meetings of the board of directors shall be noticed and open to the public in the same manner and to the same extent as required under the Colorado Open Meetings Law, C.R.S. 24-6-101 to 24-6-402, as amended, or any successor provisions.

Section 3.11. Notice. Notice of each meeting of the board of directors stating the place, day and hour of the meeting shall be given to each director at the director's business address at least two days prior thereto by the mailing of written notice by first class, certified or registered mail, or at least one day prior thereto by personal delivery of written notice or by telephonic, email, telegraphic, telex or facsimile notice (and the method of notice need not be the same as to each director). If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage thereon prepaid. If telegraphed, such notice shall be deemed to be given when the telegram is delivered to the telegraph company. If transmitted by telex, email or facsimile, such notice shall be deemed to be given when the transmission is completed. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

Section 3.12. Waiver of Notice. Any director may waive notice of any meeting before, at or after such meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.13. Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless such director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 3.14. Quorum and Voting. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the board of directors, and the vote of a majority of the directors present in person at a meeting at which a quorum is present shall be the act of the board of directors. If less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than an announcement at the meeting, until a quorum shall be present. No director may vote or act by proxy at any meeting of directors.

Section 3.15. Compensation. Directors as such shall not receive any stated salaries for their services but, by resolution of the board of directors, actual and necessary expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board, Such fixed amount shall be consistent with the expense reimbursement paid to directors of comparable nonprofit boards of directors as is determined from time to time by resolution of the board.

Section 3.16. Meetings by Telephone. Members of the board of directors or any committee thereof may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting

## **ARTICLE IV COMMITTEES**

Section 4.1 Committees of Directors. The board of directors may create one or more committees of the board and appoint one or more directors to serve on them, by action of the board of directors. Committees shall make recommendations to the board of directors, and no such committee shall have the authority of the board. The chair may appoint non-directors to serve on any committee. All committees shall have a written charter outlining its purpose and authority and such charter shall be filed with the secretary and approved by the board of directors.

Section 4.2 Term of Office. Each member of a committee shall continue as such until the next annual meeting of the board of directors and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed or resigns from such committee.

Section 4.3 Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 4.4. Quorum. Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 4.5 Rules. The same rules described herein regarding meetings, notice, waiver of notice and quorum and voting requirements of the board of directors similarly apply to the committees of the board and their members.

## **ARTICLE V OFFICERS AND AGENTS**

Section 5.1. Number and Qualifications. The elected officers of the corporation may consist of a chair, one or more vice-chairs, a secretary, and/or a treasurer. The board of directors may also appoint such other officers as it deems necessary. All officers must be at least eighteen (18) years old.

Section 5.2. Election and Term of Office. The officers of the corporation shall be

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elected by the board of directors at each regular annual meeting of the board. If the election of officers shall not be held at such meeting, such election shall be held as soon as convenient thereafter. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified, or until the officer's earlier death, resignation, or removal.

Section 5.3. Compensation. Officers of the board and directors serving as such shall receive no salary or compensation for their services, except that they shall be reimbursed for their actual Expenses incurred in the performance of their duties hereunder.

Section 5.4. Removal. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not in itself create contract rights.

Section 5.5. Vacancies. Any officer may resign at any time, subject to any rights or obligations under any existing contracts between the officer and the corporation, by giving written notice to the chair or to the board of directors. An officer's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.

Section 5.6. Authority and Duties of Officers. The officers of the corporation shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the chair, the board of directors or these Bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

- (a) Chair. The chair, if elected, shall (i) preside at all meetings of the board of directors; (ii) see that all orders and resolutions of the board of directors are carried into effect; and (iii) perform all other duties incident to the office of chair of the board and as from time to time may be assigned to the chair by the board of directors,
- (b) Vice-Chair. The vice-chair(s) shall assist the chair and shall perform such duties as may be assigned to them by the chair or by the board of directors. The vice-chair shall, at the request of the chair, or in the chair's absence or inability or refusal to act, perform the duties of the chair and when so acting shall have all the powers of and be subject to all the restrictions on the chair.

- (c) Secretary. The secretary shall (i) keep the minutes of the proceedings of the board of directors and all committees of the board; (ii) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the corporation; and (iv) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary by the chair or the board of directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.
- (d) Treasurer. The treasurer shall (i) be the principal financial officer of the corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the board of directors; (ii) receive and give receipts and acquittances for moneys paid in on account of the corporation, and pay out of the funds on hand all bills, payrolls and other just debts of the corporation of whatever nature upon maturity; (iii) unless there is a controller, be the principal accounting officer of the corporation and as such shall prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all local, state and federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the chair and the board of directors statements of account showing the financial position of the corporation and the results of its operations; (iv) upon request of the board, make such reports to it as may be required at any time; and (v) perform all other duties incident to the office of treasurer and such other duties as from time to time may be assigned to the treasurer by the chair or the board of directors. Assistant treasurers, if any, shall have the same powers and duties, subject to supervision by the treasurer.

## **ARTICLE VI INDEMNIFICATION**

Section 6.1. Definitions. For purposes of this Article VI, the following terms shall have the meanings set forth below:

- (a) "Corporation" means the corporation and, in addition to the resulting or surviving corporation, any domestic or foreign predecessor entity of the corporation in a merger, consolidation or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (b) "Expenses" means the actual and reasonable expenses, including attorneys



- fees, incurred by a party in connection with a proceeding.
- (c) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to a private corporation or an employee benefit plan) or expense incurred with respect to a proceeding.
  - (d) "Official Capacity" when used with respect to a director of the corporation means the office of director in the corporation and, when used with respect to a person in a capacity other than as a director (even if such person is also a director), means the office in the corporation held by the officer or the employment relationship undertaken by the employee on behalf of the corporation in the performance of his or her duties in his or her capacity as such officer or employee. "Official capacity" does not include service for any other foreign or domestic corporation or for any partnership, joint venture, trust, other enterprise or employee benefit plan when acting directly on behalf of such other corporation, partnership, joint venture, trust, enterprise or plan as a director, officer, employee, fiduciary or agent thereof.
  - (e) "Party" means any person who was, is, or is threatened to be made, a named defendant or respondent in a proceeding by reason of the fact that such person is or was a director, officer, or employee of the corporation, and any person who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise, or employee benefit plan. A party shall be considered to be serving an employee benefit plan at the corporation's request if such party's duties to the corporation also impose duties on or otherwise involve services by such party to the plan or to participants in or beneficiaries of the plan.
  - (f) "Proceeding" means any threatened, pending or completed action, suit or proceeding, or any appeal therein, whether civil, criminal, administrative, arbitrative or investigative (including an action by the corporation) and whether formal or informal.

## Section 6.2. Right to Indemnification.

- (a) Standards of Conduct. Except as provided in Section 6.2(d) below, the corporation shall indemnify any party to a proceeding against liability incurred in or as a result of the proceeding if (i) such party conducted himself or herself in good faith; (ii) such party reasonably believed (A) in the case of a director acting in his or her official capacity, that his or her conduct was in the corporation's best interests, or (B) in all other cases, that such party's conduct

was at least not opposed to the corporation's best interests, and (iii) in the case of any criminal proceeding, such party had no reasonable cause to believe his or her conduct was unlawful. For purposes of determining the applicable standard of conduct under this Section 6.2, any party acting in his or her official capacity who is also a director of the corporation shall be held to the standard of conduct set forth in Section 6.2(a)(ii)(A), even if such party is sued solely in a capacity other than as such director.

- (b) Employee Benefit Plans. A party's conduct with respect to an employee benefit plan for a purpose such party reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirements of Section 6.2(a)(ii)(B). A party's conduct with respect to an employee benefit plan for a purpose that such party did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of Section 6.2(a)(i).
- (c) Settlement. The termination of any proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not of itself determinative that the party did not meet the applicable standard of conduct set forth in Section 6.2(a).
- (d) Indemnification Prohibited. Except as hereinafter set forth in this Section 6.2(d), the corporation may not indemnify a party under this Section 6.2 either (i) in connection with a proceeding by the corporation in which the party is or has been adjudged liable for gross negligence or willful misconduct in the performance of the party's duty to the corporation; or (ii) in connection with any proceeding charging improper personal benefit to the party, whether or not involving action in the party's official capacity, in which the party was adjudged liable on the basis that personal benefit was improperly received by the party (even if the corporation was not thereby damaged).  
Notwithstanding the foregoing, the corporation shall indemnify any such party if and to the extent required by the court conducting the proceeding, or any other court of competent jurisdiction to which the party has applied, if it is determined by such court, upon application by the party, that despite the adjudication of liability in the circumstances in clauses (i) and (ii) of this Section 6.2(d) or whether or not the party met the applicable standard of conduct set forth in Section 6.2(a), and in view of all relevant circumstances, the party is fairly and reasonably entitled to indemnification for such Expenses as the court deems proper in accordance with the Colorado Nonprofit Corporation Code.
- (e) Claims by Corporation. Indemnification permitted under this Section 6.2 in

connection with a proceeding by the corporation shall be limited to Expenses incurred in connection with the proceeding.

- (f) Combined Proceedings. If any claim made by the corporation against a party is joined with any other claim against such party in a single proceeding, the claim by the corporation (and all Expenses related thereto) shall nevertheless be deemed the subject of a separate and distinct proceeding for purposes of this Article.

Section 6.3. Prior Authorization Required. Any indemnification under Section 6.2 (unless ordered by a court) shall be made by the corporation only if authorized in the specific case after a determination has been made that the party is eligible for indemnification in the circumstances because the party has met the applicable standard of conduct set forth in Section 6.2(a) and after an evaluation has been made as to the reasonableness of the Expenses. Any such determination, evaluation and authorization shall be made by the board of directors by a majority vote of a quorum of such board, which quorum shall consist of directors not parties to the subject proceeding, or by such other person or body as permitted by law.

Section 6.4. Success on Merits or Otherwise. Notwithstanding any other provision of this Article VI, the corporation shall indemnify a party to the extent such party has been successful, on the merits or otherwise, including, without limitation, dismissal without prejudice or settlement without admission of liability, in defense of any proceeding to which the party was a party against Expenses incurred by such party in connection therewith.

Section 6.5. Advancement of Expenses. The corporation shall pay for or reimburse the Expenses, or a portion thereof, incurred by a party in advance of the final disposition of the proceeding if (a) the party furnishes the corporation a written affirmation of such party's good faith belief that he or she has met the standard of conduct described in Section 6.2(a)(i); (b) the party furnishes the corporation a written undertaking, executed personally or on behalf of such party, to repay the advance if it is ultimately determined that the party did not meet such standard of conduct; and (c) authorization of payment and a determination that the facts then known to those making the determination would not preclude indemnification under this Article have been made in the manner provided in Section 6.3. The undertaking required by clause (b) must be an unlimited general obligation of the party but need not be secured and may be accepted without reference to financial ability to make repayment.

Section 6.6. Payment Procedures. The corporation shall promptly act upon any

request for indemnification, which request must be in writing and accompanied by the order of court or other reasonably satisfactory evidence documenting disposition of the proceeding in the case of indemnification under Section 6.4 and by the written affirmation and undertaking to repay as required by Section 6.5 in the case of indemnification under such Section. The right to indemnification and advances granted by this Article shall be enforceable in any court of competent jurisdiction if the corporation denies the claim, in whole or in part, or if no disposition of such claim is made within ninety days after the written request for indemnification is made. A party's Expenses incurred in connection with successfully establishing such party's right to indemnification is made. A party's Expenses incurred in connection with successfully establishing such party's right to indemnification, in whole or in part, in any such proceeding shall also be paid by the corporation.

Section 6.7. Insurance. By action of the board of directors, notwithstanding any interest of the directors in such amounts as the board of directors deems appropriate to protect itself and any person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under applicable provisions of law or this Article. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the laws of Colorado or any other jurisdiction, including any insurance company in which the corporation has an equity or any other interest, through stock ownership or otherwise. The corporation may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such sums as may become necessary to effect indemnification as provided herein.

Section 6.8. Right to Impose Conditions to Indemnification. The corporation shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the board of directors in each specific case and circumstances, including, but not limited to, any one or more of the following: (a) that any counsel representing the party to be indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the corporation; (b) that the corporation shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the party to be indemnified; and (c) that the

corporation shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the corporation.

Section 6.9. Other Rights and Remedies. Except as limited by law, the indemnification provided by this Article shall be in addition to any other rights which a party may have or hereafter acquire under any law, provision of the articles of incorporation, any other or further provision of these Bylaws, vote of the board of directors, agreement, or otherwise.

Section 6.10. Applicability: Effect. The indemnification provided in this Article shall be applicable to acts or omissions that occurred prior to the adoption of this Article, shall continue as to any party entitled to indemnification under this Article who has ceased to be a director, officer, or employee of the corporation or, at the request of the corporation, was serving as and has since ceased to be a director, officer, partner, trustee, employee, fiduciary, or agent of any other domestic or foreign corporation, or of any partnership, joint venture, trust, other enterprise, or employee benefit plan, and shall inure to the benefit of the estate and personal representatives of each such person. The repeal or amendment of this Article or of any Section or provision hereof that would have the effect of limiting, qualifying or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict, or otherwise affect the right or power of the corporation to indemnify any person, or affect any right of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the corporation and each party covered hereby.

Section 6.11. Indemnification of Agents. The corporation shall have the right, but shall not be obligated, to indemnify any agent of the corporation not otherwise covered by this Article to the fullest extent permissible by the laws of Colorado. Unless otherwise provided in any separate indemnification arrangement, any such indemnification shall be made only as authorized in the specific case in the manner provided in Section 6.3.

Section 6.12. Savings Clause: Limitation. If this Article or any Section or provision hereof shall be invalidated by any court on any ground, then the corporation shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any applicable provision of this Article that shall not have been invalidated. Notwithstanding any other provision of these Bylaws, the corporation shall neither indemnify any person nor purchase any insurance in any manner or to any

extent that would jeopardize or be inconsistent with the qualification of the corporation as an organization described in section 501(c)(3) of the Internal Revenue Code, or that would result in the imposition of any liability under section 4941 of the Internal Revenue Code.

## **ARTICLE VII PURPOSE, RESTRICTIONS**

Section 7.1. General. The purposes of the corporation are those set forth in the articles of incorporation, subject to restrictions set forth in such articles of incorporation, restrictions on amendment as set forth in the articles of incorporation, and in restrictions on amendment set forth in these Bylaws pursuant to the authority set forth in the articles of incorporation.

## **ARTICLE VIII ANNUAL AUDITS, BUDGETS AND WORK PLAN**

Section 8.1 Annual Audit. The corporation shall conduct an audit at least annually of its finances and performance in accordance with its contractual obligations and applicable law, which shall be conducted by an independent third party auditor for submittal of copies to the Mayor, the City auditor and the City Council. At a minimum, such annual audits shall include the following information:

- (a) The number of students receiving assistance from the Denver College Affordability Fund, in total and by program;
- (b) Metrics tracking students year over year, students graduated, students making measurable progress towards completion, students who have lost eligibility due to performance or enrollment status, and students who have otherwise stopped receiving assistance from the Denver College Affordability Fund; and
- (c) Audited financial statements for the corporation, including full reports one expenditures for the prior fiscal year and anticipated budgets and work for the ensuing fiscal years.

Section 8.2 Annual Budget and Work Plan. The board shall adopt a budget and work plan for 2019 and each subsequent calendar year. The board shall adopt the budget and work plan for each calendar year on or before October 1 of the immediately preceding calendar year and shall provide copies thereof and of any amendments thereto to the Mayor and the City Council promptly upon their adoption by the board.

Section 8.3 Use of Revenues. All revenues received by the corporation will be applied by the corporation in accordance with its articles of incorporation, these Bylaws and applicable law.

## **ARTICLE IX MISCELLANEOUS**

Section 9.1. Account Books, Minutes, Etc. The corporation shall keep correct and complete books and records of account consistent with generally accepted accounting principles for nonprofit corporations, and shall keep minutes of the proceedings of its board and committees thereof. All books and records of the corporation shall be kept at the principal office of the corporation where they shall be available to the public as required under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 to 24-72-206, as amended, or any successor provisions. A "Custodian of Public Records" shall be appointed by the board of directors, who may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records. All requests received by the corporation shall be immediately transmitted to the Custodian of Public Records for processing.

Section 9.2. Public Accountability. Notwithstanding Article VIII above, the corporation shall provide for all financial reports necessary or desirable for a charitable organization exempt from tax under Section 501(c)(3) of the Code. The corporation may provide for an annual independent audit or review of its financial affairs. The corporation shall publish and make available to the general public all tax applications and returns as appropriate for a charitable organization exempt from tax under Section 501(c)(3) of the Code.

Section 9.3. Fiscal Year. The fiscal year of the corporation shall be as established by the board of directors.

Section 9.4. Checks, Drafts, or Other Orders For Payment. Each expenditure of the board of directors shall be evidenced by an invoice or other vendor document. All checks, drafts, or other orders for payment of money greater than Five Hundred and No/100 Dollars (\$500.00) shall be co-signed by two authorized signatories. All checks, drafts, or other orders for payment of money equal to or less than Five Hundred and No/100 Dollars (\$500.00) shall be signed by one authorized signatory. The chair and treasurer shall be authorized signatories. The board of directors may designate such other individuals to be authorized signatories in accordance with these Bylaws.



Section 9.5. Conflicts of Interest.

- (a) From time to time potential conflicts of interest or the appearance of such conflicts will inevitably arise. It is the policy of the corporation to deal with such conflicts in as open and appropriate way as possible. The directors may adopt a specific policy on conflicts of interest.
- (b) If any person who is a director or officer of the corporation is aware that the corporation is about to make a grant to or otherwise enter into any transaction directly or indirectly with such person, any member of that person's family, or any entity in which that person has any legal, equitable or fiduciary interest or position, including, without limitation, as a director, officer, shareholder, partner, beneficiary or trustee, such person shall (i) promptly inform those charged with approving the transaction on behalf of the corporation of such person's interest or position; (ii) disclose any material facts within such person's knowledge that bear on the advisability of such transaction from the standpoint of the corporation; and (iii) not be entitled to vote on the decision to enter into such transaction. Notwithstanding the foregoing, the corporation shall not enter into any transaction in violation of the restrictions set forth in the corporation's articles of incorporation.
- (c) In the event the corporation awards any grant or otherwise enters into any transaction that involves any actual or potential conflict of interest, the fact of the conflict and of compliance by all parties with the requirements of Section 9.5(b) shall be recorded in the minutes of the proceedings approving such grant or other transaction.
- (d) The directors, officers, employees and agents of the corporation shall also faithfully observe and comply with any other policies or procedures adopted by the corporation from time to time to assure that conflicts of interests and any other matters bearing on the proper and ethical conduct of corporate affairs are appropriately and effectively monitored, disclosed and dealt with in furtherance of the best interests of the corporation.

Section 9.6. Loans to Directors and Officers Prohibited. No loans shall be made by the corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until it is repaid.

Section 9.7. No Discrimination. In administering the Denver College Affordability Fund or expending any monies derived from the Denver College Affordability tax, the corporation shall not discriminate against any person on the basis of race, color, religion,



national origin, gender, age (except as to the age of students eligible for tuition reimbursement), military status, sexual orientation, gender identity or gender expression, material status, or physical or mental disability.

Section 9.8. References to Internal Revenue Code. All references in these Bylaws to provisions of the Internal Revenue Code are to the provisions of the Internal Revenue Code of 1986, as amended, and to the corresponding provisions of any subsequent federal tax laws.

Section 9.9. Amendments. The power to alter, amend or repeal these Bylaws and adopt new bylaws shall be vested in the board of directors; provided, however, that no alteration, amendment or repeal shall become effective in contravention of the Act or without any review or filing which may from time to time be required thereunder. Amendments with respect to the purposes of the corporation shall be subject in all respects to the articles of incorporation.

Section 9.10. Severability. The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such invalid provision were omitted.

## SECRETARY CERTIFICATION

The undersigned secretary of Prosperity Denver Fund hereby certifies that the is a true and correct copy of the Bylaws of the corporation, duly adopted by the board of directors and in full force and effect as of this 21st day of March, 2019.

Signature: \_\_\_\_\_

Name: Akasha Absher

Title: Secretary