

# **WESTBAY COMMUNITY ACTION, INC. BYLAWS**

**Approved as amended on June 22, 2017**

**Reviewed by Gowri Krishna, AB, JD RWU School of Law reviewed 6/11/14**

## **ARTICLE I: THE CORPORATION**

### **SECTION 1. TITLE**

The name of the corporation shall be Westbay Community Action, Inc. Hereinafter called the Corporation.

### **SECTION 2. DESCRIPTION**

Westbay Community Action, Inc. is a private, non-profit corporation, incorporated January 27, 1966 under the terms of the Chapter 7-6 of the General Laws of Rhode Island.

### **SECTION 3. PURPOSE**

The Corporation is constituted for the purpose of planning, organizing, supplementing, coordinating and executing a comprehensive community action program to improve the economic and social life of citizens of Kent County; to aid individuals and families in achieving their full economic and social potential, and to assist disadvantaged families in an effort "to eliminate the paradox of poverty in the midst of plenty;" to do either directly or indirectly, alone or in conjunction with other persons and organizations, all acts and things incidental to the foregoing.

### **SECTION 4. OFFICES**

The principle office of the Corporation shall be in the County of Kent, State of Rhode Island. Other offices may be established from time to time, as the membership may determine, in any City, County, and State.

### **SECTION 5. CONFLICT OF INTEREST**

A. Purpose: The purpose of the conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation 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.

#### **B. Definitions:**

1. Interested Person: Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
2. Financial Interest: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;
  - b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
  - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation 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 III, subsection 2, 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.

**C. Procedures:**

1. **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 directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
2. **Determining Whether a Conflict of Interest Exists:** After disclosure of the financial 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.
3. **Procedures for Addressing the Conflict of Interest:** 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.
  - a. 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.
  - b. After exercising due diligence, the governing board or committee shall determine whether the Corporation 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.
  - c. 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 directors whether the transaction or arrangement is in the Corporation'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.
4. **Violations of the Conflicts of Interest Policy:** 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.
  - a. 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.

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

**E. Compensation:**

1. A voting member of the governing board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.
3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**F. Annual Statements:** Each director, 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 Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**G. Periodic Reviews:** To ensure the Corporation 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:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
2. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation'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.

## **ARTICLE II: MEMBERSHIP**

### **SECTION 1. DIVISION**

The membership of the Corporation is the same as that of the governing body or Board of Directors. Hereafter in these Bylaws the full membership shall be referred to as the Board. There shall be not less than fifteen members of the Board, including one-third low income representatives at all times.

#### **Group I: Public Officials**

One-third of the Board shall be public officials or their representatives.

The Council Presidents of East Greenwich, West Warwick, and the Mayor of Warwick, as the designating officials, shall fill the seats allocated to public officials. In the event there is an insufficient number of elected officials willing and able to serve, the remainder of the seats allotted to public officials may remain vacant, or the designating officials may fill these seats by selecting appointed public officials. The appointed public officials selected must be those who have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues.

Each public official may choose one permanent representative to serve on the Board full-time in his/her place, if unable or unwilling to serve, who shall have full authority to act for the public officials whom they represent at meetings of the Board. If the elected public officials and appointed public officials who are willing and able to serve do not comprise one-third of the Board, the remainder of the seats allotted to public officials shall remain vacant. The designating officials may fill these seats at any time as soon as an official is willing to sit in on the Board.

#### Group II: Representatives of the Low Income

The members of this group shall be democratically selected or elected representatives of the poor, all of whom shall live in those areas designated by the Board. At least one-third of the members of the Board shall be members of this group.

Representatives of the low-income need not themselves be low-income, but they must be selected in a manner which ensures that they truly represent the low-income. Low-income representatives will be recruited through advertisement circulars distributed to residents, by newspaper and radio announcements and by any other available means of publicity.

The Board shall determine the means of allocating low-income representatives. All matters regarding the election or selection of low-income representatives shall be determined by a vote of the Board members. If there is a situation involving election or selection in which a member may have a conflict of interest, he/she shall disqualify himself/herself from voting.

#### Group 3: Community Members

The remaining one-third of the seats of the Board shall consist of representatives of the private sector and/or community members of the geographical area as set forth in Section I, Group II.

The Board shall establish and maintain a list of private sector organizations and individuals in the area served, including business, industry, labor, private social service, private educational, religious, unaffiliated constituencies of the poor concerned with specific problems, and other individuals with skills of benefit to the effective functioning of the Board and organization.

To the maximum extent possible, the Board will select and seek by the census tract participation from each category mentioned. If an organization is selected, it shall name an individual to be its representative on the Board. The representative shall be empowered to speak and act on behalf of the organization in connection with the business of the Board.

## **SECTION 2. RESIDENCE**

All Board members selected to represent a specific geographic area, including public officials who are selected to represent a specific political subdivision, representatives of the low-income who are selected or elected to represent the residents within designated areas and representatives of community groups or interests which are organized on a geographic basis, must reside/work in the area represented. Representatives of public officials need not reside in the service area if their business is located in and/or services the area serviced by the Corporation.

## **SECTION 3: TERM OF OFFICE**

Community members will serve a three year term, and may be re-appointed for one additional three year term.

Low-income representatives will serve a three year term and may be reelected for one additional three year term.

Representatives of public officials serve at the pleasure of the designating officials and as long as the public official is currently holding office.

## **SECTION 4. VACANCIES**

There is a vacancy on the Board when a member has been notified of his/her official removal by action of the Board for cause, when a member notifies the Board of his/her resignation, when the designating officials remove a representative, or when a public official leaves office.

When the seat of a public official is vacant, the Board shall ask the designating official to select another public official to fill the seat. If the public official, both elected and appointed who are willing and able to serve, do not comprise one-third of the Board, the remainder of the seats allotted to public officials shall remain vacant.

When the seat of a representative of the community representative is vacant, the Board shall choose another similar representative from the list established under Article II, Section 1, Group III of these Bylaws.

When the seat of a representative of the low-income is vacant, the selection procedure will be repeated, as stated in Article II, Section 1, Group II, in these Bylaws.

The Board shall fill all vacancies as soon as reasonably possible.

The member appointed or elected to fill any vacancy shall serve until the end of the term of the seat vacated.

## **ARTICLE III: POWERS AND DUTIES OF THE BOARD**

The Board of Directors must possess and use the power to:

- A. Determine the Board's operating rules and procedures;
- B. Select the Board's officers and establish committees necessary to insure effective Board operations;
- C. Establish overall program goals and priorities;
- D. Set major personnel, organizational, fiscal, and program policies;
- E. Hire, terminate, and evaluate the performance of the President/CEO;
- F. Approve funding requests and proposals;
- G. Insure compliance with all grant and contract provisions; and
- H. Conduct evaluations of programs and projects.

## **ARTICLE IV: MEETINGS**

### **SECTION 1. ANNUAL MEETINGS**

The Annual Meeting of the members shall be held each year at the regular October meeting for the purpose of electing or installing officers and the Nominating Committee and for the transaction of such other business as may come before the meeting.

### **SECTION 2. REGULAR MEETINGS**

Regular meetings shall be held at such times as determined by the Board. The Board will meet a minimum of eight times per year.

### **SECTION 3. SPECIAL MEEETINGS**

Special meetings may be called by the Chairperson, or in his/her absence, by the Vice Chairperson, by the Executive Committee, or by written request of one-fourth of the current membership.

### **SECTION 4. EMERGENCY MEETINGS**

Emergency meetings may be called by the Chairperson, or in his/her absence, by the Vice-Chairperson or the Executive Committee, in the event that unforeseen circumstances arise that require immediate action.

### **SECTION 5. NOTICE**

No regular meeting shall be held without first giving seven days written notice thereof to each of the members either personally or by ordinary mail, by fax or by e-mail.

No special or committee meeting shall be held without first giving at least five days written notice thereof to the members personally.

No emergency meeting shall be held without first giving at least one day telephone or personal notice.

Notice of all regular and annual meetings, including time, date, place, will be provided to the public by publishing on the Westbay's website at least five days in advance.

Attendance of a member at any meeting constitutes a waiver of notice of the meeting except when a member attends a meeting for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

## **SECTION 6.            TIME AND PLACE**

All Board meetings shall be reasonably convenient in time and place with particular regard for the needs of the representatives of low-income.

## **SECTION 7.            ORDER OF BUSINESS**

The order of business at meetings shall be:

1.     Determination of a quorum in accordance with Article V, Section 8., review of attendance of members
2.     Approval of minutes of previous meeting
3.     Reports of boards and standing committees
4.     Reports of special committees
5.     President's Report
6.     Special orders
7.     Unfinished business and general orders
8.     New business
9.     Adjournment

## **SECTION 8.            QUORUM**

At all meetings of the Board, the presence of one-half of the non-vacant seats shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the members present at any meeting at which time there is a quorum shall be the act of the Board except as may be otherwise specifically provided by these Bylaws.

## **SECTION 9.            VOTING AND ACTION OF THE BOARD**

Each member shall have one vote on any matter upon which he/she is entitled to vote. Proxy voting is prohibited.

The action of a majority, over 50%, of the members present at any meeting of the Board at which a quorum exists shall be the act of the Board, except as otherwise provided by the Articles of Incorporation, these Bylaws, or the laws of the State of Rhode Island.

Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board consent in writing or by electronic transmission to the adoption of a resolution authorizing the action. Any such resolution and any written consents and electronic transmissions by the members of the Board shall be filed with the minutes of the proceedings of the Board.

## **SECTION 10.        ATTENDANCE**

An attendance requirement shall provide that upon a member's absence from three consecutive Board meetings without a reasonable explanation to the Board, he/she shall forfeit his/her membership on the Board. Written notification shall be made to members who miss two consecutive meetings without reasonable explanation before the third meeting, reminding them of this provision. At the third consecutively-missed, unexcused meeting, the Board will be notified of these absences. At the meeting following the third unexcused absence, the member subject to removal shall be given the right to be heard and represented, prior to a vote for removal by the Board at that same meeting. A two-thirds vote of the members present and voting is necessary for removal.

## **SECTION 11.        REMOVAL OF MEMBERS**

A Board member may be removed for just cause, including but not limited to, excessive absenteeism, breach of fiduciary duty, guilt of fraudulent or dishonest acts that are detrimental to the Corporation, or performance of word or deed contrary to the Bylaws of the organization. Members subject to removal have the right, upon request, to a public hearing prior to removal, at which time they may be represented. The affirmative vote of two-thirds of the members present and voting is necessary for removal.

## **SECTION 12.        MINUTES**

The Board shall keep for each meeting written minutes including a record of votes on all motions. Minutes of the previous meeting shall be distributed to all members before the next meeting, and shall be made available to the public upon request. Translations of the minutes will be made available in areas where a significant portion of the low-income population does not speak English.

## **SECTION 13.        MEETING ALLOWANCE**

Allowances as determined by the Board for the low-income and reimbursements to all members of the Board are permitted. However, no member may receive regular compensation for his/her services.

Any person who is a member of a grantee's policy-making body is eligible to be paid an allowance (a) as long as his/her family income falls within OMB Poverty Guidelines, and (b) as long as he/she is not a Federal employee, not an employee of a Community Action Agency or delegate agency, and not an employee of a state or local public agency.

Those members eligible for an allowance shall submit a voucher to the President/CEO for payment for each meeting, listing all necessary information such as name, address, place, time, and date of meeting, signed by the member. Upon approval of the President/CEO, the voucher will be forwarded to the Chief Financial Officer for payment by check for the approved amount.

## **ARTICLE V: OFFICERS**

### **SECTION 1.        ELECTION**

The general officers of the Corporation shall be chosen by the members at the Annual Meeting and shall be a Chairperson, 1<sup>st</sup> Vice Chairperson and 2<sup>nd</sup> Vice-Chairperson, Secretary, and a Treasurer, each of



whom shall be elected for a term of one year. One person shall not hold more than one office simultaneously. All of the officers of the Corporation shall hold office until their successors are elected and qualify in their stead. Any officer elected by the members may be removed for just cause with the privilege of a fair hearing by the affirmative vote of two-thirds of the members present and voting. If any office becomes vacant, the vacancy shall be filled by the members in accordance with the Bylaws.

## **SECTION 2. CHAIRPERSON**

The Chairperson shall preside at all meetings of the members. The Chairperson shall be ex-officio member of all committees, except the Nominating Committee, without the right to vote, and shall have general supervision of the management of the business of the Corporation, and shall see that all orders and resolutions of the membership are carried into effect. The Chairperson can establish committees of the Board to function during the tenure of the Chairperson at his/her discretion.

## **SECTION 3. VICE-CHAIRPERSON**

There shall be a 1<sup>st</sup> and 2<sup>nd</sup> Vice Chairperson for the purpose of implementing a plan of succession of Board leadership. The Vice-Chairperson shall, in the absence or disability of the Chairperson, perform the duties and exercise the powers of the Chairperson, and shall perform such other duties as the membership shall prescribe.

## **SECTION 4. SECRETARY**

The Secretary shall attend all sessions of the Board and Executive Committee and record all votes and the minutes of all proceedings and shall perform like duties for the standing committees when required. He/she shall give, or cause to be given, notice of all meetings to the members, and shall perform such other duties as may be prescribed by the members. He/she shall keep in safe custody the seal of the Corporation and, when authorized by the members, affix the same to any instrument requiring it and, when so affixed, it shall be attested to by his/her signature. When the Corporation seal is required in the course of ordinary business, he/she shall attest to the signature of the Chairperson, Vice-Chairperson or Treasurer and shall affix the seal thereto. The Secretary may use the services of a staff member for the recording and transcribing of votes and minutes and sending the notices of meetings to its members.

## **SECTION 5. TREASURER**

The Treasurer shall review the Corporation funds and shall see that full and accurate accounts of the receipts and disbursements in the books belonging to the Corporation are maintained. The Treasurer shall meet monthly with the accountant to review the monthly Treasurer's Report to be presented at the Finance Committee Meeting and the regular monthly Board meeting.

## **ARTICLE VI: EXECUTIVE COMMITTEE**

### **SECTION 1. COMPOSITION**

The Executive Committee is composed of the Chairperson, the 1<sup>st</sup> Vice-Chair and 2<sup>nd</sup> Vice Chairperson, the Treasurer, the Secretary, and three additional members elected at the first Board meeting following the annual meeting of the corporation. This Committee acts on pressing or emergency matters which must be dealt with between regular meetings of the full Board, assists the Chair in developing an agenda for the Board meetings, gives preliminary consideration to important policy considerations, provides

guidance and directions to the President/CEO between meetings, evaluates the President/CEO and shares results with the full Board. At least one-third of the voting members of the Executive Committee shall be from the low income representative group with the remaining members fairly reflecting the composition of the full Board. The President/CEO of Westbay Community Action, Inc. shall be advisor to the Executive Committee.

## **SECTION 2.            POWERS AND DUTIES**

During intervals between regular meetings of the membership and where specific directions shall not have been given by the membership, the Executive Committee is empowered to transact routine and ordinary business. The Executive Committee shall report any actions taken before Board meetings at the next meeting of the full Board.

## **SECTION 3.            QUORUM, MEETINGS, NOTICE, ETC.**

A majority, or over 50% of the non-vacant seats of the voting members of the Executive Committee, shall constitute a quorum. All emergency meetings of the Executive Committee shall be called with at least twenty-four hours' notice. Meetings may be called by the Chairperson, Secretary, or by any two members of the Committee. The Chairperson of the Corporation shall serve as Chairperson of the Executive Committee and the other general officers shall perform the usual functions of their offices on the Committee.

## **SECTION 4.            VACANCIES**

The Chairperson of the Board may fill any vacancy in the Executive Committee with an interim appointment, having voting privileges from the Board, until a replacement can be elected by the Board at its next meeting.

## **ARTICLE VII: NOMINATING COMMITTEE**

There shall be a Nominating Committee of three members appointed by the Chair. The committee shall select its own Chairperson. Such Committee shall prepare a slate of nominations for officers, Executive Committee members and general Board members. Additional nominations may be made from the floor at the time of election.

## **ARTICLE VIII: FINANCE COMMITTEE**

The Finance Committee shall meet monthly or no less than nine times a year to review the finance reports and shall advise the Board of Directors about financial decisions and recommendations.

The Finance Committee shall review the independent auditing firm every three years, review bids for auditing services and determine auditing vendor for the Corporation. The Committee will meet annually with the independent auditor to review the agency's Annual Financial Audit, will review the agency's 990 report to the Internal Revenue and report in full the outcome of both to the full Board of Directors.

This Committee shall also submit for approval an annual budget to the Board.

For purposes of expediency, the Finance and Executive Committees can, in fact, be a single committee conducting business as appropriate to each.

## **ARTICLE IX: OTHER COMMITTEES**

### **SECTION 1.**

All committees of the Board shall fairly reflect the full composition of the full Board and at least one-third of the members shall be representatives of low-income.

### **SECTION 2.**

All committees shall keep regular minutes of their proceedings and report the same to the Board. The Board must ratify all actions taken by a committee.

## **ARTICLE X: INSURANCE**

### **SECTION 1.**            **BONDING**

The members shall require the Chairperson, 1<sup>st</sup> Vice Chairperson, 2<sup>nd</sup> Vice Chairperson, Secretary, Treasurer, and President/CEO employed by the Corporation, and any other appropriate official, be bonded at the Corporation's expense. The sum of the bond shall be determined by the members and shall provide for the restoration of all books, papers, vouchers, money, and other property belonging to an controlled by the Corporation.

### **SECTION 2.**            **DIRECTORS AND OFFICERS**

The members shall require all members be provided the protection of liability insurance (Directors and Officers) in the sum determined by the members. This insurance shall provide financial protection for loss from settlements, judgements and defense costs as a result of legal proceedings brought against the Corporation and its members.

## **ARTICLE XI: INDEMNIFICATION**

### **SECTION 1.**            **AGREEMENT OF CORPORATION**

In order to induce the Directors and Officers of the Corporation to serve as such, the Corporation adopts this Article and agrees to provide the Directors and Officers of the Corporation with the benefits contemplated hereby.

### **SECTION 2.**            **ACCEPTANCE OF DIRECTOR OR OFFICER**

This article will apply, and the benefits hereof will be available, to each Director and Officer of the Corporation who by accepting his or her respective position and serving on behalf of the Corporation will be deemed to have accepted the provisions of this Article and agreed to abide by the terms contained herein.

### **SECTION 3.**            **DEFINITIONS**

As used herein, the following will have the following respective meanings:

**“Covered Act”** means any act or omission by the Indemnified Person in the Indemnified Person’s official capacity with the Corporation and while serving as such while governing body, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**“Excluded Claim”** has the meaning set forth in Section 6, hereof.

**“Expenses”** means any reasonable expenses incurred by the Indemnified Person in connection with the defense of an claim made against the Indemnified Person for Covered Acts including, without being limited to, legal, accounting or investigative fees and expenses (including the expense or bonds necessary to pursue an appeal of an adverse judgement).

**“Indemnified Person”** means any Director or Officer of the Corporation who accepts election or appointment as a director or officer and agrees to serve as such in the manner provided in Section 2 hereof.

**“Loss”** means any amount which the Indemnified Person is legally obligated to pay as a result of any claim made against the Indemnified Person for Covered Acts including, without being limited to, judgements for, and awards of damages, amounts paid in settlement of any claim, any fine or penalty or, with respect to an employee benefit plan, any excise tax or penalty.

**“Proceedings”** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

#### **SECTION 4.            INDEMNIFICATION**

Subject to the exclusions hereinafter set forth, the Corporation will indemnify the Indemnified Person against and hold the Indemnified Person harmless from any Loss or Expenses.

#### **SECTION 5.            ADVANCE PAYMENT OF EXPENSES**

The Corporation will pay the expense of the Indemnified Person in advance of the final disposition of any Proceeding except to the extent that the defense of a claim against the Indemnified Person is undertaken pursuant to any Directors’ and officers’ liability insurance (or equivalent insurance known by any term) maintained by the Corporation. The advance payment of Expenses will be subject to the Indemnified Person’s first agreeing in writing with Corporation to repay the sums paid by it hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Indemnified Person was otherwise not entitled to indemnity under these bylaws.

#### **SECTION 6.            EXCLUSIONS**

The Corporation will not be liable to pay any Loss or Expenses (an “Excluded Claim”):

- A. With respect to a Proceeding in which a final non-appeal able judgment or other adjudication by a court or competent jurisdiction determines that the Indemnified Person is liable (as distinguished from being liable to a third party) for: any breach of the Indemnified Person’s duty of loyalty to the Corporation or its members; acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; or any transaction from which the Indemnified Person derived a personal benefit; or

- B. If a final, non-appeal able judgment or other adjudication by a court or competent jurisdiction determines that such payment is unlawful.

## **SECTION 7. NOTICE TO CORPORATION; INSURANCE**

Promptly after receipt by the Indemnified Person of notice of the commencement of or the threat of commencement of any Proceeding, the, Indemnified Person will, if indemnification with respect thereto may be sought from the Corporation under these bylaws, notify the Corporation of the commencement thereof. Failure to promptly notify the Corporation will not adversely affect the Indemnified Person's right to indemnification hereunder unless and only to the extent that the Corporation is materially prejudiced in its ability to defend against the Proceedings by reason of such failure. If, at the time of the receipt of such notice, the Corporation has any directors' and give prompt notice of the commencement of such Proceeding to the insurer in accordance with the procedures set forth in the policy or policies in favor of the Indemnified Person. The Corporation will thereafter take all necessary or desirable action to cause such insurer to pay, on behalf of the Indemnified Person, all Loss of Expenses payable as a result of such Proceeding in accordance with the terms of such policies.

## **SECTION 8. INDEMNIFICATION PROCEDURES**

- A. Payments on account of the Corporation's indemnity against Loss will be made by the Treasurer of the Corporation except if, in the specific case, a determination is made that the indemnification of the Indemnified Person is not proper in the circumstances because such Loss results from a claim which is an Excluded Claim. If the Corporation so determines that the Loss results from an Excluded Claim (although no such determination is required by the Corporation hereunder prior to payment of a Loss by the Treasurer), the determination shall be made:
- i. By the Board of Directors by a majority vote of a quorum consisting of Directors not at the time parties to the Proceeding; or
  - ii. If a quorum cannot be obtained for purposes of clause (I) of the subparagraph (a), then by a majority vote of a committee of the Board of Directors duly designated to act in the matter by a majority vote of the full Board (in which designated directors who are parties to the Proceeding may participate) consisting solely of three or more Directors not at the time parties to the Proceeding; or
  - iii. By independent legal counsel designated: (A) by the Board of Directors in the manner described in the clause (i) of the subparagraph (a), or by a committee of the Board of Directors established in the manner described in clause (ii) of this subparagraph (a), or (b) if the requisite quorum of the full Board cannot be obtained therefore and a committee cannot be so established, by a majority vote of the full Board (in which designated Directors who are parties to the Proceeding may participate). If made, any such determination permitted to be made by this subparagraph (a) will be made within 60 days of Indemnified Person's written request for payment of a Loss.
- B. Payment of Indemnified Person's Expenses in advance of the final disposition of any Proceeding will be made by the Treasurer of the Corporation except if, in the specific case, a determination is made pursuant to Paragraph B (a) above that indemnification of the Indemnified Person is not proper in the circumstances because the Proceeding involved an Excluded Claim.

- C. The Corporation will have the power to purchase and maintain insurance on behalf of any Indemnified Person against liability asserted against him or her with respect to any Covered Act, whether or not the Corporation would have the power to indemnify such Indemnified Person against such liability under the provisions of this Article. The Indemnified Person to the extent that the Corporation has made any payments to such Indemnified Person in respect to any Loss or Expense as provided herein.

## **SECTION 9. SETTLEMENT**

The Corporation will have no obligation to indemnify the Indemnified Person under this Article for any amounts paid in settlement of any Proceeding effected without the Corporation's prior written consent. The Corporation will not unreasonably withhold or delay its consent to any proposed settlement. If the Corporation so consents to the settlement of any Proceeding, or unreasonably irrefutably presumed for all purposes that the Loss or Expense does not constitute an Excluded Claim. If the Corporation reasonably withholds its consent solely on the ground that the Proceeding constitutes an Excluded Claim, the Indemnified Person may accept the settlement without the consent of the Corporation, without prejudice to the Indemnified Person's rights to indemnification in the event the Corporation does not ultimately prevail on the issue of whether the Proceeding constitutes an Excluded Claim.

## **SECTION 10. RIGHTS NOT EXCLUSIVE**

The rights provided hereunder will not be deemed exclusive or any other rights to which the Indemnified Person may be entitled under any agreement, vote of disinterested Directors or otherwise, both as to action in the Indemnified Person's official capacity and as to action in any other capacity while holding such office, and will continue after the Indemnified Person ceases to serve the Corporation as an Indemnified Person.

## **SECTION 11. ENFORCEMENT**

- A. The Indemnified Person's right to indemnification hereunder will be enforceable by the Indemnified Person in any court of competent jurisdiction and will be enforceable notwithstanding that an adverse determination has been made as provided in Section 8 hereof.
- B. In the event that any action is instituted by the Indemnified Person under these bylaws, the Indemnified Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Person with respect to such action, unless the court determines that each of the material assertions made by the Indemnified Person as a basis for such section was not made in good faith or was frivolous.

## **SECTION 12. SEVERABILITY**

If any provision of this Article is determined by a court to require the Corporation to perform or to fail to perform an act which is in violation of applicable law, this Article shall be limited or modified in its application to the minimum extent necessary to avoid a violation of law, and, as so limited or modified, this Article shall be enforceable in accordance with its terms.

### **SECTION 13.**            **SUCCESSOR AND ASSIGNS**

The provision of this Article will be (a) binding upon all successors and assigns of the Corporation (including any transferee of all or substantially all of its assets) and (b) binding on the insured to the benefit of the heirs, executors, administrators, and other personal representatives of the Indemnified Person.

### **SECTION 14.**            **AMENDMENT**

No amendment or termination of this Article will be effective as to an Indemnified Person without the prior written consent of that Indemnified Person and, in any event, will not be effective as to any Covered Act of the Indemnified Person occurring prior to the amendment or termination.

## **ARTICLE XII: FISCAL**

### **SECTION 1.**

The fiscal year of the Corporation has been established by the members as July 1 to June 30.

### **SECTION 2.**

All checks, drafts, notes, bonds, bills, IRS Form 990 or exchange in order for the payment of money as well as contracts and agreements shall, unless otherwise required by law or permitted by these bylaws, be signed by the President/CEO or Chief Financial Officer (CFO) where applicable, and where as in the President/CEO's absence Board of Directors will designate the CFO of Westbay to sign in his/her absence.

### **SECTION 3.**

The Corporation shall have full authority to apply for and to receive funds in the form of grants, gifts, or loans from any private agencies, individuals, federal, state or local governments, corporations, etc.

### **SECTION 4.**

The Finance Committee shall have prepared for each January meeting a full and clear statement of the business and financial condition of the Corporation. The Board will have an Independent Auditor review the books and prepare a financial statement on an annual basis.

## **ARTICLE XIII: SEAL**

The Corporation seal shall be circular and shall provide a suitable seal bearing the name of the Corporation and the year of incorporation. This seal shall be kept by the Secretary. An impression of same shall be placed upon this record.

## **ARTICLE XIV: RULES OR ORDER**

Unless otherwise provided herein, Robert's Rule of Order will prevail at all meetings of the Corporation or Committees thereof.

#### **ARTICLE V: AMENDMENTS**

These Bylaws may be amended, altered or repealed, in whole or in part, by two-thirds (2/3) vote of all members of the Board present at any meetings of the members, provided written notice of such meeting and proposed amendments has been given no less than thirty (30) days prior to such meeting to each of the directors personally.

#### **ARTICLE XVI: DISSOLUTION**

Procedure to dissolve the Corporation shall be in accordance with State law, OMB, and IRS procedures.