

## SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is entered into effective as of February 16, 2023 (“**Effective Date**”) by and between the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated, d/b/a the Barbershop Harmony Society (“**BHS**”), all members of the Board of Directors of BHS (“**SBOD**”), Martin Monson, in his official capacity as Chief Executive Officer and Executive Director of BHS (“**Monson**”) (**BHS**, **SBOD** and **Monson** being hereafter collectively referred to as the “**BHS Parties**”) on the one hand, and Harmony Foundation International, Inc., (“**HFI**”) and its current, former, and putative officers, counsel, and Trustees Gary Plaag, Kendall Williams, Donald A. Laursen, Lynn Weaver, Don Lambert, Sherri Matthews, Mike Moisio, Dan Bell, Jay Bylsma, Christina Lewellen, Perry White, and James Warner (the “**HFI Individual Defendants**”) (**HFI** and the **HFI Individual Defendants** being hereafter collectively referred to as the “**HFI Parties**”) on the other (each individually, “**Party**,” and collectively, “**Parties**”):

### RECITALS

**WHEREAS**, BHS and HFI have had a long-standing relationship dating back to 1959;

**WHEREAS**, in recent years, the Parties have disagreed about the nature of the relationship between BHS and HFI and the attendant duties related thereto;

**WHEREAS**, since December 1, 2020, some or all of the Parties have been engaged in litigation, first in the United States District Court for the Western District of Wisconsin, and subsequently in the Circuit Court of Kenosha County, Wisconsin, and in the Circuit Court, Probate Division of Milwaukee County, Wisconsin;

**WHEREAS**, the litigation includes and has included *Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated, and Harmony Foundation International, Inc. v. Gary Plaag and certain unnamed persons acting in concert with him*, No. 3:20-cv-01073-SLC (W.D. Wisc.) (the “**Federal Litigation**”); *In re: Harmony Foundation International, Inc. Trust*, No. 2021PRO014181 (Milwaukee County Circuit Court, Probate Division) (the “**Probate Litigation**”); and *Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Inc., et al. v. Harmony Foundation International, Inc., et al.*, No. 21-CV-879 (Kenosha County Circuit Court) (the “**Kenosha Litigation**”); as well as other potential and threatened litigation including, without limitation, a possible legal malpractice action by BHS against James Warner and his former law firm Martin, Tate, Morrow, and Marston, P.C. (the “**BHS Malpractice Litigation**”), possible litigation by BHS against HFI and its officers and Trustees over the use of the Harmony Foundation trademark (the “**Trademark Litigation**”); and other potential litigation, known and unknown (the **Federal Litigation**, the **Probate Litigation**, the **Kenosha Litigation**, the **BHS Malpractice Litigation**, the **Trademark Litigation** and all other potential litigation, known and unknown, collectively being hereafter referred to as the “**Litigation**”);

**WHEREAS**, without conceding any claims or defenses raised in the Litigation, the Parties now wish to resolve the Litigation amicably to avoid the risks and expense of further litigation; and

**WHEREAS**, BHS and HFI desire to set forth the terms of their relationship with each other going forward and the attendant duties related thereto;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the mutual execution of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby specifically contract, covenant, and agree as follows:

## **I. GENERAL PROVISIONS**

**1. Recitals.** The foregoing recitals are contractual in nature and are mutual representations of the Parties.

**2. Warranty and Voluntary Agreement.** The Parties warrant that they have entered into this Agreement voluntarily and of their own accord without reliance on any inducement, promise, or representation by any other Party, except those that are expressly set forth in this Agreement. This Agreement contains and constitutes the entire understanding and agreement between the Parties respecting the subject matter hereof, and all oral discussions and prior agreements are merged herein. The Parties intend for this Agreement to govern the financial relationship between BHS and HFI. For the avoidance of doubt, the BHS Bylaws, the HFI Bylaws, and the Trust Agreement between BHS and HFI, as they will be amended pursuant to this Agreement, also remain in place and, where applicable, govern the relationship between the Parties. The Parties intend, however, that there be no inconsistency between and among this Agreement and the HFI Bylaws, the Trust Agreement, and/or the elements of the BHS Bylaws covered in this Agreement. Should there be any such inconsistency, the Parties agree that the HFI Bylaws, the Trust Agreement, and the elements of the BHS Bylaws covered by this Agreement shall be modified to be consistent with this Agreement.

**3. No Admission of Liability.** It is expressly understood and agreed that this Agreement is entered into to avoid the expense and inconvenience of additional legal proceedings and to set forth the terms of the relationship between BHS and HFI going forward and the attendant duties related thereto. This Agreement is not to be construed as an admission of any impropriety, illegality, liability, or satisfaction on the part of any of the Parties or Martin, Tate, Morrow, and Marston, P.C.

**4. Applicable Law.** Except to the extent the BHS Bylaws, HFI Bylaws, and Trust Agreement are governed by Wisconsin law, the validity, construction, and enforcement of this Agreement shall be determined according to the laws of the State of Tennessee without giving effect to any choice of law or conflict of law provisions or rules (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Tennessee.

5. **Amendment and Waiver in Writing.** No provision of this Agreement can be amended or waived, except by a statement in writing signed by the Party against which enforcement of the amendment, or waiver is sought, and any such waiver shall apply only to the matter or instance specifically waived.

6. **Severability.** Should any provision of this Agreement be declared invalid or unenforceable by operation of law or by any tribunal of competent jurisdiction for any reason, the remaining provisions hereof shall remain in full force and effect.

7. **Construction.** This Agreement has been jointly negotiated. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly construed for or against any Party.

8. **Authorization.** The representatives executing this Agreement on behalf of the Parties are empowered to do so and thereby bind the Parties and their successors and assigns according to the terms of this Agreement.

9. **Further Assurances.** The Parties agree to take all actions reasonably necessary to effectuate the approval, performance, validity, and enforceability of this Agreement.

10. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The telecopied, digitally scanned, or electronically signed signature of a party hereto shall be considered as if it was the original.

11. **Term and Renewal.** This Agreement shall remain in full force and effect unless and until terminated pursuant to Section 12 (Term), but in no event shall this Agreement be terminated prior to December 31, 2025 except as provided in Section 12 (Term). Beginning January 1, 2025, BHS and HFI agree to engage in good faith negotiations with regard to the amount and timing of the \$610,000.00 Annual Payments by HFI to BHS. It is explicitly contemplated that, as part of the good faith negotiations over the \$610,000 Annual Payments, BHS and HFI may elect to create an additional term of time during which this Agreement may not be terminated, which additional term shall be pursuant to a written amendment to this Agreement, duly executed by the Parties.

12. **Term.** This Agreement shall continue in full force and effect and may not be terminated by BHS or HFI until December 31, 2025 except as follows:

- a. the Agreement may be terminated for Material Breach according to Section 13; or
- b. the Agreement may be terminated by mutual agreement of BHS and HFI on 180 days advance written notice.

After (but not before) December 31, 2025, this Agreement may be terminated with or without cause, unilaterally, by either BHS or HFI, effective upon 365 days advance written notice to the other Parties.

**13. Termination for Material Breach.** This Agreement may be terminated at any time by BHS or HFI upon a Material Breach of this Agreement if such terminating Party is not then in Material Breach. For purposes of this Agreement each of the following events shall be a “Material Breach”:

- a. any failure by HFI to make any Quarterly Payment or any other payment required to be made by HFI hereunder within thirty (30) days after HFI’s receipt of written notice from BHS of non-payment thereof;
- b. if, during any twelve (12) month period during the term hereof, HFI should fail on two (2) or more occasions to make any Quarterly Payment or any other payment required to be made by HFI hereunder as and when due;
- c. except as described in Section 13(a) or (b), any material failure by any Party to perform any obligation or covenant under this Agreement where such failure is not cured within thirty (30) days of receipt of written notice regarding such material failure; and
- d. any material breach of any representation or warranty set forth in this Agreement.

**14. Effect of Termination or Expiration for Any Reason.** Upon the termination of this Agreement:

- a. The Trust Agreement will automatically terminate.
- b. The Barbershop Harmony Society Endowment Fund will be possessed and managed by HFI, and distributions will be made, according to the terms of the endowment agreement attached as Exhibit E. HFI will retain all other existing endowment funds held by it but will remain obligated to make Endowment Distributions according to donor instructions and HFI’s normal process, procedure, and timing including, where applicable, to BHS.
- c. HFI will return to BHS all data and information received from BHS during the period of this Agreement and will provide BHS with data related to donors and amounts raised from BHS members for BHS during the existence of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, upon termination, HFI will not be prevented from raising money from any persons, whether members of BHS or otherwise, who have ever made a donation to HFI prior to the Implementation Date or who are, or have been, known to HFI from information other than the information provided to HFI by BHS pursuant to the terms of this Agreement.

- d. Unless permission is specifically sought by HFI and specifically acknowledged in writing by the SBOD, HFI and its principals, agents, and employees will not conduct any Fundraising Activities within 25 yards of any event organized and managed by BHS. For the avoidance of doubt, HFI's principals, agents, and employees will be permitted to attend BHS events in their personal capacity provided they do not engage in Fundraising Activities.
- e. From and after the effective date of termination, HFI will no longer owe BHS the \$610,000 Annual Payments.
- f. Sections 15-21, 22a, 22b, and 23-25 of this Agreement will be null and of no effect, and HFI will be able to nominate and elect all HFI Trustees.
- g. HFI will be free to amend the HFI Bylaws without approval by the SBOD.
- h. BHS will be permitted to engage in all Fundraising Activities it wishes to pursue.
- i. Nothing in this Section 14 shall relieve any Party from responsibility for any liability resulting from any breach of this Agreement prior to such termination or expiration;
- j. Sections 14, 29, 31, and 32, and any other provision that, by its express terms or nature, is intended to survive the expiration or termination of this Agreement shall survive such expiration or termination.

## **II. DEFINITIONS**

As used in this Agreement, the terms listed below shall be defined as set forth in this Section. The Parties agree that these definitions are operative provisions of this Agreement to the extent these definitions contain any covenants, representations, or warranties:

The **610,000.00 Annual Payments** shall have the meaning set forth in Section 24.

The **Barbershop Harmony Society Endowment Fund** shall mean an endowment fund set aside from HFI's general endowment on or before February 28, 2023 in the initial amount of \$1,000,000. Distributions from the Barbershop Harmony Society Endowment Fund shall be made to BHS as Unrestricted Funds for use in furthering BHS' charitable mission in accordance with the endowment agreement establishing this fund attached to this Agreement as Exhibit E.

**BHS** shall mean the legal entity the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated, d/b/a the Barbershop Harmony Society, the corporation in charge of the Barbershop Harmony Society's national programming, commonly referred to as "Harmony Hall." BHS shall not mean BHS's districts, chapters, or other subordinate organizations within the barbershop community.

**BHS Fundraising Employees** shall mean at least two BHS employees who shall be assigned by BHS to work full time with HFI to conduct Fundraising Activities for and on behalf of BHS. If BHS assigns more than two BHS employees then the fundraising expenses of any additional BHS Fundraising Employees assigned by BHS to work with HFI will be paid by BHS except that the expenses per additional employee shall not be greater than the average per-employee annual expenses of all the BHS and HFI fundraisers.

**BHS Nominated Trustees** shall have the meaning set forth in Section 20(a)(v) of this Agreement.

**BHS Operating Revenue** shall mean all revenue obtained by BHS that is not obtained via Fundraising Activities.

**BHS Parties** shall mean BHS, SBOD and Monson.

**BHS Programming Activities** shall mean programs organized and put on by BHS and its chapters, districts, and other subsidiaries including, without limitation, the BHS International Convention, Mid-Winter Convention, Harmony University, BHS district conventions, and all other singing competitions, conventions, or educational gatherings or programs conducted by BHS and its chapters, districts, and other subsidiaries.

The **Effective Date** shall have the meaning set forth in the first paragraph of this Agreement.

**Elected Trustees** of HFI shall have the same meaning as found in the HFI Bylaws.

**Endowment Distributions** shall mean monies distributed by HFI from funds held in its endowment in accordance with HFI's endowment spending policy as set by the HFI Board of Trustees and according to each fund's purposes. Distributions shall follow HFI's normal process, procedure, and timing for its endowment funds, including HFI's general and named endowment funds. This term does not apply to distributions from the Barbershop Harmony Society Endowment Fund whose distributions shall follow the terms set out in Exhibit E.

**Endowment Gifts** shall mean irrevocable one-time, regular, annual or legacy gifts given to HFI to either establish new, or provide additional funding to, endowment funds, as directed by the donor.

**Full Dues Paying Membership** of BHS shall mean the total number of persons who pay to BHS the full amount of dues as set by BHS each year for adult Regular

Members in BHS, plus all persons who have been members of BHS for fifty (50) years or longer and therefore receive membership in BHS at no cost. Payment of BHS Chapter and District membership dues shall not be necessary to be counted as a full dues paying member.

**Fundraising Activities** shall mean all solicitations for and/or passive receipt of donations from individuals or entities, whether direct or indirect, in-person or remote. Fundraising Activities shall include neither applications and efforts to obtain government grants or corporate sponsorships nor revenue from BHS's earned revenue streams, including without limitation BHS memberships, licensing, advertising, events and sale of apparel, tickets, experiences, space, music, etc. Applications and efforts to obtain corporate and charitable foundation grants shall be handled as set forth in Section 15.

**HFI** shall mean Harmony Foundation International, Inc., a Wisconsin nonprofit corporation and its successors and assigns.

**HFI Board of Trustees** shall mean the board of directors of HFI.

**HFI Bylaws** shall mean the Bylaws of HFI, attached hereto as Exhibit B.

**HFI Nominated Trustees** shall have the meaning set forth in Section 20(a)(v) of this Agreement.

**HFI Individual Defendants** shall mean Gary Plaag, Kendall Williams, Donald A. Laursen, Lynn Weaver, Don Lambert, Sherri Matthews, Mike Moio, Dan Bell, Jay Bylsma, Christina Lewellen, Perry White, and James Warner.

**HFI Parties** shall mean HFI and the HFI Individual Defendants.

**HFI Sixteen** shall mean the sixteen persons BHS contends the SBOD nominated and elected on March 22, 2020 to serve as HFI Trustees: John Donehower, Blair Brown, Dick Powell, John Santora, Skipp Kropp, Bernard Priceman, Jeremy Albright, Jeremy Brann, Randy Loos, Larry Bomback, David Haedtler, Steve Denino, Joseph Berger, Dwayne Cooper, Christian Hunter, and Alan Lamson.

**HFI Trustees** shall mean the members of the HFI Board of Trustees.

The **Implementation Date** shall be April 1, 2023.

**Legacy Gifts** shall mean gifts given by persons via a will, trust, or other testamentary vehicle.

**Monson** shall mean Martin Monson in his official capacity as Chief Executive Officer and Executive Director of BHS.

**Material Breach** as used in this Agreement shall have the meaning assigned to it in Section 13.

**Quarterly Payments** shall have the meaning set forth in Section 24 of this Agreement.

The **Ramp Up Window** shall be the time period commencing on the Effective Date and running through three months immediately following the Implementation Date.

**Reconstruction Board of Trustees** shall mean the nine HFI Trustees who shall take their seats effective April 1, 2023, according to the provisions of this Agreement.

**Restricted Funds** shall mean monies distributed or paid to BHS or HFI either as Restricted Gifts or as Endowment Distributions that designate that the monies be directed to a certain individual, entity or program or be used for a specific purpose, or have a time-related restriction or provision.

**Restricted Gifts** shall mean one-time, regular, or annual gifts given to HFI in which the donor designated that the gift be directed to a certain individual, entity or program or be used for a specific purpose, or have a time-related restriction or provision. For purposes of this Agreement, the term Restricted Gifts does not include Endowment Distributions that are distributed to be used for a donor-restricted purpose.

**SBOD** shall mean the BHS Board of Directors, including each prior, current and future Director individually.

**SPPBSQSUS** shall mean the Society for the Preservation and Propagation of BarberShop Quartet Singing in the United States, together with its lodges, chapters, and other subsidiary units and its and their successors and assigns.

**Unrestricted Funds** shall mean monies distributed or paid to BHS or HFI that may be used by the recipient for any lawful purpose, without any restriction placed on the funds by the donor and/or transferor. For the avoidance of doubt, all monies received as BHS Operating Revenue are not Unrestricted Funds for purposes of this Agreement.

**Unrestricted Gifts** shall mean one-time, regular, or annual gifts given to HFI in which the donor did not designate that the gift be directed to a certain individual, entity or program or be used for a specific purpose, or have a time-related restriction or provision.

**Unrestricted Legacy Gifts** shall mean bequests made to HFI via testamentary documents and/or pledges to make such gifts including but not limited to all outstanding pledges made via the Legacy of Harmony program that do not contain any further designation by the donor that the gift be directed to a certain individual, entity, program or fund, or be used for a specific purpose.

### **III. SPECIFIC PROVISIONS**

**15. Fundraising.** On the Implementation Date, BHS will cease all Fundraising Activities whether on its own or in partnership or conjunction with any outside entity. All future



Fundraising Activities by and on behalf of BHS will be conducted by HFI as set forth in this Agreement unless otherwise agreed to in writing by authorized representatives of BHS and HFI.

- a. Except for Unrestricted Legacy Gifts specifically made payable to BHS by the donor or donor designee pursuant to Section 28, all donations, grants (except government grants or corporate sponsorships) or gifts of any nature received by BHS for BHS after the Implementation Date shall be forwarded to HFI within 30 days of receipt. For the avoidance of doubt, all monies obtained by BHS's earned revenue streams as normal operating revenue from BHS's non-fundraising operations shall be retained by BHS. Furthermore, the Parties agree that neither BHS nor HFI will make any efforts to encourage donors to substitute Legacy Gifts for giving pursuant to this Agreement. The Parties intend that all Fundraising Activities will be done through HFI.
- b. BHS, through the BHS Fundraising Employees, may apply for grants from corporate, charitable, or private foundations or donor advised funds (collectively, "Grants"). Applications for Grants on behalf of BHS shall be conducted by the BHS Fundraising Employees at the direction of HFI and BHS. Prior to the submission of any such Grant applications, the Parties expressly agree to work collaboratively, in partnership, and in good faith to determine which entity will receive the funds and how the proceeds of any such Grant shall be treated under this Agreement. Specifically, whether any such proceeds will be credited toward HFI's \$610,000.00 Annual Payments.
- c. Nothing in this provision shall prevent HFI from applying for corporate or charitable foundation grants provided it supplies notice of such applications to BHS. HFI may use the proceeds of grants it receives to pay the \$610,000.00 Annual Payments to BHS if such use is permitted by the terms of the grant.
- d. To promote fundraising coordination between the organizations and ensure compliance with this Agreement, every six months, BHS must present HFI with a report of all donations, grants or gifts of any nature received by BHS.
- e. BHS is entitled to receive any and all reporting of all donations or gifts received by HFI as a part of BHS Fundraising Activities. To promote fundraising coordination between the organizations and ensure compliance with this Agreement, every six months, the BHS Fundraising Employees working with HFI must present BHS with a report of all donations, grants, or gifts of any nature received by HFI as part of BHS Fundraising Activities—i.e. all unrestricted gifts and gifts restricted to BHS. The BHS Fundraising Employees shall have full access to all information necessary to prepare such reports.

- f. BHS shall be entitled to use its own assets as its Board sees fit, including the creation and/or implementation of accounts, investment vehicles or financial instruments. For the avoidance of doubt, this applies regardless of the name attached or restrictions placed upon the accounts, investment vehicles or financial instruments created through the use of BHS's assets. BHS shall not be entitled to solicit or accept donations directly to BHS of any kind, regardless of whether the purpose is to contribute to or otherwise increase the value of those accounts, investment vehicles or financial instruments.

**16. Fundraising Employees.** At the beginning of the Ramp Up Window, BHS will assign at least two BHS Fundraising Employees to begin working full time with HFI on the Implementation Date on Fundraising Activities for and on behalf of BHS. BHS shall pay the BHS Fundraising Employees' salaries and benefits and shall be responsible for ensuring the BHS Fundraising Employees perform their jobs in an effective manner. HFI shall be responsible for any direct costs of the Fundraising Activities conducted by the first two BHS Fundraising Employees.

- a. HFI will designate two employees to work with the BHS Fundraising Employees to plan, organize, and conduct Fundraising Activities for and on behalf of BHS.
- b. In addition to the two HFI employees specifically-designated, it is further understood and agreed to that all of HFI's fundraising employees will spend at least a portion of their time raising money for and on behalf of BHS.
- c. No HFI principals, agents, or employees will actively raise money for any organization except BHS and its subordinate organizations at any event organized and managed by BHS. For the avoidance of doubt, HFI's principals, agents, and employees may raise unrestricted funds for HFI at events organized and managed by BHS.
- d. The BHS Fundraising Employees shall report directly to the HFI CEO with respect to their job function for BHS Fundraising Activities. The BHS Fundraising Employees may provide regular reports of their BHS Fundraising Activities to the BHS CEO. It is further understood and agreed to that the BHS Fundraising Employees will receive reports and information from BHS sufficient to be able to work with HFI's two designated employees to align BHS Fundraising Activities with BHS Programming Activities.
- e. The BHS Fundraising Employees shall begin meeting with HFI during the first three months of the Ramp Up Window for purposes of integration and training.

**17. Fundraising Coordination.** It is specifically contemplated and agreed to as part of this Agreement that the Parties (and especially BHS and HFI) will work in good faith to align BHS Fundraising Activities and BHS Programming Activities including, without limitation, messaging to BHS members and donors related to BHS Fundraising Activities and BHS Programming Activities and planning and execution of programs to ensure synergy and timing between BHS Fundraising Activities and BHS Programming Activities. BHS will at all times make its membership list (broken down by membership category), together with all associated data, available to HFI; however, BHS will retain ownership of all such data and its membership list and HFI will return all such data and BHS's membership list to BHS and cease to use all such data should this Agreement be terminated. (Notwithstanding any other provision of this Agreement to the contrary, however, upon termination HFI will not be prevented from raising money from any persons whether members of BHS or otherwise who have ever made a donation to HFI prior to the Implementation Date or who are, or have been, known to HFI from information other than the information provided to HFI by BHS pursuant to the terms of this Agreement.) BHS will also promote and publicly support all BHS Fundraising Activities by HFI on behalf of BHS through all current and future marketing and communication means available. This includes, but is not limited to, positive promotion and utilization of BHS's media relations resources, stage presence, stage promotion of ongoing campaigns, etc. in order for HFI to maximize its fundraising capabilities.

- a. To help ensure fundraising coordination and to encourage cooperation and friendship between the organizations in the future, the Parties agree that the HFI Board of Trustees and SBOD shall work collaboratively and shall seek opportunities to have joint meetings.

**18. HFI Support of Programming.** HFI shall not conduct any programming activities with BHS members that directly compete with existing BHS programs, except to the extent BHS no longer provides, or declines to provide, such programs. For the avoidance of doubt, HFI may continue to support the Power of Harmony program, provide funds for grants and scholarship programs, and may conduct programming and engage in fundraising in connection with other barbershop-related groups, including without limitation Harmony Incorporated, Sweet Adelines, the Association of International Champions, and their successors and assigns. HFI may also conduct programming and engage in fundraising activities in connection with non-barbershop-related singing organizations.

**19. No Support for SPPBSQSUS.** As of the Implementation Date, HFI, including its Trustees, officers, agents, and employees shall not support SPPBSQSUS, its successors and assigns, in any official capacity. HFI shall not make grants to SPPBSQSUS, which shall include, without limitation, a prohibition on being a conduit for Restricted Gifts or Endowment Gifts that go to SPPBSQSUS. HFI Trustees, officers, agents, and employees shall not attend any SPPBSQSUS events in their official capacity. HFI shall not allow SPPBSQSUS to use any trademark, tradename, or other intellectual property right belonging to HFI. For the avoidance of doubt, nothing in this provision shall prevent HFI from raising money from persons who may be members of or involved with SPPBSQSUS. For the further avoidance of doubt, HFI shall not be prevented from supporting other male-only organizations, including without limitation all-male organizations within the BHS universe such as BHS chapters, quartets, choruses, or other subsidiaries that have chosen to remain all-male or the Association of International Champions.

**20. Nominations of HFI Trustees.**

The nominating process for HFI Trustees shall be revised as follows, which changes shall remain in effect for the duration of this Agreement:

- a. Changes to HFI Bylaws:
  - i. Section 3.02: The reference to Section 5.01 shall be changed to Section 5.02 and the phrase “in the same manner as Society officers” shall be deleted.
  - ii. Section 3.03: The section shall be replaced in its entirety with the following language: “Interim vacancies on the Board shall be filled as follows. If an HFI Nominated Trustee position shall become vacant, then the interim vacancy shall be filled by a qualified person chosen by a majority vote of the remaining HFI Nominated Trustees. If a BHS Nominated Trustee position shall become vacant, then the interim vacancy shall be filled by a qualified person chosen by a majority vote of the Board of Directors of the Society. In either instance, there shall be a meeting of the entire Board for the purpose of proposing and discussing potential candidates to fill the interim vacancies before such vacancies are filled. The secretary shall create a report of the persons considered and discussed during the mandatory meeting and shall share that report with the Board of Directors of the Society.”
  - iii. Section 4.03: The word “Officer” shall be added before “Nominating Committee” to clarify that the “Officer Nominating Committee” shall nominate to fill interim officer vacancies.
  - iv. Section 5.01: The section shall be replaced in its entirety with the following language: “The chairman of the Board shall annually appoint an Officer Nominating Committee consisting of at least two Elected Trustees. The Officer Nominating Committee shall nominate at least one eligible person for each officer position to be elected, and shall report the officer nominee(s) to the Board at least ten days prior to the meeting at which the election will be held. Nominations may also be made from the floor of the Board.
  - v. Section 5.02: The section shall be replaced in its entirety with the following language: “Each year, there shall be three nominations made for Elected Trustee positions. Two of the nominations shall be made exclusively by the six Trustees who were nominated by the Foundation (“HFI Nominated Trustees”). The HFI Nominated Trustees shall annually appoint a Trustee Nominating Committee consisting of at least two of the HFI Nominated Trustees. BHS

Nominated Trustees shall not be permitted to serve on the Trustee Nominating Committee. The Trustee Nominating Committee shall nominate one person for each HFI Nominated Trustee position to be elected and shall report the nominee(s) to the Board of Directors of the Society at least ten days prior to the meeting at which the election will be held. Nominations may also be made from the floor of the Board but only by the other HFI Nominated Trustees. Nominations for the HFI Nominated Trustee positions shall not be permitted from the floor of the Board of Directors of the Society, and the Society shall not otherwise have any right to nominate persons for the HFI Nominated Trustee positions. The Society's Nominating Committee shall nominate at least one eligible person for the Elected Trustee position to be elected that is designated by the Society ("BHS Nominated Trustee") and shall report the nominee(s) to the Board of Directors of the Society at least ten days prior to the meeting at which the election will be held. Nominations for the BHS Elected Trustee position may also be made from the floor of the Board of Directors of the Society. In addition to the requirements of Section 11.01 below, this section on nominations may not be amended without approval of at least four of the six HFI Nominated Trustees."

- vi. Section 5.03 shall be the same language as the previous section 5.02.
- b. The SBOD shall elect as Elected Trustees of HFI the nominee(s) forwarded to the SBOD by the Trustee Nominating Committee of HFI.
- c. Changes to Trust Agreement:
  - i. Article V(1): The phrase "in the same manner as the Society's officers" shall be deleted.
  - ii. Article V(1): The final sentence regarding interim vacancies shall be replaced with the following: "Interim vacancies on the Board shall be filled in the manner set out in the Bylaws of the Foundation."
- d. For the avoidance of doubt, the purpose of this Section 20 is to ensure that at all times, HFI shall have the exclusive right to nominate a majority of the Elected Trustees of HFI for the duration of this Agreement.

**21. Reconstruction of Board of Trustees.** To implement the new nominating procedure and fill the nine Elected Trustee positions, the Parties agree to the following one-time-only procedures:

- a. The terms of all current Trustees of HFI shall cease on March 31, 2023.
- b. Beginning April 1, 2023, the HFI Board of Trustees shall have nine persons divided into three classes:
  - i. Two HFI Nominated Trustees and one BHS Nominated Trustee who shall serve until December 31, 2024.
  - ii. Two HFI Nominated Trustees and one BHS Nominated Trustee who shall serve until December 31, 2025.
  - iii. Two HFI Nominated Trustees and one BHS Nominated Trustee who shall serve until December 31, 2026.
- c. For this reconstruction of the Board of Trustees, the six HFI Nominated Trustees to be nominated shall be nominated exclusively by the current Trustees of HFI, and the three BHS Nominated Trustees shall be nominated exclusively by the SBOD. All nominations shall be made no later than March 10, 2023, and the SBOD shall elect the nominees within fourteen (14) days of receipt of the nominations.
- d. For purposes of reconstructing the Board of Trustees, the Parties agree to work in good faith to make nominations of person(s) who are acceptable to all Parties and will be able to work together as the new Board and build comity between BHS and HFI. Ultimately, however, the Parties have the right to make such nominations as they see fit in their sole discretion.

**22. HFI Trustees' Membership in BHS.** All members, past, present and future, of HFI's Board of Trustees shall be admitted as members to BHS if they so choose. All benefits of membership of past and current trustees shall be restored, including uninterrupted membership years, upon payment of current membership dues.

- a. Except for the joint statement, BHS agrees that before the Implementation Date it will remove from its website, social media posts, publications, and/or any similar media forum controlled by BHS, any references to the dispute between the organizations.
- b. Except for the joint statement, HFI agrees that before the Implementation Date it will remove from its website, social media posts, publications, and/or any similar media forum controlled by HFI, any references to the dispute between the organizations.

**23. Representation on Board Committees.** One of the Elected Trustees nominated by BHS shall be seated on each of the HFI Board of Trustees' standing committees and any special committees that may be formed in the future with the exception of the Trustee Nominating Committee.

- a. The SBOD shall appoint an SBOD member who shall be seated as a member with voice but without vote on HFI's Grants Committee.
- b. The HFI Board of Trustees shall appoint an Elected Trustee who shall be seated as a member with voice but without vote on BHS's Strategic Planning Committee. It is anticipated and intended to promote comity between BHS and HFI that the Elected Trustee appointed to BHS's Strategic Planning Committee will be an Elected Trustee nominated by HFI, but the HFI Board of Trustees has ultimate discretion on who to appoint.

**24. Quarterly Payments to BHS.** For calendar year 2023, HFI will pay BHS \$305,000.00 in equal payments of \$152,500.00 due on September 30, 2023 and December 31, 2023 (the "2023 Payments"). Beginning in 2024 and each year thereafter, HFI will pay BHS \$610,000.00 each calendar year in quarterly installments of \$152,500 paid at the end of each quarter (the "Quarterly Payments" which together comprise the "\$610,000.00 Annual Payments"). Except as specifically set forth in this paragraph and in paragraphs 24a., 24b., 24c. and 25 below, BHS shall not be entitled to receive any other monies from HFI of any nature. The 2023 Payments and the \$610,000.00 Annual Payments will be paid to BHS as Unrestricted Funds, except to the extent such payments include scholarships or BHS-program-specific funds as designated by donors. BHS must provide a written report to HFI on or before January 31 and July 31 of each year as to how the monies paid by HFI to BHS are being used.

- a. The \$610,000.00 Annual Payments shall not include distributions from the Barbershop Harmony Society Endowment Fund.
- b. If in any year HFI receives Restricted Gifts that are donor-restricted to go to BHS (including gifts that are restricted to BHS but may be used by BHS for unrestricted means) during that year and the total of such Restricted Gifts exceeds \$610,000.00, then BHS shall be entitled to receive the total amount of such Restricted Gifts, notwithstanding that the total amount exceeds \$610,000.00. By way of example, if HFI receives \$700,000.00 in Restricted Gifts in a calendar year that are donor-restricted to go to BHS that year, then BHS will receive \$90,000.00 in addition to the \$610,000.00 Annual Payment provided above.
- c. All Restricted Gifts to BHS that have a specific purpose (i.e. that are not gifts restricted to BHS for BHS to use for unrestricted means) must be approved by BHS's Gift Acceptance Committee before HFI can agree to accept the restricted gift. Restricted Gifts to Harmony University, Next Generation Barbershop, or any other previously existing BHS program, that otherwise have no other conditional requirements, may be accepted without permission from the BHS Gift Acceptance Committee.
- d. BHS shall be eligible to apply for grants from HFI for additional funding over and above the \$610,000.00 Annual Payments. Approval of all grants

shall be subject to HFI's policies and procedures, and there shall be no guarantee BHS will receive any such grants.

- e. Any funds received by HFI and distributed to a BHS district or chapter as part of HFI's presently existing Donor's Choice program and/or successor programs shall not reduce HFI's obligation to pay or BHS' entitlement to receive the \$610,000.00 Annual Payment. As a part of its Donor's Choice program, HFI receives a portion of any such donation whether through a maintenance fee or otherwise. HFI is entitled to use any proceeds it receives through its Donor's Choice program to satisfy its \$610,000.00 Annual Payment obligation.
- f. Consistent with Section 15, BHS shall cease any and all Fundraising Activities, including its own program wherein it serves as a conduit for donations by its members to its local districts and chapters. HFI agrees that if a donor seeks to make a donation to a local district or chapter, HFI will assist that donor in making the donation, subject to its standard maintenance fees and programs. HFI has no obligation to directly market for such activities, but may do so. Any donation to a local district or chapter facilitated by HFI under this provision will not reduce its \$610,000.00 Annual Payment obligation.

**25. Funding Escalator.** If in a BHS fiscal year BHS grows its Full Dues Paying Membership by 5% over the prior fiscal year, then the following fiscal year, HFI will pay BHS 20% of all Unrestricted Funds (as presented in HFI's annual audit report) raised during the growth year in excess of \$2,500,000.00. For example, if in 2024, BHS grows its Full Dues Paying Membership by 5% over 2023, then in 2025, HFI will pay BHS 20% of all Unrestricted Funds raised in 2024 in excess of \$2,500,000. Each year BHS shall provide HFI with the number of Full Dues Paying members broken down by adult Regular Members and persons who have been members for fifty (50) years or longer.

**26. Advance Payment.** In recognition of this Agreement and of HFI's first payment due September 30, 2023, HFI will make an advance payment of \$100,000.00 to BHS as Unrestricted Funds within fourteen (14) days of the Implementation Date, which payment shall be credited to the payment due September 30, 2023, such that on that date a payment of only \$52,500.00 shall be due.

**27. Barbershop Harmony Society Endowment Fund.** Within fourteen (14) days of the Effective Date of this Agreement, BHS and HFI shall sign a formal endowment agreement, attached hereto as Exhibit E, and HFI shall designate \$1,000,000.00 to create the Barbershop Harmony Society Endowment Fund. Distributions from the Fund shall be made to BHS as Unrestricted Funds for use in furthering BHS' charitable mission in accordance with the endowment agreement. Distributions shall follow the process, procedure, and timing as stated in the endowment agreement. Donors may give additional gifts, including legacy gifts, and BHS may contribute additional funds, to further grow the principal of the Barbershop Harmony Society Endowment Fund, and any such additions to the principal of the fund shall not reduce HFI's



obligation to pay or BHS's entitlement to receive the \$610,000.00 Annual Payments. HFI shall provide BHS an annual report of the endowment's investment performance, distributions, fees, principal amount, and any additions to the corpus made via donations or other transfers. Except for funds that may be created through Legacy Gifts pursuant to Section 28, during the existence of this Agreement, BHS shall have no other newly-created donor directed funds created through soliciting or accepting donor funds.

**28. Unrestricted Legacy Gifts.** For all Unrestricted Legacy Gifts currently known by HFI or BHS to be in existence via the Legacy of Harmony program or otherwise as of the Implementation Date, the Parties agree that all donors shall be contacted jointly by representatives of HFI and BHS. The Parties agree to work in good faith to arrange how the joint communications shall take place and who shall make the communication. All existing donors of Unrestricted Legacy Gifts shall be given the opportunity to clarify their gift and determine whether the gift should be made to HFI, be made to HFI and designated to BHS, be made directly to BHS, or be specifically designated for some other purpose. Existing donors will further be given the opportunity to clarify if their gift should go into an endowment fund (whether the Barbershop Harmony Society Endowment Fund or another fund) or be paid out immediately to the designee. The Parties agree to change the pledges, contracts, and other donative documents in accordance with each donor's directions. Upon clarification of their designation, donors shall not be solicited again concerning the designation of their Legacy gifts. All future donors solicited for Legacy Gifts shall be given the same opportunity to designate their pledge. For the avoidance of doubt, although BHS will cease any and all Fundraising Activities, including solicitation of Legacy Gifts, any Legacy Gifts restricted to or paid directly to BHS shall not count against HFI's \$610,000.00 Annual Payment obligation. BHS must supply a report of all Legacy Gifts received by BHS as required by Section 15(d).

**29. Trademark.** In exchange for \$50,000.00 due within fourteen (14) days of the Effective Date of this Agreement, BHS will give HFI an irrevocable license to use the Harmony Foundation trademark in perpetuity and without any limitation on its use by HFI save for those limits necessary to protect the mark. The license is attached hereto as Exhibit A.

**30. Dismissal.** Within ten (10) business days of the Effective Date the Parties shall file a jointly executed stipulation and proposed order for dismissal in both the Probate Litigation and the Kenosha Litigation. The stipulations and proposed orders shall be for dismissal with prejudice and without costs to either party. The Parties shall destroy or delete all documents received from the other Party during discovery in the Litigation.

**31. Full Release of the HFI Parties and Martin, Tate, Morrow & Marston, P.C.** The BHS Parties, collectively and individually, hereby release and forever discharge the HFI Parties and Martin, Tate, Morrow & Marston, P.C., collectively and individually, as well as their predecessors, successors, assigns, heirs, parent corporations, subsidiaries, affiliated entities, and all past, present and future directors, officers, principals, shareholders, agents, employees, insurers, reinsurers, administrators, and attorneys (collectively the "HFI Released Parties"), from any and all manner of action or actions, suits, claims, damages, judgments, levies and executions, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect, in law or in equity, which they ever had, have or ever can, shall or may have against the HFI Released Parties,

arising out of or in any way related to any fact or circumstance arising prior to the Effective Date of this Agreement, including without limitation all claims arising out of or related in any way to the claims asserted in the Litigation.

**32. Full Release of the BHS Parties and HFI Sixteen.** The HFI Parties, collectively and individually, hereby release and forever discharge the BHS Parties and the HFI Sixteen, collectively and individually, as well as their predecessors, successors, assigns, heirs, parent corporations, subsidiaries, affiliated entities, and all past, present and future directors, officers, principals, shareholders, agents, employees, insurers, reinsurers, administrators, and attorneys (collectively the “BHS Released Parties”), from any and all manner of action or actions, suits, claims, damages, judgments, levies and executions, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect, in law or in equity, which they ever had, have or ever can, shall or may have against the BHS Released Parties, arising out of or in any way related to any fact or circumstance arising prior to the Effective Date of this Agreement, including without limitation all claims arising out of or related in any way to the claims asserted in the Litigation.

**33. Notices.** All notices and other communications required or permitted under this Agreement shall be considered validly given, made, or served if in writing and delivered personally, by nationally recognized overnight express courier, or by certified mail with postage prepaid and return receipt requested, to the following addresses:

*If to BHS:*

Society for the Preservation and Encouragement of Barber Shop Quartet  
Singing in America, Inc.  
Attn: Martin Monson, CEO  
110 7<sup>th</sup> Ave. N.  
Nashville, Tennessee 37203  
Email: mmonson@barbershop.org

*If to HFI:*

Harmony Foundation International, Inc.  
Attn: Dr. Perry White  
901 Broadway #24030  
Nashville, Tennessee 37202  
Email: pwhite@harmonyfoundation.org

The Parties further agree to give notice by email in conjunction with any of the above listed methods for physical delivery; however, email alone will not constitute notice to a Party under this provision unless the Party being noticed responds in writing (email sufficient) to acknowledge receipt and sufficiency of the emailed notice.

**34. Remedies; Mediation; Attorney's Fees; Forum Selection.** In the event of any breach of this Agreement, the Parties shall have all remedies that may be available to them at law or in equity, provided that, in the event of any breach of this Agreement, or if there shall arise a dispute as to the terms of this Agreement, the Parties agree that those Parties in disagreement about the terms of this Agreement and/or a breach shall participate in a pre-litigation mediation. Only if mediation is unsuccessful, or if any Party refuses to participate in mediation, shall litigation be permitted. In the event of litigation, the substantially prevailing party shall be entitled to an award of its reasonable attorney's fees incurred, as well as all costs and expenses of litigation and collection. The Parties jointly submit to the jurisdiction of the Davidson County Tennessee Chancery Court to enforce the provisions of this Agreement. All remedies provided for in this Agreement are cumulative and not exclusive of any remedies provided by law or equity.

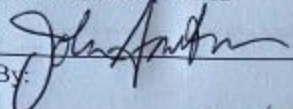
**35. Public Nature of Agreement.** Once completely executed, this Agreement shall be made publicly-available for BHS members, donors and others to review within fourteen (14) days of the Effective Date.

**36. Mutual Statement.** Within ten (10) days of the Effective Date the Parties shall publicly release the attached mutual statement announcing this Agreement, the termination of the litigation between the Parties, and the benefits to both BHS and HFI of the relationship moving forward. The Mutual Statement shall be shared via the widest release channels – i.e. the email or other distribution channel that is sent to the largest number of people – available to BHS and HFI.

**IN WITNESS WHEREOF**, the parties have signed this Agreement on the date(s) shown below:

**[SIGNATURE PAGE TO FOLLOW]**

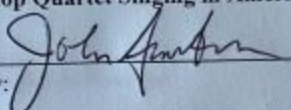
**Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated**

By: 

In his capacity as President

Date: 2/10/2023

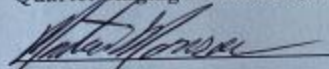
**Board of Directors of the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated**

By: 

In his capacity as President

Date: 2/10/2023

**Martin Monson, in his official capacity as Chief Executive Officer, Executive Director and Secretary of the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated**

  
Martin Monson

Date: 2/10/2023

**Harmony Foundation International, Inc.**

\_\_\_\_\_  
By:

In his capacity as

Date: \_\_\_\_\_

**Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated**

\_\_\_\_\_  
By:

*In his capacity as*

Date: \_\_\_\_\_

**Board of Directors of the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated**

\_\_\_\_\_  
By:

*In his capacity as*

Date: \_\_\_\_\_

**Martin Monson, in his official capacity as Chief Executive Officer, Executive Director and Secretary of the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated**

\_\_\_\_\_  
**Martin Monson**

Date: \_\_\_\_\_

**Harmony Foundation International, Inc.**

*Dr. G. D. Dutton*  
\_\_\_\_\_  
By:

*In his capacity as HFI President + CEO*

Date: 3-14-23

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**Gary Plaag**

Date: 2/18/2023

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**Kendall Williams**

Date: \_\_\_\_\_

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**Donald A. Laursen**

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**Lynn Weaver**

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**Don Lambert**

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**Sherri Matthews**

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**Mike Moisio**

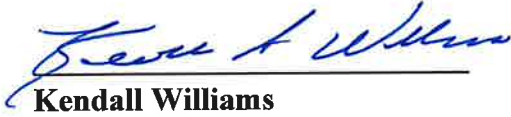
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**Gary Plaag**

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**Kendall Williams**

Date: 2/18/23

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**Donald A. Laursen**

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**Lynn Weaver**

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**Don Lambert**

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**Sherri Matthews**

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**Mike Moisio**

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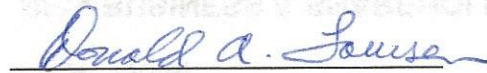
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**Gary Plaag**

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**Kendall Williams**

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**Donald A. Laursen**

Date: 2/21/2023

**Lynn Weaver**

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**Don Lambert**

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**Sherri Matthews**

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**Mike Moisio**

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**Gary Plaag**

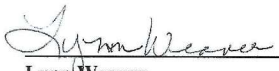
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**Donald A. Laursen**

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**Lynn Weaver**

Date: 2/19/23

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**Don Lambert**

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**Sherri Matthews**

Date: \_\_\_\_\_

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**Mike Moio**

Date: \_\_\_\_\_

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*[Signature Page to Settlement Agreement]*

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**Gary Plaag**

Date: \_\_\_\_\_

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**Kendall Williams**

Date: \_\_\_\_\_

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**Donald A. Laursen**

Date: \_\_\_\_\_

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**Lynn Weaver**

Date: \_\_\_\_\_



**Don Lambert**

Date: 21 FEB 2023

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**Sherri Matthews**

Date: \_\_\_\_\_

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**Mike Moasio**

Date: \_\_\_\_\_

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**Dan Bell**

Date: \_\_\_\_\_

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**Gary Plag**

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**Kendall Williams**

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**Donald A. Laursen**

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**Lynn Weaver**

Date: \_\_\_\_\_

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**Don Lambert**

Date: \_\_\_\_\_



**Sherri Matthews**

Date: 2/18/23

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**Mike Moisio**

Date: \_\_\_\_\_

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**Gary Plaag**

Date: \_\_\_\_\_

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**Kendall Williams**

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**Donald A. Laursen**

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**Lynn Weaver**

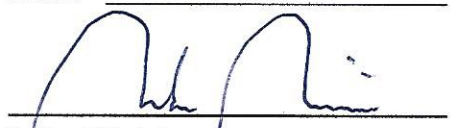
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**Don Lambert**

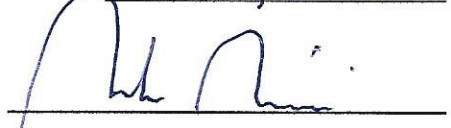
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**Sherri Matthews**

Date: \_\_\_\_\_

  
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**Mike Moisis**

Date: FEB 21, 2023

  
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*Dan Bell*

**Dan Bell**

Date: Feb. 21, 2023

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**Jay Bylsma**

Date: \_\_\_\_\_

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**Christina Lewellen**

Date: \_\_\_\_\_

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**Perry White**

Date: \_\_\_\_\_

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**James Warner**

Date: \_\_\_\_\_

*[Signature Page to Settlement Agreement]*

**Dan Bell**

Date: \_\_\_\_\_



**Jay Bylsma**

Date: 2/18/23

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**Christina Lewellen**

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**Perry White**

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**James Warner**

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**Dan Bell**

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**Jay Bylsma**

Date: \_\_\_\_\_

*Christina Lewellen*  
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**Christina Lewellen**

Date: \_\_\_\_\_

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**Perry White**

Date: \_\_\_\_\_

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**James Warner**

Date: \_\_\_\_\_

**Dan Bell**

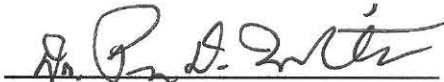
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**Jay Bylsma**

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**Christina Lewellen**

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**Perry White**

Date: 2-19-23

**James Warner**

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**Dan Bell**

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**Jay Bylsma**

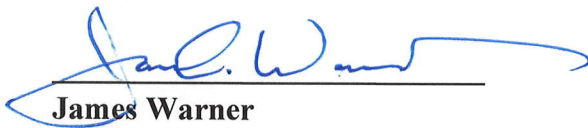
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**Christina Lewellen**

Date: \_\_\_\_\_

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**Perry White**

Date: \_\_\_\_\_

  
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**James Warner**

Date: March 5, 2023

**Exhibit A: Trademark**

**Exhibit B: HFI Bylaws**

**Exhibit C: BHS Bylaws**

**Exhibit D: Trust Agreement**

**Exhibit E: Endowment Agreement**

**Exhibit F: Joint Statement**

## TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the “Agreement”) is entered into and effective as of March 10, 2023 (the “Effective Date”) by and between the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated, a Wisconsin non-stock corporation with a principal place of business at 110 7<sup>th</sup> Ave. N., Nashville, Tennessee (“BHS”) and Harmony Foundation International, Inc., a Wisconsin non-stock, non-profit charitable trust corporation with its principal place of business at 901 Broadway #24030, Nashville, Tennessee (“HFI”) (collectively referred to as the “Parties” and each individually a “Party” to this Agreement).

WHEREAS, BHS represents that it owns all rights, title, and interest, including federally registered and common law rights, in the mark HARMONY FOUNDATION® U.S. Trademark Reg. No. 1038974, as shown in Exhibit A, and any other marks similar thereto (the “Mark”) in connection with promoting barber shop singing to aid eleemosynary activities and related services (the “Services”);

WHEREAS, BHS, in exchange for a payment, desires to grant HFI a license to continue to use the Mark for the Services in the United States, subject to the terms and conditions agreed upon below;

NOW THEREFORE, in consideration of the following and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. License.

1.1 Grant of License. Subject to the terms of this Agreement, BHS grants to HFI, and HFI accepts, a perpetual, non-transferable, non-sublicensable, irrevocable, royalty-free license to use the Mark as HFI deems reasonable and necessary in connection with the Services provided by HFI throughout the United States. The license is exclusive to HFI except that BHS may also use the Mark for the purpose of working together with HFI to raise money for BHS for so long as the Settlement Agreement dated February 16, 2023 remains in effect. Should the Settlement Agreement be terminated, then the Mark shall be exclusive to HFI.

1.2 Covenant not to Challenge BHS’s Trademark Rights. As of the Effective Date, HFI acknowledges BHS’s exclusive ownership of the Mark and that HFI’s licensed use of the Mark shall inure to the sole benefit of BHS. HFI shall not do any act or thing contesting such ownership and shall not acquire or claim or assist third parties in acquiring or claiming any title in or to the Mark, including through HFI’s use of the Mark. In addition, HFI hereby covenants that it shall not directly or indirectly undertake any action that in any manner contests, challenges, infringes or impairs the validity, enforceability, scope of rights or title of BHS in the Mark.

1.3 Maintenance of the Mark. During the term of this Agreement, BHS shall maintain and preserve the use of the Mark and the applications and registrations therefor, including without limitation, taking such actions as may be required under applicable federal or state law to maintain, renew and keep current the Mark. If BHS determines not to continue to maintain in effect any

Mark, BHS shall provide prompt written notice thereof to HFI. HFI shall be entitled to maintain any such applications and registrations for the Mark in the name of BHS, at HFI's expense, and BHS agrees to reasonably cooperate and provide reasonable assistance to HFI as HFI shall reasonably require in all such efforts.

2. Payment. In consideration for the foregoing license, HFI shall make a one-time payment to BHS of fifty thousand U.S. dollars (\$50,000.00 USD) within 14 calendar days from the Effective Date.

3. Representations and Warranties.

3.1 BHS represents and warrants to HFI that BHS has the full right, power and authority to enter into this Agreement, to perform all of its obligations hereunder, and to consummate all of the transactions contemplated herein. Specifically, BHS warrants that it owns the Mark in the United States; that the Mark is valid and enforceable; and HFI's use of the Mark as described herein will not infringe any third party rights.

3.2 HFI represents and warrants to BHS that HFI has the full right, power and authority to enter into this Agreement, to perform all of its obligations hereunder and to consummate all of the transactions contemplated herein.

4. Quality Control.

HFI agrees and warrants that the Services advertised, rendered, and sold under the Mark: (a) shall maintain a quality that is consistent in all material respects with (or higher than) the quality of the Services that HFI has advertised, rendered, and sold in the five years prior to the Effective Date; and (b) shall be in accordance with all applicable laws and government regulations; and (c) shall not reflect adversely upon, tarnish, or disparage the Mark, BHS, or any of BHS's products or services.

5. Term and Termination.

5.1 This Agreement commences on the Effective Date and remains in effect perpetually unless earlier terminated in accordance with this Section 5. If a Party materially breaches this Agreement, the non-breaching Party shall provide notice in writing of the material breach to the breaching Party. The breaching Party shall then have thirty (30) days from receipt of such notice to cure the material breach. In the event the material breach remains uncured after thirty (30) days from receipt of notice thereof, the non-breaching Party may terminate this Agreement upon written notice to the breaching Party.

5.2 In the event BHS permanently ceases operations, BHS shall assign the Mark to HFI without additional consideration and this Agreement shall immediately terminate. In the event of such assignment, HFI shall own all right and interest in the Mark.

5.3 Upon termination of this Agreement by BHS pursuant to Section 5.1 hereof, HFI shall (i) discontinue use of the Mark in any domain names within 45 days following termination of this Agreement; and (ii) cease using the Mark in a customer-facing fashion within 45 days

following termination of this Agreement, except as may be required by applicable law or regulation. This Section 5.3 shall survive the termination of this Agreement.

6. Infringement Actions. BHS shall have the exclusive right and discretion to sue and recover damages and profits for any past or future third-party infringements of the rights in the Mark; provided, that in the event that BHS elects not to pursue any action with respect to any trademark infringement or unauthorized use of the Mark, HFI shall be entitled to pursue legal action to protect against such unauthorized use or suspected infringement on BHS's behalf. HFI shall send written notification to BHS of any third-party uses of marks that HFI believes may be infringements or imitations of the Mark. Except as expressly provided in this Section 6, HFI shall not take any action regarding infringements or imitations of the Mark without informing BHS and obtaining the written consent of BHS to take any such action. In the event that HFI pursues an infringement that BHS elected not to pursue, HFI shall have control of decisions with respect to the pursuit of the infringer, including decisions on when and upon what terms to settle and how settlement or damage awards are allocated.

7. Amendments and Waiver. This Agreement may not be amended or modified, nor may compliance with any condition or covenant set forth herein be waived, except by a writing validly executed by all Parties, or, in the case of a waiver, the Party waiving compliance. No delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver by a Party of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its choice or conflict of laws rules.

9. Further Assurances. Each Party shall, upon the reasonable request of another Party, and, except as otherwise expressly set forth herein, at such other Party's sole expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

10. Severability. If any provision of this Agreement is held invalid or unenforceable, such determination will not affect the remaining portions of this Agreement, and the affected provisions must be interpreted and enforced to the fullest extent possible to carry out the intent of such provision.

11. Entire Agreement. This Agreement, including exhibits hereto, is the entire agreement between the Parties and supersedes any prior understandings or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all such counterparts will constitute one and the same instrument. Delivery of a copy of this Agreement executed by a party, including facsimile copies or electronic copies delivered by e-mail (*e.g.*, PDF copies), has the same force and effect as personal delivery by such party of an executed paper original of this Agreement.

13. Notice. Any written notices required to be sent pursuant to this Agreement shall be sent by email and courier service with delivery confirmation (*e.g.*, UPS or FedEx), to the following addresses for each of the Parties:

For BHS:

Society for the Preservation and Encouragement of Barber  
Shop Quartet Singing in America, Incorporated  
Attn: Martin Monson  
110 7<sup>th</sup> Ave. N.  
Nashville, Tennessee 37203  
Email: mmonson@barbershop.org

For HFI:

Harmony Foundation International, Inc.  
Attn: Perry White  
901 Broadway #24030  
Nashville, Tennessee 37202  
Email: pwhite@harmonyfoundation.org

A Party's change of its address above will be effective and incorporated into Section 13 when written notification of the same is sent to the other Party, according to the notice provisions of Section 13, without the need for execution of an amendment of this Agreement.

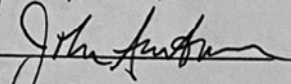
14. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that HFI shall not assign, subcontract, sublicense, transfer, or otherwise dispose of its rights, duties or obligations under this Agreement without the prior written consent of BHS, which may be granted or refused in BHS's sole discretion.

[Signature page follows]

The Parties have caused this Agreement to be executed by their duly authorized representative on the dates written below.

**SOCIETY FOR THE  
PRESERVATION  
AND ENCOURAGEMENT OF  
BARBER SHOP QUARTET  
SINGING IN AMERICA,  
INCORPORATED**

Dated: 3/10/2023

Signature: 

Name: John Santora

Title: President

**HARMONY FOUNDATION  
INTERNATIONAL, INC.**

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Parties have caused this Agreement to be executed by their duly authorized representative on the dates written below.

**SOCIETY FOR THE  
PRESERVATION  
AND ENCOURAGEMENT OF  
BARBER SHOP QUARTET  
SINGING IN AMERICA,  
INCORPORATED**

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HARMONY FOUNDATION  
INTERNATIONAL, INC.**

Dated: March 10, 2023

Signature: 

Name: Dr. Perry D. White

Title: President + CEO



**EXHIBIT A**

**Mark**

<b>Mark</b>	<b>Reg. / Serial No.</b>	<b>Filing Date / Reg. Date</b>
HARMONY FOUNDATION	1038974	October 3, 1974
	73033615	May 4, 1976

35187857.1

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**Endowment Fund Agreement**

Endowment Fund Name: Barbershop Harmony Society Endowment Fund

THIS AGREEMENT is entered into this 10<sup>th</sup> day of March, 2023, by and between the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated (Barbershop Harmony Society), a not-for-profit charitable corporation organized and existing under the laws of the state of Wisconsin and Harmony Foundation International, Inc., a non-stock, non-profit charitable corporation organized and existing under the laws of the state of Wisconsin (the Foundation).

1. **Acknowledgement and Name of Fund.** The Foundation acknowledges receipt of donor restricted contributions to The Foundation's General Endowment Fund. From the General Endowment Fund, the Foundation has designated \$1,000,000.00 from the General Endowment Fund to establish the Barbershop Harmony Society Endowment Fund. Such property and all additions thereto, and any reinvestment, shall be held and administered by the Foundation, as an endowment fund in accordance with the terms and provisions of this Agreement, subject to the provisions of the Articles of Incorporation, Bylaws, Policies, Guidelines and Procedures of the Foundation as amended and in effect from time to time except that this Agreement may not be terminated unless according to the provisions of this Agreement. The Fund established pursuant to this Agreement shall be designated on the books and records of the Foundation as the **Barbershop Harmony Society Endowment Fund** (referred to in this Agreement as the "Fund") and shall be used for the purposes established in paragraph 2 below. Any person or entity, including but not limited to Barbershop Harmony Society, may at any time make additional contributions to the Fund by current or deferred gifts. All contributions to the Fund shall become part of the Fund's corpus. The Foundation shall have the right to acknowledge and publicize any gifts or transfers to the Fund, however, it will respect the wishes of donors including requests of anonymity. The Foundation must at least once per year notify the Barbershop Harmony Society of the number and amount of gifts and transfers to the Fund.

2. **Purposes of the FUND; Termination.**

(a) The Fund shall be the property of the Foundation, held in its corporate capacity and shall not be deemed a trust fund held by it in a trustee capacity. The Fund distributions shall be used for the following purpose:

To support the activities and programs of the Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Incorporated d/b/a the Barbershop Harmony Society (the "Society"), a not-for-profit charitable organization described in § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). If at any time the Society ceases to be an organization exempt from taxation under § 501(c)(3) of the Code, the support during said ineligible period shall be suspended until such exempt status is reinstated. In the event the Society loses such exempt status for a period of 3 consecutive years, the Foundation Trustees shall deem the purpose under this section as ceasing to exist. In this instance, the Fund shall be utilized to support outreach and programs to perpetuate the barbershop harmony genre and art-form, including, but not limited to, financially assisting the Society to reestablish its exemption status. Upon reasonable request, the Society shall certify its exempt status in writing to the Foundation and provide such other documentation reasonably necessary for the Foundation to determine the exempt status of the Society.

**Endowment Fund Agreement**

Endowment Fund Name: Barbershop Harmony Society Endowment Fund

- (b) Subject to subsection (d) below, in the event, in the reasonable determination of the Foundation Board of Trustees, the Society ceases to exist and the purposes for which the Fund was established cease to exist or become incapable of fulfillment, the Fund shall be permanently named the Barbershop Harmony Society Endowment Fund and distributions from the Fund shall be made to a contingent beneficiary that offers like programs that best promote, develop, and advance opportunities for lifelong singing, which may include distributions to a not-for-profit organization with a similar mission and purpose to the Society.
  - (c) In the event the Foundation ceases to exist, the balance of the Fund (corpus and accumulated earnings) shall be disbursed to the Barbershop Harmony Society, a non-stock charitable and educational corporation organized and existing under the laws of the state of Wisconsin, or its successor, to be held and used for the purpose set forth in subsection (a) above.
  - (d) In the event both the Foundation and the Society cease to exist, the Fund shall be disbursed to a not-for-profit organization with similar mission and purpose to the Society to enrich the world through singing, pursuant to the terms in this Agreement, and the Fund shall thereupon be closed and cease to exist.
3. **Investment of the Fund.** The Foundation shall have the ultimate authority and control over all property in the Fund, and the earnings derived therefrom, in accordance with the Articles of Incorporation, By-Laws, and other governing instruments of the Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles, By-Laws, and other governing instruments. The Foundation will invest property set forth in Section 1 of this Agreement and any property received as an additional contribution to the Fund, or the Foundation may dispose of any such property and reinvest the proceeds in accordance with the Policies, Guidelines, and Procedures of the Foundation in effect from time to time. The Foundation shall have final authority and discretion as to the investment and reinvestment of the Fund. The Fund will be held by the Foundation as part of the general investment assets of the Foundation and may be commingled with other endowment assets managed by the Foundation. Income and expenses shall be allocated as a pro-rata share of the Foundation's total endowment. The overall investment guidelines, objectives, and performance of the Fund will be provided to the Society upon its written request and may be amended from time to time to meet fund objectives.
4. **Investment Policy; Total Return Concept; No Requirements Regarding the Amount of Income to be Generated.** It is expected that the Fund's investment performance will be measured by its total return, taking both income and capital appreciation into consideration, without regard to whether any particular item should be allocated to principal or to income for fiduciary accounting purposes. Accordingly, there are no guidelines as to how much current income should be generated by the Fund's investments.
5. **Use of Earnings/Distribution.** Objective: To simultaneously maintain/grow the fund balance that ensures available future spending and current spending for the purpose set forth in section 2. The spending policy, or allowable distribution, may change from time to time at the discretion of the Foundation Board of Trustees to accomplish these objectives. The Foundation may withdraw from the Fund during each fiscal year a percentage of the net fair

**Endowment Fund Agreement**

Endowment Fund Name: Barbershop Harmony Society Endowment Fund

market value of the Fund as determined by the Foundation from time to time; provided that the Foundation may not withdraw in any fiscal year more than five percent (5%) of the average of the annual net fair market value of the Fund for the three most recently completed fiscal years. Such distributions may be made throughout the year at such intervals as may be specified by the Foundation.

6. **Administrative Charges. Allocation of Income/Gains/Losses.** Administrative charges and investment fees shall be applied to the Fund, and income, gains, and losses resulting from the investment of the Fund shall be allocated to the Fund according to the Fund's pro rata share of the Foundation's total endowment, all in accordance with the Policies established by the Foundation Board of Trustees and in effect from time to time. The Foundation will charge its customary and usual fees for its management, accounting and investments services for the Fund, as adopted in the policies of the Foundation Board of Trustees which may be amended from time to time. The Foundation shall pay such fees and charges from the Fund calculated on the Fund's pro rata share of the Foundation's total endowment.
7. **Cooperation Clause.** The parties agree to cooperate fully and execute any supplemental documents and to take any additional actions that may be necessary or appropriate to give full effect to the terms and intent of this Agreement.
8. **Binding.** This Agreement shall be binding upon and shall inure to the benefit of the Barbershop Harmony Society and the Foundation, and their respective administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement to establish the **Barbershop Harmony Society Endowment Fund** as of the day and year first above written and is effective immediately.

HARMONY FOUNDATION  
INTERNATIONAL, INC.

BARBERSHOP HARMONY SOCIETY

  
\_\_\_\_\_  
DR. PERRY WHITE  
PRESIDENT AND CEO

\_\_\_\_\_

March 10, 2023  
DATE

\_\_\_\_\_  
DATE

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Harmony Foundation International, Inc.

**Endowment Fund Agreement**

Endowment Fund Name: Barbershop Harmony Society Endowment Fund

market value of the Fund as determined by the Foundation from time to time; provided that the Foundation may not withdraw in any fiscal year more than five percent (5%) of the average of the annual net fair market value of the Fund for the three most recently completed fiscal years. Such distributions may be made throughout the year at such intervals as may be specified by the Foundation.

6. **Administrative Charges. Allocation of Income/Gains/Losses.** Administrative charges and investment fees shall be applied to the Fund, and income, gains, and losses resulting from the investment of the Fund shall be allocated to the Fund according to the Fund's pro rata share of the Foundation's total endowment, all in accordance with the Policies established by the Foundation Board of Trustees and in effect from time to time. The Foundation will charge its customary and usual fees for its management, accounting and investments services for the Fund, as adopted in the policies of the Foundation Board of Trustees which may be amended from time to time. The Foundation shall pay such fees and charges from the Fund calculated on the Fund's pro rata share of the Foundation's total endowment.
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HARMONY FOUNDATION  
INTERNATIONAL, INC.

BARBERSHOP HARMONY SOCIETY

\_\_\_\_\_  
DR. PERRY WHITE  
PRESIDENT AND CEO

\_\_\_\_\_  
*John Santora*  
John Santora  
President

\_\_\_\_\_  
DATE

\_\_\_\_\_  
3/10/2023  
DATE

35183401.v2