

BYLAWS OF AMERICA CAN!™

ARTICLE I NAME

1.1 **Name.** This organization shall be known as “America CAN!™”, hereinafter referred to as “name of organization.”

1.2 **Address.** The address for America CAN!™ is: 325 West 12th Street, Dallas, TX 75208. America CAN!™ may change the location of its principal office or have such other offices, either within or without the State of Texas, as the Board may determine as the affairs of America CAN!™ may require from time to time.

ARTICLE II STATEMENT OF PURPOSES

2.1 **Purposes.** America CAN!™ is organized exclusively for charitable, educational, or scientific purposes within meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor statute, or corresponding provision of any future federal tax code (collectively, the “IRC”); and shall neither have nor exercise any power or authority, either expressly, by interpretation, or by operation of law, nor directly engage in any activity that would prevent it from qualifying and continuing to qualify as an organization described in Section 501(c)(3) of the IRC. America CAN!™ shall be organized and at all times shall be operated exclusively to perform the functions of and carry out the purposes of a Texas nonprofit corporation. Specifically, it is the purpose of America CAN!™ to provide the highest quality education for all students, especially those who have struggled in a traditional high school setting, in order to ensure their economic independence. Without limiting the generality of the foregoing, the purposes of America CAN!™ specifically include all the purposes permitted by the Amended and Restated Certificate of Formation of the Corporation including, but not limited to, the following: an alternative academic school, Texans Can, dropout prevention, dropout recovery high schools (“Students”).

2.2 **Powers.** America CAN!™ is a nonprofit corporation and shall have all the powers, duties, authorizations, and responsibilities as provided in the Texas Business Organization Code (the “TBOC”); provided, however, America CAN!™ shall not engage in, directly or indirectly, any activity that would invalidate its status as a corporation that is exempt from federal income taxation as an organization described in Section 501(c)(3) of the IRC or would impair its eligibility to receive contributions which are deductible under Section 170(c)(2) of the IRC.

ARTICLE III LIMITATIONS

3.1 **Improper Benefit.** No part of the net earnings of America CAN!™ will inure to the benefit of any Trustee or Officer of America CAN!™ or of any private individual (except that reasonable compensation may be paid for services rendered to or for America CAN!™ for one or more of its purposes), and no Trustee or Officer of America CAN!™ or any private individual will be entitled to share in the distribution of any of the corporate assets upon dissolution of America CAN!™.

3.2 **Lobbying.** America CAN!™ may engage in a limited amount of legislative lobbying under either the “substantial part” test or by electing to operate such activities under the Section 501(h) of the tax code.

3.3 **Political campaigns.** America CAN!™ will not participate or intervene in any way (including the publication or distribution of statements) in any political campaign on behalf of any candidate for public office (including city, county, state, and federal government offices).

3.4 Dissolution. Upon commencement of dissolution and winding up of the Corporation for any purpose, as stipulated under Section 501(c)(3) of the IRC, the Board of America CAN!™ shall proceed with the following: the payment, satisfaction or discharge of all liabilities and obligations. Pursuant to the requirements of Texas Education Code (TEC) Chapter 12, all remaining assets of the Corporation shall be distributed to America CAN! Cars for Kids, a Texas Nonprofit Corporation. In the event, such a distribution is disallowed for any reason, the Board of Trustees of the Corporation may adopt a dissolution distribution plan in accordance with the applicable provisions of the Texas Business Organizations Code. If the aforementioned distribution is disallowed and a dissolution plan is not adopted, the property of the Corporation shall be applied and distributed in accordance with section 22.304, Texas Business Organizations Code.

ARTICLE IV TRUSTEES

4.1 General Powers and Responsibilities. America CAN!™ shall be governed by a Board of Trustees (“the Board”), which shall have all of the rights, powers, privileges, and limitation of liability of Trustees of a nonprofit corporation organized under the TBOC. Trustees should be: (a) in agreement with the mission and goals of the Corporation; and (b) willing to contribute service, gifts, or both to the Corporation.

4.2 Election. Members of the Board of Trustees shall be elected by the Trustees at the annual meeting of the Board and as needed during the year to fill vacant positions or unexpired terms. New Trustees shall be elected by two-thirds (2/3) of then serving Trustees, voting in person.

4.3 Terms. Each Trustee shall serve a three-year term but can be re-elected for one more term of three years. Following his or her service of two terms, a Trustee must wait one (1) year before serving as a Trustee again. In addition to two (2) whole terms, a Trustee may serve a partial term before two (2) whole terms given the following:

This possible extension of the term limitation may apply only to a situation where a Trustee is elected to fill a vacancy before the Trustee’s election to two (2) consecutive whole terms, and will not apply to allow a Trustee who has served two (2) consecutive whole terms to be reelected to a third partial term.

4.4 Number. The Board shall have nine (9) Trustees. The number of board members may be set by the Board, at not less than three (3) and not more than eleven (11) Trustees.

4.5 Requirements. Each Trustee will comply with the terms and conditions of the America CAN!™ Board Member Agreement. Trustees will attend a majority of board meetings annually. If a Trustee does not attend a majority in any Term Year, then the Trustee may be removed from the Board by a vote of a majority of the Trustees. The removal will be confirmed either in the minutes of any meeting of the Board or by the Chairman sending a written confirmation of the removal to the Trustee. The Chair will be responsible for assuring a quorum at scheduled meetings to ensure the consistency of business operations for the corporation.

4.6 Resignation. Any Trustee may resign at any time by giving written notice of such resignation to the Chairperson. The Trustees then serving may fill any vacancy in the Board to fill the unexpired term.

4.7 Meetings. Regular meetings of the Board of Trustees may be held at such time and place as may be from time to time determined by the Board of Trustees. The Board must hold at least six (6) meetings each fiscal year. Notice must be sent to each Trustee at least seventy-two (72) hours prior to the meeting.

Special meetings of the Board may be called by the Chairperson or at least two Trustees. At all meetings the Chairperson or Vice-Chairperson shall preside. In their absence, a chairperson chosen by the Trustees present shall preside.

4.8 Quorum. A majority of the Board will constitute a quorum for the transaction of business at any meeting of the Board, provided that the number of Trustees constituting a quorum shall not be less than three (3) Trustees. The act of a majority of the number of the Trustees present at any meeting at which there is a quorum shall be the act of the Board. If at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting without further notice to any absent Trustee.

4.9 Proxy. Board members have a legal obligation – the duty of care – to make prudent and educated decisions for America CAN!™. Proxy voting will not be used by America CAN!™.

4.10 Action Without a Meeting –Prohibited. The Open Meetings Act, Texas Government Code Section 551.001(4) provides that a school board must hold meetings in order to exercise its statutory powers.

4.11 Meetings by Telephone or Other Remote Communications Technology. Subject to the provisions of applicable law and these Bylaws regarding notice of meetings, Trustees may participate in and hold a meeting of the Board or Board committee by using conference telephone or by using any other suitable electronic communications system, including video conferencing technology or the Internet, provided it permits all persons participating in the meeting to hear each other simultaneously. Participation in a meeting pursuant to this Paragraph 4.10 will constitute presence in person at such meeting.

4.12 Compensation. Trustees shall not receive any compensation for their services in their capacity as a Trustee. Trustees may be entitled to reimbursement for approved expenses. The Corporation may not enter into personal service contracts with, or otherwise transact business with, a Trustee, officer, or committee member of the Corporation for compensation without full disclosure of all relevant facts and without the Board's approval, not including the vote of any person having a personal interest in the transaction. A Trustee may not accept employment with the Corporation related to the Corporation's charter school operations until the first anniversary of the date the Trustee's membership on the Board ends.

4.13 Powers. All corporate powers, except such as are otherwise provided for in these Bylaws and the laws of the State of Texas, shall be vested in the Board. Except for certain non-delegable duties as proscribed in 19 TAC Section 100.1033 (14) (C,) the Board may by general resolution delegate to committees of their own number, or to Officers of America CAN!™, such powers as they may see fit.

4.14 Reporting. At the Board meeting coinciding with the annual audit, the Treasurer shall present the financial report showing in appropriate detail the following information, which will be approved by the Board:

- A. The assets and liabilities of America CAN!™ as of the end of the fiscal year immediately preceding the annual meeting, which shall not be more than four months prior to such meeting.
- B. The principal changes in assets and liabilities during the year.
- C. The revenue or receipts of America CAN!™ both unrestricted and restricted to particular uses.
- D. The expenses or disbursements of America CAN!™, for both general and restricted purposes.

4.15 Conflicts of Interest. Trustees shall conduct themselves in accordance with the Conflict of Interest Policy set forth as in Article X.

4.16 Loans. No loans or advances, other than approved travel advances, shall be made by America CAN!™ to any Trustee.

ARTICLE V OFFICERS

5.1 Number. The elected officers of America CAN!™ shall be the Chairperson, Vice-Chairperson, Secretary and, Treasurer. Each elected officer ("Officer") shall also be a member of the Board.

5.2 Election, Term of Office and Qualifications. Officers shall be elected by a majority of Trustees present at a meeting at which there is a quorum. Each Officer shall hold office for a period of two years from their date of election, or until their resignation or removal from office. Each Officer may be re-elected to one additional term in the same office. No Officer shall be eligible to serve more than two terms in the same office, in addition to any unexpired term initially filled. The Board may extend the service of any Officer for one (1) year with a three-fourths (3/4th) Officers will continue to serve the three-year term within the class to which they were initially elected. An Officer may be removed at any time by a vote of two-thirds of the number of Trustees present at a meeting at which a quorum is present, with the Officer proposed to be removed refraining from voting in his or her capacity as a Trustee, whenever in the judgment of the Board the best interests of America CAN!™ will be served thereby

5.3 Vacancies. In case any office of America CAN!™ becomes vacant by death, resignation, retirement, removal or any other cause, a majority of Trustees present at a meeting at which a quorum is present may elect an Officer to fill such vacancy. The officer will fill the unexpired term.

5.4 Chairperson. The Chairperson of America CAN!™ shall preside at all regular and special meetings and shall be generally responsible for the efficient administration of all Board activities. The Chairperson is authorized to represent America CAN!™ but shall not legally bind it without express authorization by a majority of the Board present at a meeting at which a quorum is present.

5.5 Vice-Chairperson. At the request of the Chairperson, or in the event of the absence or disability of the Chairperson, the Vice-Chairperson shall perform the duties and possess the power of the Chairperson.

5.6 Secretary. The Secretary shall be responsible for maintaining adequate and proper records of all Board meetings. The Secretary shall make provisions to have the minutes of all meetings recorded and shall keep a record of all meeting minutes.

5.7 Treasurer. The Treasurer shall monitor expenditures of funds and oversee budget development and when necessary, advise on financial management. On a monthly basis, the Treasurer shall monitor the financial records prepared by a third-party accountant.

5.8 Superintendent/Chief Executive Officer. There shall be a Superintendent employed by and responsible to the Board, as the Chief Executive Officer, who will carry out the purposes, policies and programs of America CAN!™ as determined by the Board. The Superintendent shall be responsible for the administration of America CAN!™ and its activities according to established policies; shall make recommendations to the Board for approval of any plans that require funding not previously budgeted; and shall report and perform such other duties incident to the position as are required by the Board. The day-to-day operations of America CAN!™ shall be under the direction of the Superintendent. The Board shall hire the Superintendent by a vote of 2/3 of the Trustees serving at the time at a meeting called for that purpose. The Superintendent shall hire and/or appoint all positions needed for the functioning of the organization.

The Superintendent shall attend meetings of the Board and meetings of committees of the Board, but the Superintendent may not also serve as a Trustee and may not vote at any meeting of the Board or any committee of the Board. When the Superintendent cannot attend a Board meeting or a committee

meeting for any reason, the Superintendent shall designate a member of the staff of the Corporation to attend the meeting in place of the Superintendent .

The Superintendent will be directed by and accountable to the Board, as a committee of the whole, as may be expressed by direction through the Chairman, or Vice Chairman acting in the Chairman's stead. As chief executive, the Superintendent will have broad authority to carry out day-to-day operations of the Corporation in compliance with all applicable laws and regulations and policies and procedures consistent therewith adopted by the Board. The Superintendent may sign, with the Secretary or any other person authorized by the Board, on behalf of the Corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof is expressly delegated by the Board, by these Bylaws, or by statute to some other agent of the Corporation. In general, the Superintendent shall perform all duties incident to the position of Superintendent and such other duties as may be prescribed by the Board from time to time.

If any law or any regulations of any applicable governmental agency preclude the Superintendent from performing the duties given to the Superintendent under these Bylaws, then the Superintendent may delegate those duties to another employee of the Corporation and, as to those duties, the other employee will report directly to the Board through the Chairman.

The Superintendent's compensation will be determined by the Board. The Governance Committee will review the Superintendent's compensation on an annual basis and make a recommendation to the Board as to any changes that committee may deem advisable. The Superintendent's compensation may be raised or lowered by a vote of 2/3 of the Trustees serving at the time (and not just of those present at the meeting) at a meeting called for that purpose, subject to the contract rights, if any, previously agreed upon with the Superintendent (any change to any contract rights may not be changed without the written agreement of the Superintendent).

The Superintendent may be removed by a vote of 2/3 of the Trustees serving at the time at a meeting called for that purpose, but such removal will be without prejudice to the contract rights, if any, of the Superintendent so removed.

ARTICLE VI COMMITTEES AND TASK FORCES

6.1 Standing Committees. Standing committees of America CAN!™ are Finance, Governance and Education.

- A. Finance Committee: Primary functions shall include 1) Oversees organizational financial planning, 2) Monitors that adequate funds are available for programs, 3) Safeguards organizational assets, 4) Drafts organizational fiscal policies, 5) Anticipates financial problems, 6) Ensures that the board receives accurate and complete information, 7) Helps the rest of the board understand financial statements and the general financial situation of the organization, 8) Makes sure that federal, state, and local reporting takes place and 9) Sustains the committee itself.
- B. Governance Committee: Primary functions shall include 1) Board role and responsibilities, 2) Board composition, 3) Board knowledge, 4) Board effectiveness and 5) Board leadership.
- C. Education Committee: Primary functions shall include 1) School Operations, 2) School Academic Accountability, and 3) Student Achievement.

6.2 Committee and Task Force Formation. Committees and task forces will be added as the needs of the program and Board dictate. A committee or task force may be formed and begin service immediately upon identification of need and persons available to chair and fill the committee positions. The committee or task force chair may be a Trustee, non-Trustee volunteer or staff member. The committee or task force members may be Trustees, non-Trustee volunteers or staff members.

6.3 General Rules for All Committees and Task Forces. All formal recommendations of committees and task forces to the Board shall issue upon the vote of a majority of Trustees present at a meeting at which a quorum is present. All formal recommendations of committees and task forces to the Board shall be issued in writing or presented verbally at a Board meeting where the Secretary will record the formal recommendation in the meeting minutes.

6.4 Scope of Authority & Limitations. The Board may delegate specific tasks to committees and/or task forces along with a specific scope and time frame to report to the Board. Otherwise, committee and task forces have only limited authority and do not have the authority of the Board.

ARTICLE VII CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

7.1 Contracts. The Board shall authorize the Superintendent or any other Corporate Officer designated by the Superintendent of America CAN!™ to enter into any contract or execute and deliver any instrument in the name of and on behalf of America CAN!™, and such authority may be general or confined to specific instances. No Officer, agent or Trustee of America CAN!™ may legally bind America CAN!™ without express authorization by a majority of the Board present at a meeting at which a quorum is present.

7.2 Checks, Drafts or Orders for Payment. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation must be signed by such officer or officers, agent or agents of the Corporation, and in such manner as the Board from time to time may determine by resolution. In the absence of such determination by the Board, such instruments must be signed by the Board Treasurer or the Board President of the Corporation.

7.3 Deposits. All funds of America CAN!™ will be deposited from time to time to the credit of America CAN!™ in such banks, trust companies, or other depositories as the Board may select or as may be selected in accordance with procedures established by the Board. Pursuant to the requirements of the Texas Education Code (TEC) Section 12.107(b), America CAN! shall deliver to the Texas Education Agency (TEA) a copy of the depository contract between America CAN! and any bank into which state funds are deposited.

7.4 Annual Audit. An audit will be conducted annually by an independent auditor selected and given oversight by the Board of Trustees.

7.5 Fiscal year. The America CAN!™ fiscal year begins July 1.

ARTICLE VIII INDEMNIFICATION OF TRUSTEES AND OFFICERS, LIMITATION OF LIABILITY AND LIABILITY INSURANCE

8.1 Indemnification

A. Subject to the exceptions and limitations contained in Subsection B below:

- (1) every person who is, or has been, a Trustee (as defined under Article 2 of these Bylaws) or officer (as defined under Article 3 of these Bylaws) of the Board ("Covered Person"), whether or not such Covered Person has been alleged to have been negligent in the exercise of the duties of his office, shall be indemnified to the fullest extent permitted by law against liability and against all expenses reasonably incurred or paid by him in connection with any claim, action, suit, or proceeding in which he becomes involved as a party or otherwise by virtue of his being or having been a Trustee or officer and against amounts paid or incurred by him in the settlement thereof; and,
- (2) the words "claim", "action", "suit", or "proceeding" shall apply to all claims, actions, suits, or proceedings (civil, criminal, or other, including appeals), actual or threatened while in

office or thereafter, and the words "liability" and "expenses" shall include, without limitation, attorneys' fees, costs, judgments, amounts paid in settlement, fines, penalties, and other liabilities.

B. No indemnification shall be provided hereunder to a Covered Person:

- (1) who shall have been adjudicated by a court or body before which the proceeding was brought to be liable to the Board, or the Corporation by reason of fraud, willful misfeasance, or bad faith; or
- (2) in the event of a settlement, unless there has been a determination that such Trustee or officer did not engage in fraud, willful misfeasance, or bad faith,
 - (a) by the court or other body approving the settlement;
 - (b) by at least a majority of those Trustees who are not parties to the matter, based upon review of readily available facts (as opposed to full trial-type inquiry), or
 - (c) by written opinion of independent legal counsel based upon a review of readily available facts (as opposed to a full trial-type inquiry).

C. The rights of indemnification herein provided may be insured against by policies maintained by the Board, shall be severable, shall not be exclusive of or affect any other rights to which any Covered Person may now or hereafter be entitled, shall continue as to a person who has ceased to be such Trustee or officer and shall inure to the benefit of the heirs, executors, and administrators of such Covered Person. Nothing contained herein shall affect any rights to indemnification to which personnel of the corporation, other than Trustees and officers, and other persons may be entitled by contract or otherwise under law.

D. Expenses in connection with the preparation and presentation of a defense in any claim, action, suit, or proceeding of the character described in Subsection A of this Section may be paid as an expense of the Corporation from time to time, prior to final disposition thereof upon receipt of an undertaking by or on behalf of such Covered Person that such amount will be paid over by him to the Corporation if it is ultimately determined that he is not entitled to indemnification under this Section; provided, however, that either (i) such Covered Person shall have provided appropriate security for such undertaking, (ii) the Board is insured against losses arising out of any such advance payments, or (iii) either a majority of the Trustees who are not parties to the matter, or independent legal counsel in a written opinion, shall have determined, based upon a review of readily available facts (as opposed to a trial-type inquiry or full investigation), that there is reason to believe that such Covered Person will be found entitled to indemnification under this Section.

E. Subject to applicable law, the Board may, and if requested in writing by any Covered Person shall, undertake the defense of any claim, action, or proceeding in connection with the matters set forth in Paragraphs A through D for which such Covered Person is indemnified under this Section, and thereafter the Board shall not be liable to any such Covered Person for any legal or other expenses other than reasonable costs subsequently incurred by such Covered Person at the request of the Board in connection with the defense thereof, unless (1) the employment of such counsel has been specifically authorized in writing by the Board, (2) the Board has failed after request to assume the defense and to employ counsel, or (3) the named parties to any such action (including impleaded parties) include both a Covered Person and the Board and the Covered Person shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Board, in which case, if such Covered Person notifies the Board in writing that it elects to employ separate counsel at the expense of the Board, the Board shall not have the right to assume the defense of the action on behalf of such Covered Person; provided that if the Board has insured against losses pursuant to Paragraph D, and the insurer proceeds to defend such Covered Person pursuant to the policy

of insurance, then the Corporation shall have no further duty to indemnify costs of defense or defend the Covered Person pursuant to this Section.

F. The Trustees and officers of the Board are governmental officials and shall enjoy the same immunities from liability and suit as are enjoyed by Trustees and officers of a public school district. Provided they have acted in good faith under the belief that their actions are in the best interest of the corporation, the Trustees and officers of the Board shall not be responsible for or liable in any event for neglect or wrongdoing by them or any officer, agent, employee, or investment advisor of the corporation, but nothing contained herein shall protect any Trustee against any liability to which he would otherwise be subject by reason of fraud, willful misfeasance, or bad faith.

G. The Trustees may take advice of counsel or other experts and shall be under no liability for any act or omission in accordance with such advice.

8.2 Liability Insurance. The Board of Trustees may obtain general liability and errors and omissions insurance for the protection of the Board and others in the operation and conduct of the Board in such amounts as the Board of Trustees deems adequate to cover foreseeable tort and contract liability.

ARTICLE IX AMENDMENTS TO BYLAWS

9.1 Procedure to Amend. The Board may consider by motion of any Trustee or Officer a proposal to amend any provision of these Bylaws, and any such proposal shall be in writing 60 days prior to the consideration of the Board. A vote of two-thirds of the Trustees serving at the time is required to ratify a proposed amendment. The Secretary shall be responsible for officially incorporating into the Bylaws the ratified proposal for amendment.

9.2 Review of Bylaws. The Governance Committee will review the Bylaws periodically.

ARTICLE X CONFLICT OF INTEREST POLICY

10.1 Purpose. The purpose of the conflict of interest policy is to protect the tax-exempt interest of America CAN!™ when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Trustee of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

10.2 Definitions.

A. Interested Person. Any Trustee, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, or a family member of any of the foregoing, as defined below, is an interested person.

B. Financial Interest. A conflict of interest arises when a board member or staff member has a personal interest or gain that conflicts with the interest of America CAN!™ or arise in situations where a member has divided loyalties (also known as duality of interest). The former can result in inappropriate financial gain to persons in authority at America CAN!™, which can ultimately lead to penalties and violations of IRS regulations. Similarly, situations or transactions arising out of a conflict of interest can result in either inappropriate financial gains or the appearance of lack of integrity in (name of organization's) decision making process. Both results are damaging to America CAN!™ and are to be avoided.

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (1) An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- (2) A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- (3) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section 3(b) below, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

10.3 Procedures.

A. **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Trustees and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

B. **Determining Whether a Conflict of Interest Exists.** After disclosure of the conflict of interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

C. **Procedures for Addressing the Conflict of Interest**

- (1) An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- (2) The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (3) After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (4) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested Trustees whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

10.4 Violations of the Conflict Of Interest Policy

A. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

B. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

10.5 Records of Proceedings. The minutes of the governing board and all committees with board delegated powers shall contain:

A. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

10.6 Compensation.

A. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

B. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

C. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

10.7 Annual Statements. Each trustee, principal officer, and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

A. Has received a copy of the conflicts of interest policy,

B. Has read and understands the policy,

C. Has agreed to comply with the policy, and

D. Understands the Organization is charitable and to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

10.8 Periodic Reviews. To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

A. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.

B. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

10.9 Use of Outside Experts. When conducting the periodic reviews as provided for in section 8 above, the organization may, but need not, use outside experts. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring that periodic reviews are conducted.

Certificate of the Secretary

The undersigned does hereby certify that (s)he is the duly qualified Secretary of America CAN!™, a Texas nonprofit corporation, and the foregoing is a true and correct copy of the Bylaws of America CAN!™ reviewed and adopted by America CAN!™ at a meeting of the Board held on May 20, 2021. The foregoing Bylaws replace in their entirety any previous bylaws of America CAN!™.

Robert Nelson

Robert Nelson, Secretary