

# CNY (ConnectNY), Inc. By-Laws

Adopted June 7, 2016

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New member added, November 2016: US Merchant Marine Academy  
New member added, June 2017: Marist College  
Membership changes: June 2019

*ConnectNY By-Laws*  
**CNY (CONNECTNY), INC.**

**Corporate By-Laws**

**ARTICLE I.**

**Name, Territory, Office & Corporate Status**

Section 1. *Name*. The Corporation shall be known as: CNY (ConnectNY), Inc. (hereinafter “the Corporation”). The Corporation is authorized to conduct operations under the following identities: CNY and/or ConnectNY.

Section 2. *Office*. The principal office of the Corporation shall be located in the County of Saint Lawrence, State of New York, unless otherwise authorized by the Board of Directors. This office shall direct corporate activities and be the depository for all corporate records. The Corporation may also have offices at such other places within the state as the Board of Directors may, from time-to-time, determine and/or the business or operations of the Corporation may require.

Section 3. *Corporate Status*. The Corporation is a New York Not-for-Profit Corporation, a “Charitable Corporation” as defined by the Not-for-Profit Corporation Law, and exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

**ARTICLE II.**

**Corporate Purposes & Document Construction**

Section 1. *Corporate Purposes*. The purposes of the Corporation, as set forth in the Certificate of Incorporation, as may be amended, and qualify the Corporation for exemption from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as may be amended, are to provide:

- i. efficient, rapid and cost effective delivery of library materials in both print and digital form amongst its Members;
- ii. a shared union catalog with a single interface that allows for expedited interlibrary loan space between said Members;
- iii. an administrative and support staff structure to implement projects and maintain the technical infrastructure necessary to operate the resource sharing systems;
- iv. opportunities for cost effective enhancements and developments both for local and system-wide resource sharing technologies that foster advanced searching and the delivery of research information; and,
- v. a vehicle necessary to facilitate the ongoing delivery of scholarly content and interlibrary loan services, but also allows for new technical developments as the system evolves.

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Section 2. *Document Construction.* Any amendment to the purposes of the Corporation must be rendered in accordance with the requirements of Article XVI herein. If there is any conflict between the provisions of the Certificate of Incorporation, as may be amended, and these By-Laws, provisions of the Certificate of Incorporation, as may be amended, shall govern.

### **ARTICLE III.**

#### **Members**

Section 1. *Member Classes, Sustaining Members, Affiliated Members & Additional Classes.*

1.1. *Classes of Members.* There shall be two (2) classes of institutional Members comprised exclusively of colleges, universities and other institutions of higher learning responsible for the operation of a library or libraries, to wit: Sustaining Members and Affiliated Members.

1.2. *Sustaining Members.* Sustaining Members shall be afforded all privileges associated with affiliation with the Corporation, including, but not limited to, voting representation on the Board of Directors. Each Sustaining Member shall be entitled to appoint one (1) individual, presumptively its Library Director (or any equivalent thereof), to serve as its sole and exclusive voting representative for purposes of acting upon all matters to be considered by the Board of Directors. Each of the following colleges, universities and other institutions of higher learning shall be considered Sustaining Members:

- i. Adelphi University
- ii. Bard College
- iii. Canisius College
- iv. Colgate University
- v. LeMoyne College
- vi. Marist College
- vii. Medaille College
- viii. Pace University
- ix. Pratt Institute
- x. Rensselaer Polytechnic Institute
- xi. Rochester Institute of Technology
- xii. St. Lawrence University
- xiii. Siena College
- xiv. Vassar College

1.3. *Affiliated Members.* Affiliated Members shall be afforded all privileges associated with affiliation with the Corporation, excepting voting representation on the Board of Directors. Each Affiliated Member shall be entitled to appoint one (1) individual, presumptively its Library Director (or any equivalent thereof), to serve as its sole and exclusive non-voting representative for purposes of reviewing, deliberating and offering opinions on all matters to be considered by the Board of Directors, but shall be precluded from voting on any such matters. Each of the following colleges, universities and other institutions of higher learning shall be considered Affiliated Members:

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### i. United States Military Academy

1.4. *Additional Classes.* Additional classes of institutional Members may be created upon a two-thirds majority vote of the Board of Directors.

### Section 2. *Member Actions & Waiver.*

2.1. *Actions.* Any, and all, action(s) by the Members shall generally be rendered and authorized, solely and exclusively, by the duly appointed voting representatives of the Sustaining Members, with the input of the non-voting representatives of the Affiliated Members. Should the Board of Directors refuse or prove unable to act, act in a manner contradictory or in opposition to any institutional Member and/or in the event of other extraordinary circumstances warranting the direct action of the institutional Members without the involvement, participation or authorization of the Board of Directors, the Sustaining and Affiliated Members shall be entitled to unilaterally act on behalf of the Corporation as provided for herein.

2.2. *Waiver.* The Member institutions expressly waive each and every right and/or entitlement to which they may have, otherwise, been entitled as Members pursuant to statute or regulation in favor of the organizationally-specific Member rights and entitlements stipulated herein.

Section 3. *Qualifications & Criteria for Members.* The Board of Directors may establish qualifications and criteria for institutional Members by class, including a schedule of dues, and any waivers thereof, as well as procedural requirements for, and prohibitions applicable to, prospective Members, unless otherwise proscribed by statute, the Certificate of Incorporation and/or these By-Laws. All institutional Members shall annually be responsible for providing the Corporation with documentation necessary to confirm the name and title of, and contact information for, its Library Director (or any equivalent thereof), who shall serve as its sole and exclusive representative on the Board of Directors and the name and title of, and contact information for, at least, one (1) representative of the Member, such as a President, Provost, Dean, etc. (hereinafter "Designated Authorized Representative(s)"), empowered to unilaterally act on behalf of, and otherwise bind, said Member with respect to any matter that may be considered directly by the institutional Members, and to receive related notifications thereof, and, otherwise receive reports and other correspondence submitted by the Corporation on behalf of the Member; and, promptly updating the Corporation with any updated information, should it arise.

### Section 4. *Addition, Withdrawal & Termination of Members.*

4.1. *Addition of New Members.* Any college, university or other similarly-situated institution of higher learning responsible for the operation of a library may be admitted as a new Member upon, at least, a two-thirds majority vote of the Board of Directors. Upon acceptance of admission as a Member, each new Member institution shall provide the Corporation with the name and title of, and contact information for, its Library Director (or any equivalent thereof), who shall serve as its sole and exclusive representative on the Board of Directors and the name and title of, and contact information for, at least, one (1) representative of the Member, such as a President, Provost, Dean, etc. (hereinafter "Designated Authorized Representative(s)"), empowered to unilaterally act on behalf of, and otherwise bind, said Member with respect to any matter that may be considered directly by the institutional Members, and to receive related

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notifications thereof, and, otherwise receive reports and other correspondence submitted by the Corporation on behalf of the Member.

4.2. *Withdrawal of Members.* Any institutional Member may withdraw as a Member of the Corporation on any date that may be authorized by a two-thirds majority vote of the Board of Directors or unilaterally by providing the Secretary written notice of intent to withdraw, at least, three hundred, sixty-five (365)-days in advance.

4.3. *Termination Without Cause.* Any institutional Member may be unilaterally removed, without cause, upon, at least, a two-thirds majority vote of the Board of Directors, by providing the subject Member, at least, one hundred, eighty (180)-days advance written notification of intent to remove said Member.

4.4. *Termination for Cause.* Any institutional Member may be unilaterally removed, for cause, upon, at least, a two-thirds majority vote of the Board of Directors, by providing the subject Member, at least, sixty (60)-days advance written notification of intent to remove said Member. For purposes of this Section, failure to timely remit required dues, if any, shall be considered sufficient cause for termination of a Member.

Section 5. *Reports.* In a manner sufficient to comply with applicable statutory obligations, the Board of Directors shall annually provide to the Designated Authorized Representative(s) of each institutional Member, a report, verified by appropriate Officers, or certified by an Independent Auditor, if so required, outlining, in appropriate detail, the Corporation's fiscal status, including an annual balance sheet and profit and loss statement or a financial statement performing a similar function for the preceding fiscal year, confirming assets (restricted and unrestricted) and liabilities, revenues and receipts and expenses and disbursements, together with any, and all necessary and/or required supporting documentation. Each such report shall be filed with the records of the Corporation.

### **ARTICLE IV.**

#### **Special Meetings of the Members.**

Section 1. *Special Meetings.* Should any Sustaining and Affiliated Member deem it necessary to directly act upon, or otherwise address, any matter without the involvement, participation or authorization of the Board of Directors, a Special Meeting of the institutional Members may be called at any time by the Chair, a majority vote of the Board of Directors or upon the written request of, at least, one (1) Designated Authorized Representative of any institutional Member. No business shall be conducted at a Special Meeting that is not included in the issued Notice as stipulated herein.

Section 2. *Meeting Notice.*

2.1. *Notice Requirements.* Notice shall be given to each Sustaining and Affiliated Member prior to any Special Meeting, identifying the following:

- i. the time and date;
- ii. location;

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- iii. individual or entity calling the Meeting;
- iv. the purpose, or purposes, for which said Meeting is being called; &
- v. policies and procedures for proxy voting.

2.2. *Written Notification.* Written notice of any Special Meeting of the institutional Members shall be delivered to their respective Designated Authorized Representatives, either personally or by express or first class mail, facsimile and/or electronic mail, not less than ten (10) nor more than fifty (50) days before the date of the Meeting. Notice shall be deemed given as stipulated below:

- i. if personally, upon receipt;
- ii. if mailed, when accepted by the applicable provider for overnight delivery or when deposited in the United States Mail; or,
- iii. if sent by electronic mail or facsimile, when forwarded to the facsimile number, or electronic mail address, excepting that any such notice shall not be considered properly delivered if the institutional Member is:
  - (a) unable to deliver two (2)-consecutive notices to the designated electronic mail address or facsimile number or,
  - (b) if the Corporation is otherwise made aware that notice cannot be delivered to the Member or electronic mail or facsimile.

Section 3. *Waiver of Notice.* Should any institutional Member fail to receive proper notice of a Special Meeting, as otherwise required by these By-Laws, the institutional Member shall waive its right to any such notice if:

- i. if the Member's Designated Authorized Representative(s) attend(s) the Special Meeting without objection to the lack of proper notice, prior to said Meeting being called to order; or,
- ii. either before or after the Meeting, the Member's Designated Authorized Representative(s) submit(s), a waiver of notice, which if tendered personally, in writing or by facsimile, shall be validated by written or electronic signature; or if submitted by electronic mail, shall include information from which the Corporation can reasonably determine that the waiver was properly authorized.

Section 4. *Quorum.* A quorum shall be required for the legal and proper conduct of the business of the institutional Members. At any duly called Special Meeting of the institutional Members, a majority of their respective Designated Authorized Representatives, present as a consequence of physical attendance and/or use of telephone/video-conference technology and/or proxy, shall constitute a quorum. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any of the respective Designated Authorized Representatives.

Section 5. *Voting.* The Designated Authorized Representative(s) of each Sustaining and Affiliated Member shall have one (1) vote per Member institution for purposes of the transaction of any business considered by the Members.

Section 6. *Action by the Members.*

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6.1. *Action Defined.* Except as otherwise provided by statute and/or these By-Laws, an “act,” or “action,” of the Sustaining and Affiliated Members shall mean an action at a Special Meeting of the institutional Members authorized by, at least, a two-thirds majority vote of the then-existing Members, provided a sufficient quorum is present.

6.2. *Electronic Communication.* Any, or all, of the Designated Authorized Representatives may participate in any Special Meetings of the institutional Members, by means of a conference telephone, electronic video screen communication or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting of the institutional Members.

6.3. *Proxies.* The Designated Authorized Representative(s) of each Sustaining and Affiliated Member shall be entitled to vote at a Special Meeting of such institutional Members may authorize another person, or persons, to act on his/her/their behalf by use of proxy. Any such proxy shall presumptively, but need not necessarily, authorize the Secretary of the Corporation, or his/her designee, to act at the Special Meeting. To be valid and enforceable, each proxy must be submitted before, or presented at, the Special Meeting for which it is intended. If tendered personally, in writing or by facsimile, the proxy shall be validated by written or electronic signature. If submitted by electronic mail, it shall include information from which the Corporation can reasonably determine that the proxy was properly authorized. No proxy shall be valid after the expiration of eleven (11) months from the date thereof, unless otherwise provided by proxy. Every proxy shall be revocable at the pleasure of the individual executing same, except as may otherwise be provided by law.

Section 7. *Action by the Members on Unanimous Written Consent.* Any act, or action, required or permitted to be taken by the Sustaining and Affiliated Members may be taken without a Meeting if the Designated Authorized Representative(s) of each such institutional Member submits to the Secretary, or his/her designee, a written consent, delivered personally or by regular mail, facsimile and/or electronic mail, authorizing a resolution to permit the action. A copy of the resolution, and all written consents thereto, shall be filed with the minutes of the proceedings of the institutional Members.

### **ARTICLE V.**

#### **Board of Directors.**

Section 1. *General Management.* The Board of Directors shall have ultimate authority in governing the operations, finances and affairs of the Corporation. The Board, with the advice of various committees, if so authorized, shall implement, monitor and modify, as may be needed, policies and procedures necessary for proper corporate management. It shall be empowered to employ necessary staff, retain necessary professional assistance, authorize agreements and expenditures and take all necessary and proper steps to advance the purposes and promote the best interests of the Corporation.

Section 2. *Number, Allocation, Composition & Terms.*

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2.1. *Number.* The Board of Directors of this Corporation shall be comprised, solely and exclusively, of individuals appointed by the institutional Members, with an exact number to be determined and adjusted from time-to-time, by resolution of the Board of Directors, depending on the number, and needs, of said Members, but which shall never amount to a total number of any less than three (3) Directors.

2.2. *Allocation.*

- i. *Sustaining Members.* Each Sustaining Member shall be allotted one (1)-seat on the Board of Directors to be occupied by an *ex officio* Voting Director, presumptively its Library Director (or the equivalent thereof), or under extenuating circumstances (such as the resignation, retirement or termination of its Library Director), another appointed Voting Director, to serve on the Board of Directors, with all such appointed *ex-officio* Voting Directors to be formally added to the roster of *ex officio* Voting Directors by majority vote of the Board. The appointment and/or removal of *ex-officio* Voting Directors shall be made at the sole discretion of each of the respective Sustaining Members and not require the approval of other Sustaining Members, subject to the provisions of Section 6 of this Article IV.
- ii. *Affiliated Directors.* Each Affiliated Member shall be allotted one (1)-seat on the Board of Directors to be occupied by an *ex officio* Non-Voting Director, presumptively its Library Director (or the equivalent thereof), or under extenuating circumstances (such as the resignation, retirement or termination of its Library Director), another appointed Non-Voting Director, to serve on the Board of Directors, with all such appointed *ex-officio* Non-Voting Directors to be formally added to the roster of *ex officio* Non-Voting Directors by majority vote of the Board. The appointment and/or removal of *ex-officio* Non-Voting Directors shall be made at the sole discretion of each of the respective Sustaining Members and not require the approval of other Sustaining Members, subject to the provisions of Section 6 of this Article IV.

2.3. *Terms of Office.* The terms of office for each *ex officio* Voting Directors and *ex officio* Non-Voting Directors shall commence upon their appointment by a respective institutional Member and being added to the roster of *ex officio* Voting Directors and *ex officio* Non-Voting Directors by, at least, a majority vote of the *ex officio* Voting Directors and shall conclude upon their voluntary resignation; resignation as a consequence of resignation, retirement or termination of employment, or other disaffiliation, with their respective Member; removal; incapacitation; or, death; and, the subsequent appointment of their successor by their respective Member. Except as may otherwise be provided for herein, neither *ex officio* Voting Directors nor *ex officio* Non-Voting Directors are subject to term limitation.

Section 3. *Qualifications.* All Officers and Directors must be at least eighteen (18) years of age; appointed by a Member; and, committed to advancing the purposes of the Corporation.

Section 4. *Rights & Entitlements.* Each *ex officio* Voting Directors and *ex officio* Non-Voting shall be entitled to the same rights and entitlements, excepting *ex officio* Non-Voting Directors shall be precluded from voting on any matter to be considered by the Board of Directors or participating in, or being present for, deliberations concerning matters applicable to conflicts of interest, whistleblower protection and/or auditing oversight, if so required by statute or regulation.



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### Section 5. *Selection Procedure & Vacancies*

5.1. *Selection Procedure.* At each Annual Meeting of the Board, the *ex officio* Voting Directors, by majority vote, shall seat new *ex officio* Voting Directors and *ex officio* Non-Voting Directors to replace those whose terms are expiring and reaffirm the appointment of all currently seated Directors.

5.2. *Vacancies.* A vacancy in office shall arise upon a Director's resignation, retirement or termination of employment, or other disaffiliation, with their respective Member; removal; incapacitation; or, death. A vacancy on the Board of Directors may be filled by an interim or permanent successor nominated by the applicable institutional Member and appointed by, at least, a majority vote of the *ex officio Voting Directors*.

Section 6. *Resignation.* A Director may resign, at any time, by giving written notice to the Board of Directors, the Chair or the Secretary. Unless otherwise specified in notice, the resignation shall take effect upon receipt thereof by the Board of Directors, the Chair or the Secretary, and the acceptance of the resignation shall not be necessary to make it effective.

Section 7. *Removal.* Any, or all, of the Director(s) may be removed for cause, by a two-thirds majority vote of the *ex officio* Voting Directors present at any Annual Meeting, Regular Meeting or Special Meeting of the Board called for that purpose. At any Meeting where a vote is to be taken to remove a Director, the Director in question may attend and shall be given a reasonable opportunity argue in his/her defense.

## ARTICLE VI.

### Meetings of the Board of Directors

#### Section 1. *Meetings.*

1.1. *Annual Meetings.* The Board of Directors, by yearly resolution of the Board, shall convene an Annual Meeting for the purpose of seating Directors, selecting Officers and transacting such other and further business of the Corporation. Reasonable advance notice of the Annual Meeting, including time, date and location, shall be given by means of establishing a customary meeting date, publishing the date of the meeting on the website of the Corporation, regular mail, facsimile, electronic communication, telephone and/or personal delivery.

1.2. *Regular Meetings.* The Board of Directors, in accordance with a schedule to be determined by resolution to the Board, shall endeavor to annually convene, at least, one (1) Regular Meeting, in addition to the Annual Meeting. Reasonable advance notice of the Regular Meetings, including time, date and location, shall be given by means of the advance scheduling of meeting dates, publishing the dates of the meetings on the website of the Corporation, regular mail, facsimile, electronic communication, telephone and/or personal delivery.

1.3. *Special Meetings.* The Board of Directors, whenever called by the Chair, the Secretary, or any three (3) *ex officio* Voting Directors, may convene Special Meetings in order to consider

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specific matters that may be confronted by the Corporation between Regular Meetings, provided the order of business is limited solely to purposes specified in the meeting notice. Notice of Special Meetings, including purpose, time, date and location, shall be given by regular mail, facsimile, electronic communication, telephone and/or personal delivery. If notice is given by telephone or personal delivery, it shall be given not less than three (3) days before the Meeting. If notice is given by regular mail, facsimile or electronic communication, it shall be given not less than five (5) days before the Meeting.

Section 2. *Waivers of Notice.* Notice of any Meeting of the Board of Directors need not be given to any Director who submits a signed waiver of notice, by regular mail, electronic mail, facsimile or personal delivery, to the Board, the Chair or the Secretary, either before or after the Meeting, or who attends the meeting without protesting prior to formal commencement, the lack of formal notice.

Section 3. *Quorum.* A quorum shall be required for the legal and proper conduct of the business of the Board of Directors. A majority of the *ex officio* Voting Directors shall constitute a quorum for the transaction of any business. When a quorum is once present to organize a Meeting, it is not broken by the subsequent withdrawal of any Directors. The attendance of *ex officio* Non-Voting Directors shall not be considered for purposes of determining quorum.

Section 4. *Organization.*

4.1. *Chair.* At all meetings of the Board of Directors, the Chair, or, in his/her absence, the Vice-Chair, or, in his/her absence, another Director chosen by the Board shall preside.

4.2. *Secretary.* At all meetings of the Board of Directors, the Secretary, or, in his/her absence, another Director chosen by the Board shall act as secretary of the Meeting.

Section 5. *Voting.* Each *ex officio* Voting Director shall have one (1) vote for purposes of the election of Officers and the transaction of any other business considered by the Board of Directors.

Section 6. *Parliamentary Law.* In all matters of parliamentary procedure not covered or contradicted by these By-Laws, or applicable statute, regulation or contractual obligation, Roberts Rules of Order, newly revised, shall be used as a guideline in answering all questions of proper parliamentary procedure.

Section 7. *Action by the Board of Directors.*

7.1. *Action Defined.* Except as otherwise provided by statute and/or Article XIV of these By-Laws, an "act," or "action," of the Board of Directors shall mean an action at a meeting of the Board authorized by vote of a majority of the *ex officio* Voting Directors present at the time of the vote, provided a sufficient quorum is present.

7.2. *Written Unanimous Consent.* Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if each *ex officio* Voting Director submits to the Secretary of the Corporation, or his/her designee, a written consent, delivered by regular mail, facsimile and/or electronic mail, authorizing a resolution to permit the action. A copy of the

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resolution, and all written consents thereto, shall be filed with the minutes of the proceedings of the Board.

7.3. *Electronic Communication.* Any, or all, Director(s), or committee member(s), may participate in any meetings of the Board of Directors, by means of a conference telephone, electronic video screen communication or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting of the Board.

### Section 8. *Presumption of Concurrence.*

8.1. *Meeting Participation.* An *ex officio* Voting Director who participates in a meeting of the Board of Directors at which an act, or action, on any corporate matter is taken shall be presumed to have concurred to the action taken unless said Director:

- i. assures that his/her dissent is entered in the minutes of the meeting;
- ii. files a written dissent to such act or action with the Secretary of the meeting before the adjournment thereof, or;
- iii. forwards a written dissent, by regular mail, facsimile, electronic communication or personal delivery, to the Secretary, immediately after the adjournment of the meeting.

8.2. *Meeting Absence.* An *ex officio* Voting Director who is absent from a meeting of the Board at which an act, or action, on any corporate matter is taken shall be presumed to have concurred to the action taken unless said Director:

- i. forwards a written dissent, by personal delivery and/or registered mail, to the Secretary; or, a personally delivers, or, sends by registered mail, his/her written dissent thereto to the Secretary; or,
- ii. assures that his/her dissent is entered in the minutes of the meetings of the Board within a reasonable time after learning of such action.

8.3. *Ex Officio Non-Voting Directors.* The participation in, or absence from, a meeting of the Board of Directors shall not be considered for purposes of determining any presumption of occurrence on the part of an *ex officio* Non-Voting Director.

## **ARTICLE VII.**

### **Officers**

Section 1. *Officers, Appointment, Term.* The Board of Directors shall elect by majority vote of the *ex officio* Voting Directors, a Chair, First Vice Chair, Second Vice Chair, Secretary and Treasurer, and such other Officers as it may determine are needed from time-to-time, who shall be given such duties, powers and functions as hereinafter provided. Officers shall be appointed to hold office for one (1)-year from the date of appointment. Each Officer shall hold office for the term for which he/she is appointed and until his or her successor has been appointed. *Ex officio* Non-Voting Directors may serve as Officers, but shall be precluded from voting on any matter or participating in, or being present for, deliberations concerning matters applicable to conflicts of

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interest, whistleblower protection and/or auditing oversight, if so required by statute or regulation. Directors shall be precluded from serving the same Office for any more than three (3)-consecutive years.

Section 2. *Removal, Resignation & Vacancies.* Officers serve at the discretion of the Board of Directors. Any Officer elected by the Board may be removed by a majority vote of the *ex officio* Voting Directors. In the event of the resignation, removal, incapacitation or death of an Officer, the Chair of the Board shall appoint an acting successor to fill the un-expired term. This appointment shall be confirmed by a majority vote of the *ex officio* Voting Directors within the next two (2) Regular Meetings.

### Section 3. *Duties.*

3.1. *Chair.* The Chair shall be the principal volunteer executive officer of the Corporation and shall in general monitor and supervise the business and affairs of the Corporation. He/she shall preside at all meetings of the Council of Directors and shall be a voting member of all Committees of the Board and Committees of the Corporation, unless otherwise precluded by statute, regulation and/or these By-Laws. The Chair is authorized to sign any deeds, mortgages, bonds, contracts or other instruments that the Council has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board, these By-Laws and/or applicable regulation or statute to some other Officer or agent of the Corporation. The Chair is the sole Officer or Director authorized to speak on behalf of the Corporation, unless the Chair and/or the Board of Directors have otherwise delegated such authority to another Officer, Director and/or representative or otherwise directed by these By-Laws. The Chair shall perform such other duties as from time-to-time may be assigned to him/her by the Board.

3.2. *First Vice Chair.* In the absence of the Chair, or in the event of his/her inability or refusal to act, the First Vice Chair shall perform the duties of the Chair, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chair. The First Vice Chair shall perform such other duties as from time-to-time may be assigned to him/her by the Chair and/or the Board.

3.2. *Second Vice Chair.* In the absence of the First Vice Chair, or in the event of his/her inability or refusal to act, the Second Vice Chair shall perform the duties of the First Vice Chair, and when so acting shall have all the powers of and be subject to all the restrictions upon the First Vice Chair. The Second Vice Chair shall perform such other duties as from time-to-time may be assigned to him/her by the Chair and/or the Board.

3.3. *Secretary.* The Secretary shall generally be responsible for assuring that the records of the Corporation are properly recorded, documented and stored and that all informal or formal notices that may be issued by the Corporation are tendered in a manner in compliance with all applicable statutes, regulations, contracts, ethical obligations, the Certificate of Incorporation, as may be amended, and these By-Laws. The Secretary shall assure that the minutes of the meetings of the corporate Membership, Board of Directors, and Committees of the Board or Corporation, if any, are properly recorded, documented and stored; keep a register of the post office address, telephone number and, where appropriate electronic address of each corporate Member, Officer, Directors and members of committees who do not serve on the Board, if any; notify Directors of election and members of committees of appointment; and, generally serve as custodian of the records of the Corporation. He/she may delegate recording, documentation

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and storage and other duties, as deemed appropriate, to other Officers, excepting the Chair, Directors, or employees of the Corporation. The Secretary shall perform such other duties as from time-to-time may be assigned to him/her by the Chair and/or the Board.

3.4. *Treasurer.* The Treasurer shall be responsible for the supervision and accounting of all funds received or expended by the by the Corporation and shall keep the Board of Directors informed on all pertinent financial matters. The Treasurer shall provide a financial report at all Regular Meetings of the Board in a format prescribed by the Board. The Treasurer shall perform other duties as from time-to-time may be assigned to him/her by the Chair and/or the Board.

### **ARTICLE VIII.**

#### **Committees**

Section 1. *Committee Types & General Authority & Responsibilities.* The Board of Directors may permissibly charge committees to perform various functions on behalf of the Corporation in either of the two (2) available types: Committees of the Board and Committees of the Corporation. Each Committee of the Board and Committee of the Corporation, and every member thereof, shall serve at the pleasure of the Board. All Committees shall keep minutes of all proceedings, to be regularly submitted to the Secretary for subsequent distribution to the Board, and report to the Board, at its next scheduled Regular Meeting, all activities and determinations.

Section 2. *Committees of the Board.* Committees of the Board shall be comprised solely of, at least, three (3) Directors elected by majority vote of the *ex officio* Voting Directors and shall have either standing authority and/or may be designated specific authority from time-to-time by the Board to take action within statutory limitations that would legally bind the Board and/or the Corporation. *Ex officio* Non-Voting Directors may serve on Committees of the Board, subject to matters limited by statute, regulation and/or these By-Laws, but shall be precluded from voting on any matter before any such committee. No Committee of the Board shall have such the authority in the following matters:

- i. submission to Members, if any, of any act, or action, requiring Members approval by statute and/or these By-Laws;
- ii. filling of vacancies on the Board, or in any of its various committees;
- iii. fixing of compensation for Directors, or members of its various committees;
- iv. authorization of any form of Fundamental Corporate Change, as set forth in these By-Laws, including, but not limited amendment, or repeal, of these By-Laws or the adoption of new By-Laws; and/or,
- v. amendment, or repeal, of any resolutions of the Board, which by its terms, shall not be capable of amendment or repeal.

The Board shall appoint an Executive Committee, which shall serve as the audit committee for purposes of corporate functions related to audit oversight and conflict of interest assessment. The Board, by resolution adopted by the majority of the *ex officio* Voting Directors, may designate additional standing Committees of the Board, with such authority as the applicable resolution shall provide.

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Section 3. *Committees of the Corporation.* Committees of the Corporation shall be comprised of, at least, three (3) individuals elected by majority vote of the *ex officio* Voting Directors and shall either have standing authority or may be designated specific authority from time-to-time by the Board. Committees of the Corporation are advisory in nature and cannot, under any circumstances, take actions that bind the Board and/or the Corporation.

Section 4. *Qualifications.* The *ex officio* Voting Directors of the Board of Directors may establish or waive qualifications for committee membership at its discretion.

Section 5. *Meetings.* Meetings of committees, of which no formal notice shall be necessary, shall be held at such time and place as may be fixed by the Chair or the Chair of the applicable Committee or by majority vote of the voting members of the committee.

Section 6. *Quorum and Manner of Acting.* Unless otherwise provided by resolution of the Board of Directors, a majority of all of the voting members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the members of the committee shall be the act of the committee. The procedures and manner of acting of all committees shall be subject at all times to the direction of the Board. All committees shall maintain appropriate minutes of their meetings in an effort to document proper and appropriate oversight.

Section 7. *Executive Committee.* The Executive Committee shall be comprised of the elected Officers of the Corporation, Chair, First Vice-Chair, Second Vice Chair, Secretary and Treasurer; and, any additional members of the Board of Directors that may be appointed to serve on the Committee from time-to-time, provided they are found by resolution of the Board of Directors to be "Independent Directors" (as defined by Appendix "A"); however, under no circumstances shall the Corporation's "Independent Auditor" (as defined by Appendix "A") or a partner, employee of business associate or "Relative" (as defined by Appendix "A") of the Independent Auditor's firm, serve on the Committee.. *Ex officio* Non-Voting Directors may serve on the Executive Committee, but shall be precluded from voting on any matter before the committee or participating in, or being present for, deliberations concerning matters applicable to conflicts of interest, whistleblower protection and/or auditing oversight, if so required by statute or regulation. The Chair shall serve as the Chair of the Executive Committee. Meetings of the Committee may be called by the Chair or by any three (3)-members of the Committee. The Executive Committee shall maintain surveillance of the operations and affairs of the Corporation and shall be empowered to transact only such business as may be necessary between Regular Meetings of the Board of Directors, unless otherwise authorized by the Board. The Committee shall also be responsible for overseeing all audits and the overall fiscal affairs of the Corporation. It shall develop a budget for approval by the Board of Directors; propose policies governing the finances of the Corporation for adoption by the Board; and, endeavor to assure that all the Corporation's institutional funds are deposited, invested and withdrawn in a manner consistent with all applicable statutes, regulations and contractual obligations, if any. The Committee shall assure that proper federal and state compliance and tax filings are submitted, and that any taxes due have been paid or, otherwise, addressed. It shall periodically review the Corporation's internal and financial controls, and the adequacy of the Corporation's insurance coverage. With regard to responsibilities relative to conflicts of interest, whistleblower protection and auditing oversight, as appropriate, the Committee shall be responsible for strict adherence to, and enforcement of, the Corporation's Board of Directors Conflicts of Interest Policy and

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Audit Oversight Policy, which are annexed to these By-Laws as Appendices “B” and “D,” respectively. It shall also assure that proper policies and procedures are in place to ensure that all newly-received and annually-submitted Conflict of Interest Disclosure Statements, an unexecuted copy of which is annexed to these By-Laws as Appendix “C,” and any case-specific Related Party Transaction reports, together the minutes of any related meetings, are promptly provided to the Chair and shall subsequently see to it that they are properly considered for auditing purposes.

### **ARTICLE IX.**

#### **Executive Director Duties & Review of Compensation**

Section 1. *Duties.* The Board of Directors shall employ an Executive Director who shall serve as the chief administrative officer of the Corporation. The Executive Director shall serve in an *ex officio*, non-voting capacity on the Board of Directors and all Committees of the Board and Committees of the Corporation, unless otherwise precluded by statute, regulation and/or these By-Laws. Although serving in *ex-officio* capacity on the Board, and its various Committees, unless otherwise proscribed, the Executive Director shall serve at the pleasure of the Board and, in so doing, he/she shall have no rights or entitlements to attend meetings of the Board, and/or its various Committees, and/or to receive otherwise stipulated notice applicable to meetings of the Board and/or such Committees. He/she shall be responsible for effectuating the purposes of the Corporation and assuring proper and compliant implementation of Board policies and directives. The Executive Director is responsible for general charge of the day-to-day affairs of the Corporation, including the hire, supervision, evaluation and termination of employees. He/she also shall establish up-to-date job descriptions for each job in accordance with the Board approved budget and/or regulatory/contractual requirements. The Executive Director shall perform all other such duties as are incidental to the position and/or established in a Board approved job description or by employment contract.

Section 2. *Review of Compensation.* At least, annually, the Chair and/or the Executive Committee, shall oversee a compensation analysis of the Executive Director, and, if deemed necessary at the discretion the Board, of any other “Key Employee(s),” to run concurrently with the annual performance evaluation of such employee(s). In order to determine the reasonableness of compensation as it applies to the Corporation, this compensation analysis shall confirm that:

- i. the compensation to be authorized and awarded is reasonable for the services to be provided to the Corporation;
- ii. there is no relationship between any of the Corporation’s Directors or Officers and the Executive Director, or any other Key Employee(s) (if applicable), other than one of employment;
- iii. the Executive Director, or any other Key Employee(s) (if applicable), as appropriate, has met, or exceeded, performance expectations; brought value to the Corporation; and/or provided significant contributions to its growth and development;
- iv. no Director or Officer is a Relative of, or employed by the Executive Director, or any other Key Employee(s) (if applicable), as appropriate, or any entity in which the

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- Executive Director/Key Employee(s) (if applicable) has/have, at least, a thirty-five percent (35%) controlling interest; and,
- v. no Director or Officer has a material financial interest affected by the outcome of the compensation review.

### **ARTICLE X.**

#### **Officer & Director Compensation, Reimbursement & Loans**

Section 1. *Compensation.* No Director, Officer or member of a committee shall receive compensation for his/her services as a Director, Officer and/or member of a committee, but if properly authorized, may permissibly receive other compensation for services that may be rendered to the Corporation, provided any such compensation is awarded pursuant to all applicable policies and procedures required by statute, regulation and/or these By-Laws. The Board of Directors shall be empowered to provide reasonable compensation, together with reimbursement for reasonably incurred expenses, for offices or positions not afforded voting privileges for purposes, such as the position of Executive Director.

Section 2. *Reimbursement.* Notwithstanding the mandates of this Article, at the discretion of the Board of Directors, individual Directors, Officers, members of Committees and employees may be reimbursed in an amount determined by the Board for expenses reasonably incurred by them in the performance of their duties on behalf of the Corporation.

Section 3. *Loans.* No loans shall be made by the Corporation to its Directors, Officers, members of committees or to any other corporation, firm, association or other entity in which one or more of its Directors, Officers or committee members are directors or officers or hold a substantial financial interest, except as may be permitted by statute.

### **ARTICLE XI.**

#### **Fiscal Year & Independent Financial Audit**

Section 1. *Fiscal Year.* The fiscal year of the Corporation shall commence on the first day of July and conclude on the thirtieth day of June.

Section 2. *Independent Financial Audit.* If required pursuant to stipulated statutory thresholds dictated by revenue annually received and/or other applicable regulation and/or contractual obligation, demanded by the Office of the Attorney General, requested by another regulatory agency or funder as a condition of funding, or otherwise recommended and authorized by the Board of Directors, the accounts of the Corporation shall be subject to an annual audit report or audit review report prepared by "Independent Auditor" (as defined by Appendix "A"), and conducted in a manner compliant with all applicable statutory, regulatory and contractual obligations, to be overseen solely by "Independent Directors" (as defined by Appendix "A") serving on the Executive Committee.



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### ARTICLE XII.

#### Fiduciary Duties

Section 1. *Duty of Care.* All Directors shall exercise the same standard of care that a reasonable person, with similar abilities, acumen and sensibilities, would exercise under similar circumstances at all times. Each Director shall endeavor to understand all, or substantially, all of the consequences of his/her actions and/or the omissions.

Section 2. *Duty of Loyalty.* No Director shall be permitted to engage in, or condone, any conduct that is disloyal, disruptive, damaging or competes with the Corporation. No Director shall be permitted to take any action, or establish any interest, that compromises his/her ability to represent the Corporation's best interest. All Directors are expected to represent the interests of this Corporation at all times while serving on the Board.

Section 3. *Duty of Obedience.* No Director shall be permitted to disobey or publically contradict an authorized decision of the Board.

### ARTICLE XIII.

#### Statutory Compliance

Section 1. *Definitions.* Should any term, phrase or understanding relative to any topic addressed in these By-Laws and/or the policies of the Corporation be specifically defined in a document entitled, "By-Law and Corporate Policy Definitions," a copy of which is annexed hereto, and made a part hereof of these By-Laws as **Appendix "A,"** the stipulated definition of such term in said document shall govern for purposes of interpreting the By-Laws and/or corporate policies.

Section 2. *Conflicts of Interest & Related Party Transaction Protocols.* This Corporation shall adopt, and at all times honor, the terms of a written Conflicts of Interest & Related Party Transaction Policy to assure that its Directors, Officers and Key Employees act in the Corporation's best interest and comply with applicable statutory, regulatory and ethical requirements. The Conflicts of Interest & Related Party Transaction Policy shall include, at a minimum, the following provisions:

- i. *Procedures.* procedures for disclosing, addressing, and documenting Conflicts of Interest and Related Party Transactions to the Executive Committee.
- ii. *Restrictions.* stipulations that when the Executive Committee is considering a real/potential conflict of interest, the interested party shall not:
  - (a) be present at, or participate in, any deliberations;
  - (b) attempt to influence deliberations; and/or,
  - (c) cast a vote on the matter.
- iii. *Definitions.* definitions of circumstances that could constitute a Conflict of Interest and/or Related Party Transaction.

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- iv. *Documentation.* requirements that the existence and resolution of the conflict and/or transaction be documented in the records of the Corporation, including in the minutes of any meeting at which the conflict was discussed or voted upon; and,
- v. *Audit-Related Disclosure.* protocols to assure for the disclosures of all real or potential Conflicts of Interest and/or Related Party Transaction are properly forwarded to the Board of Directors, or another authorized committee, as appropriate, for purposes of audit-related consideration.

Section 3. *Conflicts of Interest & Related Party Transaction Conflicts Policy.* The Conflicts of Interest and Related Party Transaction Policy of the Corporation required in order to comply with the mandates of Section 2 of this Article is annexed hereto, and made a part hereof as **Appendix “B.”** This policy may only be amended, modified or repealed by a two-thirds majority vote of the *ex officio* Voting Directors present at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose with the change in policy to not be applicable to any pending or currently being reviewed real or potential conflicts of interest or Related Party Transaction.

Section 4. *Potential Conflicts Disclosure Statement.* The Potential Conflicts Disclosure Statement of the Corporation required in order to comply with the mandates of Section 2 of this Article is annexed hereto, and made a part hereof as **Appendix “C.”**

Section 5. *Whistleblower Protection Protocols.* The Corporation shall endeavor to protect any “Director,” “Officer” (each as defined by Appendix “A”) or employee, including any “Key Employee” (as defined by Appendix “A”) or volunteer who provides substantial services to the Corporation, from intimidation, bully, harassment, discrimination or other forms of retaliation on the part of the Corporation, or any of its Directors, Officers, employees, including Key Employees, or volunteers, as a consequence of the good-faith filing of a report relative to possible violations of any statute, regulation, applicable ethical standard or policy or procedure of the Corporation.

Section 7. *Audit Oversight Protocols.* Provided the Corporation is required pursuant to stipulated statutory thresholds dictated by revenue annually received and/or other applicable regulation and/or contractual obligation, demanded by the Office of the Attorney General, requested by another regulatory agency or funder as a condition of funding, or otherwise recommended and authorized by the Board of Directors, the accounts of the Corporation shall be subject to an annual audit report or audit review report prepared by “Independent Auditor” (as defined by Appendix “A”) to be overseen by a designated Committee of the Board (as appropriate), comprised solely of “Independent Directors” (as defined by Appendix “A”). If such an audit report or audit review is commissioned, the Corporation shall adhere to the terms of a written Audit Oversight Policy, which, in the absence of statutory obligation, shall be considered advisable, but not required.

Section 8. *Audit Oversight Policy.* The Audit Oversight Policy required in order to comply with the mandates of Section 7 of this Article is annexed hereto, and made a part hereof as **Appendix “D.”** This policy may only be amended, modified or repealed by a two-thirds majority vote of the *ex officio* Voting Directors present at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose with the change in policy to not be applicable to any pending or currently processing audit report or audit review.

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### ARTICLE XIV.

#### Prohibited Conduct, Obligations & Related Policies

Section 1. *Prohibited Conduct.* Neither bullying, harassment nor discrimination shall be tolerated by this Corporation. Any individual bound by these By-Laws who is subject to bullying, abusive behavior, harassment, inappropriate physical touching or suggestive language, unfair behavior or discrimination relating to race, ethnicity, national origin, gender, religion, age, disability, veteran status, marital status, sexual orientation, political or union affiliation, or records of arrests or convictions, or who experiences is encouraged to report it immediately to a member of the Executive Committee.

Section 2. *Obligations.* Any individual bound by these By-Laws who is aware of conduct that would reasonably violate the terms of Section 1 herein is required report such activity immediately.

Section 3. *Related Policies.* Appropriate policies concerning workplace bullying, harassment or discrimination will be stipulated in the personnel policies and procedures promulgated by the Corporation. However, nothing in this Article will bind the staff of the Corporation, who will instead be covered by the procedures contained in their personnel policies and procedures.

### ARTICLE XV.

#### Indemnification of Directors, Officers & Employees

Section 1. *Indemnification Obligations.* The Corporation shall indemnify its Directors, Officers, employees and volunteers against judgments, fines, amounts paid in settlement and reasonable expenses and costs, including fees assessed by attorneys, in connection with any claim asserted against the Director, Officer, employee or volunteer by court action, or otherwise, by reason of the fact that such person was a Director, Officer, employee or volunteer of the Corporation and acting in good-faith for a purpose which such entity or person, as appropriate, reasonably believed to be in the best interest of the Corporation, and was not unlawful, unethical or immoral. In order to assure adequate indemnification, the Corporation shall be required to purchase and maintain appropriate Directors and Officers (“D & O”) liability insurance coverage. Any such indemnification, and related insurance, shall be considered, awarded and governed by the terms of a comprehensive Indemnification and Insurance Policy, a copy of which is annexed hereto, and made a part hereof as **Appendix “E.”**

### ARTICLE XVI.

#### Amendment of By-Laws & Fundamental Corporate Changes

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Section 1. *By-Law Amendment.* These By-Laws may be amended, repealed or altered, in whole, or in part, by a two-thirds majority vote of the *ex officio* Voting Directors present at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose.

Section 2. *Certificate of Incorporation Amendment.* The Corporation's Certificate of Incorporation may be changed or amended, in whole, or in part, by a two-thirds majority vote of the *ex officio* Voting Directors present at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose, provided all statutory approvals are subsequently secured and any Certificate of Change or Amendment is accepted for filing by the New York Department of State.

Section 3. *Merger or Consolidation.* This Corporation may be merged or consolidated by a two-thirds majority vote of the *ex officio* Voting Directors present at any Annual Meeting or Special Meeting called for that purpose, provided all statutory approvals are subsequently secured and any Certificate of Merger or Consolidation is accepted for filing by the New York Department of State.

Section 4. *Dissolution.*

4.1. *Procedure.* Unless stipulated otherwise herein, this Corporation may be dissolved by a two-thirds majority vote the *ex officio* Voting Directors present at any Annual Meeting or Special Meeting called for that purpose. Upon dissolution of the Corporation, provided all statutory approvals are subsequently secured and any Certificate of Dissolution is accepted for filing by the New York Department of State.

4.2. *Residual Assets.* In seeking approvals necessary for Dissolution, the Corporation shall exercise its best efforts to assure that any residual assets shall be donated to another Not-for-Profit Corporation, or Corporations, qualified under Section 501(c)(3) of the Internal Revenue Code with corporate purposes similar to those of this Corporation.

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### **APPENDIX A—By-Law & Corporate Policy Definitions**

**1. *Affiliate.***

An “Affiliate” of the Corporation means any entity controlled by, in control of, or under common control with, the Corporation.

**2. *Committee - Charitable Corporation.***

Any Not-for-Profit Corporation formed, or deemed to be formed, for charitable purposes, including those formerly considered by the Not-for-Profit Corporation Law to be Type “B” or “C” Corporations, as well as former Type “D” with charitable purposes.

**3. *Committee - Non-Charitable Corporation.***

Any Not-for-Profit Corporation formed, or deemed to be formed, for other than the purposes of a Charitable Corporation, including, but not limited to one formed for any one, or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, or animal husbandry, or for the purpose of operating a professional, commercial, industrial, trade or service association, including those formerly considered by the Not-for-Profit Corporation Law to be Type “A” Corporations, as well as former Type “D” with non-charitable purposes.

**4. *Member.***

A “Member” means any institution of higher learning afforded rights, entitlements or obligations with respect to the governance and operations of the Corporation, as identified in the By-Laws and/or the Certificate of Incorporation, as may be amended.

**5. *Officer.***

An “Officer” means any director, trustee, manager, governor, or by any other title, any individual holding an office of the Corporation identified in the Certificate of Incorporation and/or By-Laws.

**6. *Director.***

A “Director” means any member of the governing board of the Corporation, whether designated as director, trustee, manager, governor, or by any other title.

**7. *Entire Board.***

The “Entire Board” means the total number of Directors entitled to vote which the Corporation would have if there were no vacancies. If the By-Laws provide that the Board of Directors shall consist of a fixed number of Directors, then the “Entire Board” shall consist of that number of Directors. If the By-Laws provide that the Board may consist of a range between a minimum and maximum number of Directors, then the “Entire Board” shall consist of the number of Directors within such range that were elected as of the most recently held election of Directors.

**8. *Key Employee.***

A “Key Employee” means any person who is in a position to exercise substantial influence over the affairs of the Corporation, including any employee with responsibilities concerning capital expenditures, operating budget, employee compensation, or a substantial portion of the organization’s income/expenses.

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### **9. Relative.**

A "Relative" of an Office, Director or Key Employee of the Corporation means his or her spouse, domestic partner, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, spouses or domestic partners of brothers, sisters, children, grandchildren and/or great-grandchildren and ancestors.

### **10. Independent Director.**

An "Independent Director" means a Director who:

- i. is not, and has not been within the last three (3) fiscal years, an employee of the Corporation or an Affiliate of the Corporation and does not have a Relative who is, or has been within the last three (3) fiscal years, a Key Employee (as defined by these By-Laws) of the Corporation or an Affiliate;
- ii. has not received, and does not have a Relative who has received, in any of the last three (3) fiscal years, more than ten thousand dollars (\$10,000) in direct compensation from the Corporation or an Affiliate (other than reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director if permitted by statute and regulation; and,
- iii. is not a current employee of or does not have a substantial financial interest in, and does not have a Relative who is a current Officer of or has a substantial financial interest in, any entity that has made "payments" to, or received "payments" from, the Corporation or an Affiliate of the Corporation for property or services in an amount which, in any of the last three (3) fiscal years, exceeds the lesser of twenty-five thousand dollars (\$25,000) or two percent (2%) of such entity's consolidated gross revenue. For purposes of this definition the term "payments" does not include charitable contributions.

### **11. Independent Auditor.**

An "Independent Auditor" means any Certified Public Accountant performing the audit of the financial statements of the Corporation who is not, nor is any member of his/her firm, an Officer, Director, employee or volunteer of the Corporation or has a Relative who is such an individual.

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### APPENDIX B—Board of Directors Conflicts of Interest Policy & Related Party Transactions Policy

#### 1. Policy Requirements.

Any real or potential “Conflict of Interest” and/or “Related Party Transaction” (each as defined herein) and any other interested matter must be addressed in accordance with the terms of this Board of Directors Conflicts of Interest and Related Party Transactions Policy. Any Conflict of Interest and/or Related Party Transaction, or any other interested matter, authorized in a manner that is materially inconsistent with the terms of this policy may be subsequently rendered void or voidable by a vote of a majority of the *ex officio* Voting Directors of the Board of Directors, excluding any Directors with an interest in the subject transaction or matter.

#### 2. Definitions.

- a. Conflict of Interest. Unless otherwise specifically excluded herein, a “Conflict of Interest” means any transaction, agreement or any other arrangement, including, but not limited to a “Related Party Transaction,” as defined herein, between this Corporation and another individual or entity that confers a direct, substantial benefit to any Related Party, as defined herein. The following circumstances shall not be considered a Conflict of Interest for purposes of interpretation of this definition or consideration of a Conflict of Interest by the Board of Directors:
  - i. the current, or prior, service of an Officer, Director or Key Employee of this Corporation, or a Relative (as defined by statute) thereof, all as defined herein, as an officer, director, trustee, key employee or partner, or the equivalent thereof, of any corporate entity that is: considered to be an Affiliate (as defined by statute); otherwise controlled by, or controls, this Corporation, and/or; an Affiliate of any corporate entity controlled by, or that controls, this Corporation, or;
  - ii. the current, or prior, receipt by an Officer, Director or Key Employee of this Corporation, or a Relative thereof, of goods or services offered by this Corporation that are generally made available to other similarly-situated individuals, provided that the recipient does, has not, received any form of preferential treatment as a consequence of his/her relationship with this Corporation.

The assessment of, and any determination concerning any Conflict of Interest must be considered in strict compliance with the adopted policies and procedures of the Corporation.

- b. Related Party Transaction. Unless otherwise specifically excluded herein, a “Related Party Transaction” means any transaction, agreement or any other arrangement in which a Related Party has a financial interest and in which the Corporation, or any Affiliate, is a participant. The following circumstances shall not be considered a Related Party Transaction for purposes of interpretation of this definition or consideration of a Related Party Transaction:
  - i. the current, or prior, service of an Officer, Director or Key Employee of this Corporation, or a Relative thereof, all as defined herein, as an officer, director,

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trustee, key employee or partner, or the equivalent thereof, of any corporate entity that is considered to be an Affiliate, as defined herein; otherwise controlled by, or controls, this Corporation, and/or; an Affiliate of any corporate entity controlled by, or that controls, this Corporation, or;

- ii. the current, or prior, receipt by an Officer, Director or Key Employee of this Corporation, or a Relative thereof, of goods or services offered by this Corporation that are generally made available to other similarly-situated individuals, provided that the recipient does not, or has not, received any form of preferential treatment as a consequence of his/her relationship with this Corporation.

The assessment of, and any determination concerning, any Related Party Transaction, must be considered in strict compliance with the adopted policies and procedures of the Corporation.

c. Related Party. A "Related Party" means any:

- i. Officer, as defined by statute;
- ii. Director, as defined by statute;
- iii. Key Employee, as defined by statute;
- iv. founder of the Corporation;
- v. individual who has made substantial monetary contributions to the Corporation;
- vi. Relative, as defined by statute, of an Officer, Director, Key Employee, founder or substantial contributor;
- vii. partnership or professional corporation where an Officer, Director or Key Employee, or a Relative thereof, directly or indirectly, has an ownership interest in excess of five percent (5%);
- viii. entity where an Officer, Director or Key Employee, or a Relative thereof, directly or indirectly, holds a thirty-five percent (35%), or greater, ownership or beneficial interest;
- ix. corporate entity where an Officer, Director or Key Employee, or a Relative thereof, serves as an officer, director, trustee, key employee or partner, or the equivalent thereof; or,
- x. outside auditor where an Officer, Director or Key Employee, or a Relative thereof, is a current owner (wholly or partially), director, officer or employee or who, otherwise, worked on the Corporation's audit at any time during the past three (3)-fiscal years.

### **3. General Disclosure.**

Prior to initial election, and annually thereafter, each Director shall be required to complete, sign and submit to the Secretary, or an authorized designee, as appropriate, a written statement identifying, to the best of the Director's knowledge, any entity of which such Director is an officer, director, trustee, owner (either as a sole proprietor, partner or member) or employee and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the Director might have a real or potential interest. The Secretary shall provide a copy of all completed disclosure statements to the Board of Directors, or another



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authorized committee thereof, as appropriate. A copy of each disclosure statement shall be available to any Director on request.

#### **4. *Specific Disclosure.***

If at any time during his or her term of service, a Director, Officer or Key Employee (each as defined by Appendix "A") acquires an interest, or circumstances otherwise arise, which could give rise to a real or potential Conflict of Interest and Related Party Transaction, or any other interested matter, he or she shall promptly disclose, in good-faith, to the Executive Committee, as appropriate, the material facts concerning such interest.

#### **5. *Process of Review.***

The Executive Committee, shall thoroughly review any real, or potential, Conflict of Interest or Related Party Transaction, or any other interested matter and, if a designated Committee, submit to the Board a recommendation as whether or not it should be approved.

#### **6. *Standard of Review.***

For purposes of this policy, amongst the considerations of the Executive Committee, relative to assessment of any real or potential Conflict of Interest and/or Related Party Transaction, shall be the determination as to whether any financial interest, amounts to a Conflict of Interest and/or a Related Party Transaction, each as defined herein. Should any such financial interest be considered a Conflict of Interest and/or a Related Party Transaction, the terms of this "Conflict of Interest" and/or "Related Party Transaction Policy" shall apply with regard to proper consideration of the matter. Should the financial interest not amount to a Conflict of Interest and/or Related Party Transaction, as defined herein, the transaction shall be considered a matter unworthy of additional non-customary review and/or documentation.

#### **7. *Authorization of Conflicts of Interest & Related Party Transactions.***

The Corporation shall not enter into any matter considered to be a Conflict of Interest and/or a Related Party Transaction, or any other interested matter, unless such a financial transaction, or other matter, is determined by a majority of the *ex officio* Voting Directors serving on the Executive Committee to be fair, reasonable and in the Corporation's best interest at the time of such determination.

#### **8. *Authorization of Transactions Concerning Substantial Financial Interest.***

With respect to any Conflict of Interest and/or Related Party Transaction, or other interested matter, in which a Related Party, or otherwise conflicted individual, has a substantial financial interest, the *ex officio* Voting Directors serving on the Executive Committee shall:

- i. prior to entering into any such transaction, or matter, to the extent practicable, consider alternative transactions and/or a review of information compiled from, at least, two (2) independent appraisals of other comparable transactions;
- ii. approve the transaction by not less than a two-thirds majority vote of the Directors and/or committee members, as appropriate, present at the meeting; and,
- iii. contemporaneously document the basis for approval by the Executive Committee, which shall include the preparation of a written report, to be attached to the minutes of any meeting where the transaction or matter was deliberated or authorized, identifying the details of the transaction or matter; alternate transactions considered; materials or other information reviewed, Directors, or committee members, present at times of deliberations;

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names of those who voted in favor, opposed, abstained or were absent; and, the specific action authorized.

### **9. Restrictions.**

With respect to any Conflict of Interest and/or Related Party Transaction, or any other conflicted matter, considered by the Executive Committee, no Related Party, or otherwise conflicted individual, shall:

- i. be present at, or participate in, any deliberations;
- ii. attempt to influence deliberations; and/or,
- iii. cast a vote on the matter.

Nothing herein shall prohibit the Board, or authorized committee, as appropriate, from requesting that a Related Party, or otherwise conflicted individual, present information concerning a Conflict of Interest and/or Related Party Transaction, or any other interested matter, at a Executive Committee meeting prior to the commencement of deliberations or related voting.

### **10. Recognized Exceptions.**

Although not stipulated in statute, the Charities Bureau of the New York State Office of the Attorney General has advised that a certain transaction that might, by definition, be considered a Conflict of Interest and/or a Related Party Transaction need not necessarily be subject to, otherwise applicable, contemporaneous documentation requirements stipulated herein as a consequence of it being a matter that would not customarily require the action or approval of the Board of Directors. As a consequence of the foregoing, while all other obligations of this policy remain in effect, the Corporation need not contemporaneous document, or disclose for auditing purposes, any of the following:

- i. *de minimis* transactions — transactions being of a small size relative to this Corporation's budget and assets, which would customarily fall below the threshold of review by the Board of Directors;
- ii. ordinary course of business transactions — transactions or activities that are undertaken in the ordinary course of business by staff of this Corporation, as consistent with either past corporate or sector practices;
- iii. mission-focused transactions — transactions involving benefits provided to a Director solely as a consequence of his/her membership in a class of individuals that the Corporation intends to benefit in accomplishing its mission, provided any such transactions are authorized in good-faith, without any undue benefit to the conflicted, or otherwise interested, Director, and/or,
- iv. compensation-related transactions — transactions related to compensation, or reimbursement of a Related Party, or otherwise conflicted Director, for reasonable expenses incurred on behalf of this Corporation.

Nothing herein shall be interpreted so as to permit or authorize a Related Party, or otherwise conflicted Director, to attempt to improperly influence the decision-maker(s) or reviewer(s) in a given Related Party Transaction, or other conflicted matter.

### **11. Audit-Related Disclosure.**

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It shall be the duty of the Secretary to see to it that all newly-received and annually-submitted Director Disclosure Statements and any case-specific Conflict of Interest and/or Related Party Transaction reports, together the minutes of any related meetings, are promptly provided to the Secretary of the Board of Directors, or the chair an authorized committee thereof, as appropriate, in an effort to assure that they are properly considered for auditing purposes.

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### APPENDIX C—Code of Ethical Conduct & Annual Potential Conflicts Disclosure Statement

As a “Director, “Officer” or “Key Employee,” each as defined by the New York Not-for-Profit Corporation Law, prior to being seated on the Board of Directors or commencing employment with the Corporation, as appropriate, and annually thereafter, you are required to truthfully, completely and accurately disclose all information requested herein and to promptly update all such information as factual circumstances may change from time-to-time.

***please mark ‘Yes’ or ‘No’ & provide additional information when requested***

#### Financial Information Return Disclosure

Responses to the following questions are required in order to complete financial information returns annually submitted to the Internal Revenue Service and the Office of the Attorney General.

1. Have you served as an “Officer,” “Director” “Trustee,” “Key Employee,” partner or member of, or hold a thirty-five percent (35%) or greater ownership, or beneficial interest, in, or in the case of a partnership or professional corporation, a direct or indirect ownership interest in, excess of five percent (5%), an entity, which during the most recently completed, or current, fiscal year, had, or is reasonably anticipated to have, a direct, or indirect, business relationship, with the Corporation?

\_\_\_\_\_      \_\_\_\_\_  
No                      Yes                      If Yes, please attach a detailed explanation of the  
circumstances

2. Have you, individually, or through an entity where you hold a thirty-five percent (35%) or greater ownership, or beneficial interest, in, or in the case of a partnership or professional corporation, a direct or indirect ownership interest in, excess of five percent (5%), during the most recently completed, or current, fiscal year, that had, or is reasonably anticipated to have, a direct, or indirect, business relationship, with any individual who is a current, or former, “Officer,” “Director” or “Key Employee” of the Corporation?

\_\_\_\_\_      \_\_\_\_\_  
No                      Yes

3. Do you have a “Relative” (as defined by statute) who, during the most recently completed, or current, fiscal year, had, or is reasonably anticipated to have, a direct, or indirect, business relationship with the Corporation?

\_\_\_\_\_      \_\_\_\_\_  
No                      Yes                      If Yes, please attach a detailed explanation of the  
circumstances

4. Have you, or did you have a “Relative” who, during the most recently completed, or current, fiscal year, had, or is reasonably anticipated to have, any transaction with the Corporation that might reasonably be considered a real or potential conflict of interest

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pursuant to the Corporation's Board of Directors Conflicts of Interest Policy, which has not been otherwise disclosed herein?

           No                       Yes            If Yes, please attach a detailed explanation of the circumstances

5. Have you been provided with, properly reviewed and reasonably understand the terms of the Corporation's current written Board of Directors Conflicts of Interest Policy?

           No                       Yes            If **No**, please attach a detailed explanation of the circumstances

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### Independent Director Assessment Disclosure

In order to qualify as an “Independent Director,” as defined by the New York Not-for-Profit Corporation Law, an Officer or Director must respond in the ***negative*** to each of the following questions, although failure to respond to all questions in the ***negative*** shall not necessarily preclude such an Officer or Director from serving on the Board of Directors.

1. Are you currently, or have you been within the last three (3) fiscal years, an employee of the Corporation, or an “Affiliate” (as defined by statute) of the Corporation?

\_\_\_\_\_ No      \_\_\_\_\_ Yes      If Yes, please attach a detailed explanation of the circumstances

2. Do you have a “Relative” (as defined by statute) who is, or has been within the last three (3) years, a “Key Employee” (as defined by statute) of the Corporation or an “Affiliate” of the Corporation?

\_\_\_\_\_ No      \_\_\_\_\_ Yes      If Yes, please attach a detailed explanation of the circumstances

3. Have you received, within the last three (3) fiscal years, more than ten thousand dollars (\$10,000) in direct compensation from the Corporation, or an “Affiliate” of the Corporation, other than reimbursement for out-of-pocket expenses?

\_\_\_\_\_ No      \_\_\_\_\_ Yes      If Yes, please attach a detailed explanation of the circumstances

4. Do you have a “Relative” who has received, within the last three (3) fiscal years, more than ten thousand dollars (\$10,000) in direct compensation from the Corporation, or an “Affiliate” of the Corporation, other than reimbursement for out-of-pocket expenses?

\_\_\_\_\_ No      \_\_\_\_\_ Yes      If Yes, please attach a detailed explanation of the circumstances

5. Are you a current officer or employee of, or do you have a substantial financial interest in, any entity that has made “payments” to, or received “payments” from, the Corporation or an “Affiliate” of the Corporation, for property or services in an amount which, within the last three (3) fiscal years, exceeds the lesser of twenty-five thousand dollars (\$25,000) or two percent (2%) of such entity's consolidated gross revenue? Note: for purposes of this question, the definition the term “payments” does not include charitable contributions or dues or fees paid to the Corporation for services which the Corporation performs as part of its nonprofit purposes, provided that such services are available to individual members of the public on the same terms.

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No \_\_\_\_\_ Yes \_\_\_\_\_ If Yes, please attach a detailed explanation of the circumstances

6. Do you have a "Relative" who is a current officer or employee of, or has a substantial financial interest in, any entity that has made "payments" to, or received "payments" from, the Corporation or an "Affiliate," for property or services in an amount which, within the last three (3) fiscal years, exceeds the lesser of twenty-five thousand dollars (\$25,000) or two percent (2%) of such entity's consolidated gross revenue? Note: for purposes of this question, the definition the term "payments" does not include charitable contributions or dues or fees paid to the Corporation for services which the Corporation performs as part of its nonprofit purposes, provided that such services are available to individual members of the public on the same terms.

No \_\_\_\_\_ Yes \_\_\_\_\_ If Yes, please attach a detailed explanation of the circumstances

7. Are you a current owner (wholly or partially), director, officer or employee of the Corporation's outside auditor or have you, otherwise, worked on the Corporation's audit at any time during the past three (3) fiscal years?

No \_\_\_\_\_ Yes \_\_\_\_\_ If Yes, please attach a detailed explanation of the circumstances

8. Do you have a "Relative" who is a current owner (wholly or partially), director, officer or employee of the Corporation's outside auditor or who has, otherwise, worked on the Corporation's audit at any time during the past three (3) fiscal years?

No \_\_\_\_\_ Yes \_\_\_\_\_ If Yes, please attach a detailed explanation of the circumstances

**—Certification—**

I, the undersigned, certify that I have read and understand this Annual Conflicts Disclosure Statement. I agree that my actions will comply with the disclosures found in this document. I further affirm that neither I, as a Related Party nor any Relative have, or had, an interest, or has taken any action, that contravenes, or is likely to contravene, the Conflicts of Interests and Related Party Transaction Policy of the Corporation or, otherwise impedes my ability to act as a fiduciary and in the best interests of the Corporation, except those that may have been disclosed herein.

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Date

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### **APPENDIX D—Audit Oversight Policy**

#### **1. Auditing.**

Provided the Corporation is required pursuant to stipulated statutory thresholds dictated by revenue annually received and/or other applicable regulation and/or contractual obligation, demanded by the Office of the Attorney General, requested by another regulatory agency or funder as a condition of funding, or otherwise recommended and authorized by the Board of Directors, the accounts of the Corporation shall be subject to an annual audit report or audit review report prepared by “Independent Auditor” (as defined by Appendix “A”) to be overseen by the Executive Committee, which shall be comprised solely of “Independent Directors” (as defined by Appendix “A”). If such an audit report or audit review is commissioned, the Corporation shall adhere to the terms of this Audit Oversight Policy, which, in the absence of statutory obligation, shall be considered advisable, but not required.

#### **2. Restrictions.**

Once retained, neither the Independent Auditor, nor or a partner, associate or employee of the Independent Auditor’s firm or practice; or, a “Relative” (as defined in Appendix “A”), or a partner, associate or employee of a Relative’s firm or practice, shall perform any assistance to the Corporation other than that directly related to auditing functions.

#### **3. General Duties.**

While working with the Independent Auditor retained to prepared annual audit report, the Corporation’s Executive Committee, which shall be comprised solely of “Independent Directors” (as defined by these By-Laws), shall perform the following duties:

- i. oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements;
- ii. annually retain or renew the retention of an Independent Auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the Independent Auditor; and,
- iii. oversee the adoption, implementation of, and compliance with the Corporation’s Conflicts of Interest Policy and Related Party Transaction Policy and any required Whistleblower Protection Policy adopted by the Corporation, if such functions are not otherwise performed by another Committee of the Board comprised solely of Independent Directors or the Entire Board, itself.

#### **4. Revenue-Imposed Duties.**

The Executive Committee shall also be required to perform the following duties:

- i. review with the Independent Auditor the scope and planning of the audit prior to the audit's commencement;
- ii. upon completion of the audit, review and discuss with the Independent Auditor:
  - (a) any material risks and weaknesses in internal controls identified by the Independent Auditor;
  - (b) any restrictions on the scope of the Independent Auditor's activities or access to requested information;
  - (c) any significant disagreements between the Independent Auditor and management of the Corporation; and,



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- (d) the adequacy of the Corporation's accounting and financial reporting processes;
- iii. annually consider the performance and independence of the Independent Auditor; and,
- iv. report on the Committee's activities to the Board of Directors.

### **5. *Affiliate Corporations.***

Should the Corporation control other "Affiliate" (as defined by Appendix "A") subsidiary corporations, the Executive Committee of this Corporation may pursuant to state statute and these By-Laws perform all audit oversight duties stipulated in this Article for any such Affiliate subsidiary corporations.

### **6. *Restrictions.***

Only Independent Directors may participate in any Executive Committee deliberations or voting relating to matters set forth in this Article.

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### **APPENDIX E—Indemnification & Insurance Policy**

#### **1. *Authorized Indemnification.***

Unless clearly prohibited by applicable statute, regulation or these By-Laws, the Corporation shall indemnify any person (an “Indemnified Person”) made or threatened to be made a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by the Corporation, by reason of the fact that s/he (or her/his Testator or Administrator, if then deceased), whether before or after adoption of this Article: (a) is or was a Director or Officer of the Corporation, or; (b) is serving or served, in any capacity, at the request of the Corporation, as a Director or Officer of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Corporation shall have consented to such settlement) and reasonable expenses, including attorneys’ fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding.

#### **2. *Prohibited Indemnification.***

The Corporation shall not indemnify any person if a judgment, or other final adjudication, adverse to any Indemnified Person establishes, or the Board of Directors in good faith determines, that such person’s acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that s/he personally garnered any financial profit or other advantage to which s/he was not legally entitled.

#### **3. *Advancement of Expenses.***

The Corporation shall, on request of any Indemnified Person who is, or may be, entitled to be indemnified by the Corporation, pay or promptly reimburse an Indemnified Person’s reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a written commitment to repay the Corporation, with interest, for any amount advanced for which it is ultimately determined that he/she is not entitled to be indemnified pursuant to statute or these By-Laws. An Indemnified Person shall cooperate with any request by the Corporation that common legal counsel be used by the parties for such action or proceeding who are similarly situated unless it would be inappropriate to do so because of real or potential conflicting interests of the parties.

#### **4. *Indemnification of Others.***

Unless clearly prohibited by law or these By-Laws, the Board may approve indemnification by the Corporation, as set forth in Section 1 of this Article, or advancement of expenses as set forth in Section 3 of this Article, to a person (or her/his Testator or Administrator, if then deceased) who is or was employed by the Corporation or who is or was a volunteer for the Corporation, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Corporation in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

#### **5. *Determination of Indemnification.***

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Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board shall, upon written request by an Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board must expressly find that such indemnification will not violate the provisions of Section 2 herein. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable, the Board shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.

### **6. *Binding Effect.***

Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

### **7. *Insurance.***

The Corporation is required to purchase Directors and Officers (“D & O”) liability insurance coverage. To the extent permitted by law, such insurance shall insure the Corporation for any obligation it incurs as a result of this Article, or operation of law, and it may insure directly the Directors, Officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article, as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

### **8. *Nonexclusive Rights.***

The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board is authorized to enter into agreements on behalf of the Corporation with any Director, Officer, employee or volunteer to provide them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article, subject to the limitations of Section 2 herein.