

**AMENDED & RESTATED**  
**BYLAWS**  
**OF**  
**SMALL BUSINESS INVESTMENT CORPORATION**  
**(AS ADOPTED SEPTEMBER 15, 2009)**

**ARTICLE I**  
**CORPORATE OFFICE**

The principal office of the corporation in the State of New Mexico shall be located in the City of Santa Fe and County of Santa Fe. The corporation may have such other offices within the State of New Mexico as the activities of the corporation may from time to time require.

**ARTICLE II**  
**PUBLIC CORPORATION/NO MEMBERS**

2.1 Public Corporation. The corporation is a nonprofit, independent, public corporation created under and operated in accordance with the New Mexico Small Business Investment Act, Chapter 58, Article 29, NMSA 1978, as amended (the "SBIC Act"). The rights, powers, duties, and obligations of the corporation shall be as set out in the SBIC Act, and to the extent not inconsistent with the SBIC Act, as provided for under the New Mexico Nonprofit Corporation Act, Chapter 53, Article 8, NMSA 1978, as amended (the "Nonprofit Act").

2.2 No Members. The corporation shall not have members.

**ARTICLE III**  
**DIRECTORS**

3.1 General Powers. The affairs of the corporation shall be managed by the Board of Directors.

3.2 Appointment and Powers of the Board of Directors. The Board of Directors shall be appointed and shall have such rights, powers, duties, and obligations as provided under the SBIC Act, and to the extent not inconsistent with the SBIC Act, as provided for under the Nonprofit Corporation Act.

3.3 Powers and Duties. Subject to the requirements of the SBIC Act, the Board of Directors shall have control and management of the affairs and activities of the corporation. The directors shall in all cases act as a Board, regularly convened, and, in the transaction of business, the act of a majority present at a meeting, except as otherwise provided by law, these Bylaws, or the Articles of Incorporation, shall be the act of the Board, provided a quorum is present. The directors may adopt such rules and regulations for the conduct of their meetings and the

management of the corporation as they may deem proper, not inconsistent with law, these Bylaws or the Articles of Incorporation.

3.4 Regular Meetings. A regular annual meeting of the Board of Directors, for the purpose of electing or appointing officers and for the transaction of any other business which may come before the meeting, shall be held in the month of September of each year, at such time and place as is designated by the Chairman. If the regular annual meeting is not held in September, it shall be held as soon thereafter as is convenient as determined by the Board. The Board of Directors shall also hold other regular meetings as determined appropriate by the Board of Directors. Notice of the time and place of the regular annual meeting and other regular meetings shall be given as provided in Section 3.7, below.

3.5 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman or the President at any time. The President or Secretary shall, upon a written request of at least one-half (1/2) the number of directors, call a special meeting to be held not more than seven (7) days after the receipt of such request. Any such special meeting shall be held at the time and place designated in the notice thereof to be given as provided in Section 3.7, below. The President may fix any place within the State of New Mexico as a place for holding any special meeting of the Board of Directors.

3.6 Meetings by Telephone Conference Calls or Similar Means. Directors or any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

3.7 Notice.

(a) Open Meetings Act. All meetings of the Board of Directors shall be held in accordance with the provisions of the New Mexico Open Meetings Act, Chapter 10, Article 15, NMSA 1978, as amended.

(b) Notice to Directors. Notice of the regular annual meeting, of any other regular meeting, and of any special meeting shall be given at least forty eight (48) hours previously thereto by written notice delivered personally, by courier, by facsimile transmission, by electronic mail, or mailed to each director at the director's last known address. If delivered personally or by courier, such notice shall be deemed to be delivered when actually delivered personally or by courier to such address. If sent by facsimile or electronic mail, such notice shall be deemed delivered upon being sent to the director's last known facsimile number or electronic mail address, as the case may be. If mailed, such notice shall be deemed to be delivered at 8:00 am mountain time on the day that is five (5) days after it is deposited in the United States mail in a properly addressed, sealed envelope, with postage thereon prepaid. Whenever any notice is required to be given to any Director, a waiver thereof in writing signed by the person entitled to the notice is equivalent to the giving of the notice. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except that 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.

3.8 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business at any regular or special meeting. A quorum, once attained at a meeting, shall be deemed to continue until adjournment, notwithstanding a voluntary withdrawal of enough directors to leave less than a quorum. The act of the majority of the directors present at a meeting at which a quorum is present, unless otherwise provided by law, these Bylaws or the Articles of Incorporation, shall be the act of the Board of Directors. At any meeting at which a quorum is not present, a majority of the directors present may adjourn the meeting to a fixed time without further notice.

3.9 Presumption of Assent. A director 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 the 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.

### 3.10 Committees.

(a) The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate and appoint one or more committees, each of which shall consist of two or more directors. These committees, to the extent provided in the resolution, the Articles of Incorporation, or the Bylaws of the corporation, may exercise all the authority of the Board of Directors, but no such committee shall have the authority of the Board of Directors in reference to amending the Articles of Incorporation; adopting a plan of merger or consolidation; the sale, lease, exchange, or other disposition of all or substantially all the property and assets of its business; voluntary dissolution of the corporation or a revocation thereof; amending the Bylaws of the corporation; electing, appointing, or removing any member of any committee or any director or officer of the corporation; adopting a plan for the distribution of the assets of the corporation; or altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by a committee. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

(b) Regular and special meetings of any committee established pursuant to this Section may be called and held subject to the same requirements with respect to time, place, and notice as are specified in these Bylaws for regular and special meetings of the Board of Directors. Meetings of any committee shall be held in accordance with the provisions of the New Mexico Open Meetings Act, Chapter 10, Article 15, NMSA 1978, as amended.

(c) A majority of the members of any committee serving at the time of any meeting thereof shall constitute a quorum for the transaction of business at such meeting. The action of a majority of those members present at a committee meeting at which a quorum is present shall constitute the act of the committee. A quorum, once attained at a committee meeting, shall be deemed to continue until adjournment, notwithstanding a voluntary withdrawal of enough committee members to leave less than a quorum.

## **ARTICLE IV OFFICERS**

4.1. Officers and Qualifications. The officers of the corporation shall consist of a Chairman, a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors at the time and in the manner prescribed by these Bylaws. Other officers and assistant officers and agents deemed necessary may be elected or appointed by the Board of Directors or chosen in the manner prescribed by the Bylaws. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. All officers and agents of the corporation, as between themselves and the corporation, shall have the authority and perform the duties in the management of the corporation as provided in these Bylaws, or as determined by the resolution of the Board of Directors not inconsistent with these Bylaws.

4.2. Election and Term. All officers of the corporation shall be elected annually by the Board of Directors at its regular annual meeting. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his or her successor has been duly elected and qualified, or until removed as hereinafter provided.

4.3. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors.

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

4.5. Duties of Officers. The duties and powers of the officers of the corporation shall be as follows and that shall hereafter be set by resolution of the Board of Directors:

### **Chairman**

The Board of Directors shall elect a Chairman from among the members of the Board of Directors. The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors.

## **President**

The President shall:

- (a) be the chief executive officer of the corporation shall have such powers and duties as set out in the SBIC Act, and shall in general supervise and control all of the business and affairs of the corporation;
- (b) in the absence of the Chairman, preside at all meetings of the directors;
- (c) present at each annual meeting of the directors a report of the condition of the business of the corporation;
- (d) cause to be called regular and special meetings of the directors in accordance with the requirements of the law and these Bylaws;
- (e) have the authority to sign and execute all contracts in the name of the corporation, all notes, drafts, or other orders for the payment of money, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and execution of shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed;
- (f) cause all books, reports, statements, and certificates to be properly kept and filed as required by law; and
- (g) enforce these Bylaws and perform all the duties incident to his or her office and which are required by law, and, generally, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

## **Vice President**

In the absence of the President or in the event of the President's inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers and be subject to all the responsibilities of the office of President. The Vice President shall also perform such other duties and have such other powers as from time to time may be assigned to the Vice President by the Board of Directors or President.

## **Secretary**

The Secretary shall:

- (a) keep the minutes of the meetings of the Board of Directors in the appropriate books;
- (b) attend to the giving of notice of special meetings of the Board of Directors;
- (c) be the custodian of the records;
- (d) attest the execution of instruments on behalf of the corporation by a proper officer thereof;
- (e) 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 President or by the Board of Directors.

## **Treasurer**

The Treasurer shall:

- (a) have the care and custody of and be responsible for all the funds and securities in the name of the corporation in such banks, trust companies, or other depositories as shall be designated by the Board of Directors;
- (b) have, subject to banking resolutions adopted by the Board of Directors, the authority to make, sign, and endorse in the name of the corporation all checks, drafts, notes, and other orders for the payment of money, and pay out and dispose of such under the direction of the President or the Board of Directors;
- (c) keep accurate books of account of all the corporation's business and transactions and shall at all reasonable hours exhibit books and accounts to any director upon application;
- (d) render a report of the condition of the finances of the corporation at each regular meeting of the Board of Directors and at such other times as shall be required;
- (e) further perform all duties incident to the office of Treasurer of the corporation; and,
- (f) shall, if required by the Board of Directors, give such bond as it shall determine appropriate for the faithful performance of his or her duties.

## **Other Officers**

Other officers shall perform such duties and have such powers as may be assigned to them by the Board of Directors. Assistant Secretaries and assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

## **ARTICLE V CONTRACTS, LOANS, CHECKS, AND DEPOSITS**

5.1 Contracts. The Board of Directors may authorize any officer, officers, agent, agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

5.2 Loans. No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

5.3 Loans to Directors or Officers. Any director or officer who assents to or participates in the making of any loan to a director or officer shall be personally liable to the corporation for the amount of the loan until the repayment thereof.

5.4 Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

5.5 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

## **ARTICLE VI FISCAL YEAR**

The corporation shall have a fiscal year which ends on the last day of June and begins on the first day of July.

## **ARTICLE VII INDEMNIFICATION**

7.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter, a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the corporation or while a director or officer of the corporation is or was serving at the request

of the corporation as a director, officer, partner, trustee, employee, or agent of another corporation or of a partnership, joint venture, trust, or other incorporated or unincorporated enterprise, including service with respect to employee benefit plans or trusts, whether the basis of such proceeding is alleged action or inaction in an official capacity as a director, officer, partner, trustee, employee, or agent or in any other capacity while serving as a director, officer, partner, trustee, employee, or agent shall be indemnified and held harmless by the corporation to the fullest extent authorized by the New Mexico Nonprofit Corporation Act as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, taxes, or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors, and administrators; provided, however, that, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or a part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Article shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the New Mexico Nonprofit Corporation Act requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer of the corporation (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to employee benefit plans or trusts) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article or otherwise. The corporation may, by action of its Board of Directors, provide indemnification and advance expenses to employees and agents of the corporation and others permitted to be indemnified by the New Mexico Nonprofit Corporation Act with the same scope and effect as the foregoing indemnification and advancement of expenses of directors and officers.

7.2 Non-Exclusivity. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the corporation's Articles of Incorporation, Bylaws, agreement, vote of disinterested directors, or otherwise.

7.3 Insurance. The corporation may maintain insurance, at its expense, or provide alternative financial arrangements including but not limited to providing a trust, letter of credit, or self-insurance to protect itself and any director, officer, partner, trustee, employee, or agent of the corporation or another corporation, partnership, joint venture, trust, or other incorporated or unincorporated enterprise (including an employee benefit plan or trust) against any such expense, liability, or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability, or loss under the New Mexico Nonprofit Corporation Act.



**ARTICLE VIII  
SEAL**

The Board may, but need not, adopt a form of seal to be used by the Corporation, but the failure to use a corporate seal does not affect the validity of any instrument or any action taken in reliance thereon or in pursuance thereof.

**ARTICLE IX  
AMENDMENTS**

These Bylaws may be altered, amended, or repealed, or new Bylaws adopted by a majority of the entire Board of Directors at a regular or special meeting of the Board.

OFFICERS' CERTIFICATE

We certify the foregoing to be a true copy of the Amended & Restated Bylaws duly adopted by the Corporation on September 15, 2009.



\_\_\_\_\_  
Andrew Baca, President

\_\_\_\_\_  
Marie Longserre, Treasurer

OFFICERS' CERTIFICATE

We certify the foregoing to be a true copy of the Amended & Restated Bylaws duly adopted by the Corporation on September 15, 2009.

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Andrew Baca, President

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Marie Longserre, Treasurer