

THE SCHENECTADY COUNTY HISTORICAL SOCIETY

Corporate By-Laws

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ARTICLE I.

Name, Territory, Office & Corporate Status

Section 1. *Name.* The Corporation shall be known as: The Schenectady County Historical Society (hereinafter “The Corporation”).

Section 2. *Territory.* The Corporation shall conduct activities primarily in the County of Schenectady in the State of New York, unless otherwise stipulated in the Corporation’s Certificate of Incorporation, as may be amended.

Section 3. *Office.* The principal office of the Corporation shall be located in the County of Schenectady, State of New York. 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 Trustees may, from time-to-time, determine and/or the business or operations of the Corporation may require.

Section 4. *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 are 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.

Section 2. *Document Construction.* Any amendment to the purposes of the Corporation must be rendered in accordance with the requirements of Article XIV 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.

Membership

Section 1. *Classes of Membership Authorized.* Unless otherwise stipulated herein, the Corporation shall have two (2) classes of Members. One class shall be voting members and have a voice in the affairs of the Society, the right to vote at Annual and Special meetings, to serve on committees of the Society, and to be elected Trustees of the Society, and shall have all the rights and privileges of membership. The other class shall be persons who have attained distinguished eminence and been made honorary members of the Society by the Board of Trustees. They shall be exempt from the payment of dues but shall have no voice in the management of the Society. This honorary class of members shall be non-voting members.

Section 2. *Qualifications & Criteria for Membership.* The Board of Trustees may establish qualifications and criteria for Membership, 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 persons eighteen or older interested in history and in sympathy with the purposes and mission of the Society shall be eligible for membership.

Section 3. *Evidence of Membership.* Each Member shall be issued appropriate evidence or proof of Membership, which shall be nontransferable.

Section 4. *Termination of Membership.*

4.1. *Termination by the Membership.* Termination of Membership by the Members, themselves, shall be authorized, with, or without cause, by majority vote of the Membership at the Annual Meeting or a Special Meeting of the Membership called for that purpose.

4.2. *Termination by the Board of Trustees.* Termination of Membership by the Board of Trustees shall be authorized, for cause, by majority vote of the Board at any Regular or Special Meeting of the Board called for that purpose. For purposes of this Section, failure to timely remit required dues, if any, shall be considered sufficient cause for termination of Membership by vote of the Board. Failure to remit required dues within 60 days shall automatically terminate membership.

Section 5. *Annual Meeting.* A meeting of the Members entitled to vote shall annually be held for purposes of the election of Trustees and the transaction of any other business of the Corporation in a month to be determined by the Board of Trustees.

Section 6. *Special Meetings.* Special Meetings of the Members entitled to vote may be called at any time by the Board of Trustees, the President, a majority vote of the Board of Trustees, or upon the written request of at least ten percent (10%) percent of the Members entitled to vote. No business shall be conducted at a Special Meeting that is not included in the issued Notice as stipulated herein.

Section 7. *Meeting Notice.*

7.1. *Notice Requirements.* Notice shall be given to each Member entitled to vote prior to each Meeting of Membership, stating the place, date and hour of the Meeting. Notice of a Special Meeting shall, in addition, identify:

- i. the person, or persons, calling the meeting; and,
- ii. the purpose, or purposes, for which said meeting is being called.

7.2. *Written Notification.* Unless the Corporation has over five hundred (500) Members, written notice of any Meeting of the Membership shall be given personally or by first class mail, facsimile or by 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 by the Member;
- ii. if mailed, when deposited in the United States Mail, with postage prepaid, directed to the Member at the Member's current address of record as it appears on the list of Members; or,

- iii. if sent by electronic mail or facsimile, when forwarded to the facsimile number, or electronic mail address, as either appear on the list of Members, excepting that any such notice shall not be considered properly delivered if the Corporation is:
 - (a) unable to deliver two (2)-consecutive notices to the designated electronic mail address or facsimile number or,
 - (b) is otherwise made aware that notice cannot be delivered to the Member or electronic mail or facsimile.

7.3. *Notification by Publication.* Provided the Corporation has more than five hundred (500) Members, notice of Meetings of the Membership may be given by publication. Any such notice shall be:

- i. published in a newspaper published in the County in which the principal office of the Corporation is located once a week for 3-successive weeks immediately preceding the Meeting; and,
- ii. prominently posted on the homepage of the Corporation's website continuously from the date of newspaper publication through the date of the Meeting.

Section 8. *Waiver of Notice.* Should any Member fail to receive proper notice of a Meeting of the Membership, as otherwise required by these By-Laws, the Member shall waive his/her right to any such notice if:

- i. the Member attends the Meeting of the Membership 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 submits, 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 9. *Qualification of Voters.* The Board of Trustees may fix a date as the record date for the purpose of determining the Members entitled to vote at any Meeting of the Membership, or to express consent to or dissent any proposal without a Meeting. The record date shall not be more than fifty (50) nor less than ten (10) days before the date of the Meeting.

Section 10. *Quorum.* At any, duly called Meeting of the Membership, the lesser of ten percent (10%), or one-hundred (100) eligible voting Members entitled to vote, present as a consequence of physical attendance and/or use of telephone/video-conference technology and/or use 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 Member(s).

Section 11. *Voting.* Each Member shall have one (1) vote for purposes of the election of Trustees and the transaction of any other business considered by the Membership. Honorary members shall not have the right to vote.

Section 12. *Action by the Membership.*

12.1. *Action Defined.* Except as otherwise provided by statute and/or these By-Laws, an "act," or "action," of the Membership shall mean an action at a Meeting of the Membership authorized by vote of a majority of the Members present at the time of the vote, provided a sufficient quorum is present.

12.2. *Electronic Communication.* Any, or all, Members may participate in any Meetings of the Membership, 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 Membership.

12.3. *Proxies.* Every Member entitled to vote at a Meeting of the Membership may authorize another person, or persons, to act on his/her behalf by use of proxy. To be valid and enforceable, each proxy must be submitted before, or presented at, the Meeting of the Membership 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 Member executing same, except as may otherwise be provided by law.

Section 13. *Action by Members on Unanimous Written Consent.* Any act, or action, required or permitted to be taken by the Membership may be taken without a Meeting if each 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 Membership.

Section 14. *Reports.* In a manner sufficient to comply with applicable statutory obligations, the Board of Trustees shall annually present to the Membership 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 and a copy, or an abstract thereof, shall be entered in the minutes of the proceedings of the Meeting of the Members at which the report is presented.

ARTICLE IV.

Board of Trustees

Section 1. *General Management.* The Board of Trustees 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.* There shall be, at least, seventeen (17) but no more than, twenty three (23), seats on the Board of Trustees, including Officers, with the exact number to be established from time-to-time by majority vote of the Board.

Section 3. *Ex Officio Trustees.* The Board majority vote may also appoint *ex officio*, non-voting Trustees to serve on the Board, if deemed to be in the best interests of the Corporation. Any such *ex officio*, non-voting

Trustees shall be entitled to all rights and entitlements of other Trustees, and obligated to honor all corresponding fiduciary duties, excepting they shall not be entitled to:

- i. attend, or receive notice of, any Meeting of the Board, or its various committees, if the purpose of said Meeting(s) relates to concerns with respect to the given *ex officio*, non-voting Trustee;
- ii. be counted for purposes of determining quorum for any Meeting of the Board, or its various committees;
- iii. vote on any matter being considered by the Board, or its various committees; and/or,
- iv. hold elective Office with the Corporation.

The Executive Director shall serve as an *ex-officio*, non-voting Trustee while employed by the Corporation.

Section 4. *Qualifications.* All Officers and Trustees must be at least eighteen (18) years of age and committed to advancing the purposes of the Corporation. No employee of the Society shall be a Trustee.

Section 5. *Selection Procedure, Terms of Office, Newly Created Trusteeships & Vacancies*

5.1. *Selection Procedure.* At each Annual Meeting, the Membership, by a plurality of the votes cast, shall elect new Trustees to replace those whose terms are expiring to terms of three (3) years in duration.

5.2. *Terms of Office.* The term of office for a Trustee shall be three (3) years in duration, unless otherwise provided in these By-Laws. Approximately one-third (1/3) of the Trustees shall be selected every three (3) years. The terms of office for all Trustees shall begin on the day of their election and shall conclude upon the election of their successors. Trustees may serve no more than three (3) consecutive terms, officers may serve without term limit until their replacement is elected by the board.

5.3. *Newly Created Trusteeships.* Newly created Trusteeships resulting from an increase in the number of Trustees shall be filled by vote of a majority of the Membership. Trustees elected to fill newly created Trusteeships shall hold office in accordance with their classification and until their successors have been elected and qualified.

5.4. *Vacancies.* A vacancy in office shall arise upon the resignation, removal, incapacitation or death of a Trustee. A vacancy on the Board of Trustees occurring in the interim between Annual Meetings may be filled by an interim successor appointed by the Board of Trustees. At the next Annual Meeting following the vacancy, the Membership may elect, by majority vote, a permanent successor for the vacant position. Trustees elected to fill vacancies shall hold office for the remainder of the term of the vacated position in accordance with the classification of said position and until their successors have been elected and qualified. No period of interim service shall be considered for purposes of establishing limitations on the terms of Trustees.

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

Section 7. *Suspension & Removal.*

7.1. *Suspension.* Any Trustee may be temporarily suspended, for cause, by a two-thirds (2/3s) majority vote of the Board of Trustees at any Regular Meeting or Special Meeting of the Board called for that purpose. The period of suspension can last only until such time as the next Annual Meeting. At any Meeting where a vote is to be taken to suspend a Trustee, the Trustee in question may attend and shall be given a reasonable opportunity argue in his/her defense.

7.2. *Removal.* Any, or all, of the Trustee(s) may be permanently removed for cause, by a two-thirds (2/3s) majority vote of the Board of Trustees at any Regular Meeting or Special Meeting of the Board called for that purpose, or with, or without, cause, by a majority vote of the Membership at any Annual Meeting or Special Meeting of the Members called for that purpose. At any Meeting where a vote is to be taken to remove a Trustee, the Trustee in question may attend and shall be given a reasonable opportunity argue in his/her defense.

Section 8. *Meetings.*

8.1. *Annual Meetings.* The Board of Trustees, by yearly resolution of the Board shall, within thirty (30) days of the Annual Meeting of the Society/Membership, convene an Annual Meeting of the Board of Trustees for the purpose of appointing Officers 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.

8.2. *Regular Meetings.* The Board of Trustees, in accordance with a schedule to be determined by resolution to the Board, shall endeavor to annually convene, at least, four (4) Regular Meetings. 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.

8.3. *Special Meetings.* The Board of Trustees, whenever called by the President, the Secretary, or any three (3) Trustees, may convene Special Meetings in order to consider 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 9. *Waivers of Notice.* Notice of any meeting of the Board of Trustees need not be given to any Trustee who submits a signed waiver of notice, by regular mail, electronic mail, facsimile or personal delivery, to the Board, the President 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 10. *Quorum.* A quorum shall be required for the legal and proper conduct of the business of the Board of Trustees. A majority of Trustees of the Entire Board 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 Trustees.

Section 11. *Voting.* Each Trustee shall have one (1) vote for purposes of the appointment of Officers and the transaction of any other business considered by the Board of Trustees.

Section 12. *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 13. *Action by the Board of Trustees.*

13.1. *Action Defined.* Except as otherwise provided by statute and/or these By-Laws, an “act,” or “action,” of the Board of Trustees shall mean an action at a Meeting of the Board authorized by vote of a majority of the Trustees present at the time of the vote, provided a sufficient quorum is present.

13.2. *Written Unanimous Consent.* Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if the Entire Board 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 resolution, and all written consents thereto, shall be filed with the minutes of the proceedings of the Board.

13.3. *Electronic Communication.* Any, or all, Trustee(s), or committee member(s), may participate in any meetings of the Board of Trustees, 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 14. *Presumption of Concurrence.*

14.1. *Meeting Participation.* A Trustee who participates in a meeting of the Board of Trustees at which an act, or action, on any corporate matter is taken shall be presumed to have concurred to the action taken unless said Trustee:

- 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.

14.2. *Meeting Absence.* A Trustee 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 Trustee:

- 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.

Section 15. *Attendance.* A Trustee who, without excuse conveyed in advance to the President or Secretary, has been absent for three consecutive Board meetings, or who has failed to attend at least half of the meetings held over a prior span of at least eleven months of service, shall, upon affirmative vote of the

Audit Committee, be considered to have resigned, and notice thereof shall be conveyed to the ex-Trustee by the President.

ARTICLE V.

Officers

Section 1. *Officers, Appointment & Term.* The Board of Trustees shall appoint by majority vote a President, Vice President, 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.

Section 2. *Suspension, Removal, Resignation.* Officers serve at the discretion of the Board of Trustees. Any Officer appointed by the Board may be suspended or removed by a majority vote of the Board. In the event of the resignation, suspension, removal, incapacitation or death of an Officer, the President 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 Board within the next two (2) Regular Meetings.

Section 3. *Duties.*

3.1. *President.* The President 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 Board of Trustees 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 President is authorized to sign any deeds, mortgages, bonds, contracts or other instruments that the Board 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 President is the sole Officer or Trustee authorized to speak on behalf of the Corporation, unless the President and/or the Board of Trustees have otherwise delegated such authority to another Officer, Trustee and/or representative or otherwise directed by these By-Laws. The President shall perform such other duties as from time-to-time may be assigned to him/her by the Board.

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

Committees of the Board or Corporation, if any, are properly recorded, documented and stored; keep a record of the post office address, telephone number and, when possible electronic address of each Member, Trustee, Officer and member of a committee who does not serve on the Board, if any; notify Trustees 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 and storage and other duties, as deemed appropriate, to other Officers, excepting the President, Trustees, 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 President 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 Trustees informed on all pertinent financial matters. If an Independent Trustee, he/she shall ordinarily, but need not necessarily, serve on the Audit and Finance Committee, or its functional equivalent, if applicable, but not as Chair of the Audit Committee. 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 President and/or the Board.

ARTICLE VI.

Committees

Section 1. *Committee Types & General Authority & Responsibilities.* The Board of Trustees 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 Entire 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 of Trustees shall be comprised solely of, at least, three (3) voting Trustees elected by majority vote of the Entire Board 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. .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 Trustees, 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, at least, three (3), Trustees and/or to serve on the following standing Committees of the Board: Audit and Finance and Personnel. The Board, by resolution adopted by the majority of the

Entire Board, may designate additional standing Committees of the Board, with such authority as the applicable resolution shall provide.

2.1. *Audit Committee.* The Audit Committee shall be comprised all officers of the Society and such other Trustees as appointed by the President, found by resolution of the Board of Trustees to be “Independent Trustees” (as defined by Attachment “A”); however, under no circumstances shall the Corporation’s “Independent Auditor” (as defined by Attachment “A”) or a partner, employee of business associate or “Relative” (as defined by Attachment “A”) of the Independent Auditor’s firm to serve on the Committee. Provided the Treasurer is found to be an “Independent Trustee,” he/she shall serve on the Committee, *but shall be precluded from serving as Chair.* The Audit Committee shall be responsible for overseeing all audits of the Corporation. 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 Trustees Conflicts of Interest Policy, Whistleblower Protection Policy and Audit Oversight Policy, which are annexed to these By-Laws as Attachments “B” “D” and “E,” 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 Attachment “C,” and any case-specific Related Party Transaction reports, together the minutes of any related meetings, are promptly provided to the Chair of the Committee and shall subsequently see to it that they are properly considered for auditing purposes.

The Audit Committee shall also serve as the Executive Committee and shall be empowered to act on urgent matters that the President deems cannot be held over to the next scheduled meeting of the full Board of Trustees.

2.2. *Finance Committee.* The Committee shall be responsible for the overall fiscal affairs of the Corporation. The Committee shall develop a budget for approval by the Board of Trustees; 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 will be responsible for monitoring the investments of the Society, including Endowment Funds, Life Memberships, and bequests. To fulfill those responsibilities it may recommend the services of an Investment Adviser to the Board, and establish an investment subcommittee. In conjunction with the Investment Adviser it will review and update the Society’s Investment Policy as needed, with changes to be presented to the Board for approval. It shall also conduct an annual review of the Society’s investment portfolio.

2.3. *Personnel.* The Personnel Committee shall maintain a Personnel Handbook, recommend to the Board annual updates thereto, and shall recommend to the President or the Audit Committee or the full Board, as appropriate to the circumstance, actions intended to resolve grievances involving Society personnel. The members of the Personnel Committee shall be Trustees of the Society.

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 Entire Board 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.

The Board shall appoint, at least, three (3) voting Trustees, Members and/or other non-Trustees, to serve on the following standing Committees of the Corporation: Building and Grounds, Membership, Museum,

Accessions and De-accessions, Library and Archives, Mabee Farm, Historic Site, Fund Development and Nominating. The Board, by resolution adopted by the majority of the Entire Board, may designate other standing, or *ad hoc*, Committees of the Corporation, with such authority as the applicable resolution shall provide.

3.1. *Building and Grounds Committee.* The Building and Grounds Committee shall have full charge of the buildings and grounds of Society Headquarters and of any other Society properties whose oversight has not been granted to a different committee of the Society. Such duties shall include the renting or sub-leasing of the whole or portions thereof, and shall arrange for the care and maintenance of the same.

3.2. *Membership Committee.* The Membership Committee shall endeavor in all ways possible to secure and retain members for the Society.

3.3. *Museum Committee.* The Museum Committee shall collaborate with and advise the curator in regard to carrying out the goals of the Society.

3.4. *Accessions and De-accessions Committee.* The Accessions and De-accessions Committee shall advise the Curator and Librarian regarding the acceptance of gifts, loans or purchase of items as well as the deaccessioning of items for all Society museums and the Library. Members of the Accessions and Deaccessions Committee shall be appointed annually and shall include the chairman and at least one other member from the Museum, Library and Mabee Farm Committees.

3.5. *Library and Archives Committee.* The Library and Archives Committee shall collaborate and advise the librarian in regard to carrying out the goals of the Society.

3.6. *Mabee Farm Committee.* The Mabee Farm Committee shall collaborate with and support the staff in carrying out events, programs and exhibits to meet the goals of the Society.

3.7. *Historic Sites Committee.* The Historic Sites Committee shall authenticate all requests for historical markers, and shall take any necessary steps to encourage identification, marking, and preservation of historic sites and buildings in Schenectady County.

3.8. *Fund Development Committee.* The Fund Development Committee shall be responsible for increasing both public and fiscal support for the Society and its mission. The committee shall be responsible for the development and execution of planned giving and other donation strategies. The committee shall promote the interests of the Society as an active and important civic organization and see that it is represented at community, civic, and other mission appropriate functions and events whenever possible.

3.9. *Nominating Committee.* The Nominating Committee shall present nominations for the slate of officers and Trustees at the annual meeting of the Society. The President shall appoint members to the Committee in accord with the following principles: (a) No officer shall be appointed a member. (b) The committee shall include three Trustees who are not officers, and two representatives of the general membership. (c) The President shall designate one of the three Trustees as chair of the committee. The concurrence of at least four committee members shall be necessary for nomination.

Section 4. *Qualifications.* The Board of Trustees 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 President or the Chair of the applicable Committee or by majority vote of the members of the committee.

Section 6. *Quorum and Manner of Acting.* Unless otherwise provided by resolution of the Board of Trustees, a majority of all of the 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.

ARTICLE VII.

Executive Director Duties & Review of Compensation

Section 1. *Duties.* The Board of Trustees may 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 Trustees 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. In effectuating the forgoing, the Executive Director shall be authorized to form, and appoint various individuals to serve on, *ad hoc* advisory Committees of the Corporation in order to offer non-binding recommendations to be considered by the Board from time-to-time. 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 Board of Trustees, and/or the Audit Committee, shall engage in 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 Trustees 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 Trustee 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 Executive Director/Key

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

ARTICLE VIII.

Elected Officer & Trustee Compensation, Reimbursement & Loans

Section 1. *Compensation.* No elected Trustee, Officer or member of a committee shall receive compensation for his/her services as a Trustee, 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 Trustees 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 Trustees, individual Trustees, 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 Trustees, Officers, members of committees or to any other corporation, firm, association or other entity in which one or more of its Trustees, Officers or committee members are Trustees or officers or hold a substantial financial interest, except as may be permitted by statute.

ARTICLE IX.

Fiscal Year, Independent Financial Audit, Endowment Funds, Borrowing of Monies

Section 1. *Fiscal Year.* The fiscal year of the Corporation shall commence on the 1st day of April and conclude on the 31st day of March.

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 Trustees, 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 Trustees” (as defined by Appendix “A”) serving on either the Board of Trustees, or an authorized Committee of the Board.

Section 3. *Endowment Funds.* The Board of Trustees shall have the power to create endowments, the principal of which shall be invested. Dividends, capital gains and interest may be used for Society operations, or reinvested in the endowment at the discretion of the Board. Alternatively, the Board may

choose to base distributions on a percentage of the endowment, the percentage to be established from time to time with the caveat that it may not exceed one deemed prudent for conservation of the endowment. For purposes of this Article, the endowment shall consist of income-producing financial investments, including stocks, bonds, loans and managed investments such as mutual funds.

Section 4. *Borrowing of Monies.* For adoption of resolutions that pertain to the borrowing of money from a source external to the Society, those present and voting in the affirmative must constitute a two-thirds majority of the entire Board.

ARTICLE X.

Fiduciary Duties

Section 1. *Duty of Care.* All Trustees 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 Trustee 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 Trustee shall be permitted to engage in, or condone, any conduct that is disloyal, disruptive, damaging or competes with the Corporation. No Trustee shall be permitted to take any action, or establish any interest, that compromises his/her ability to represent the Corporation's best interest. All Trustees are expected to represent the interests of this Corporation at all times while serving on the Board.

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

ARTICLE XI

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 Trustees, 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 Board of Trustees, or an authorized committee, as appropriate.
- ii. *Restrictions.* stipulations that when the Board of Trustees, or an authorized committee, as appropriate, 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.
- 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 Trustees, 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 (2/3) majority vote of the Board of Trustees 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. *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 Trustees, the accounts of the Corporation shall be subject to an annual audit report or audit review report prepared by “Independent Auditor” (as defined by Attachment “A”) to be overseen by a designated Audit or combined Audit and Finance Committee of the Board (as appropriate), comprised solely of “Independent Trustees” (as defined by Attachment “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 6. *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 (2/3) majority vote of the Board of Trustees 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.

ARTICLE XII.

Prohibited Conduct, Obligation & 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 Audit & Finance 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 XIII.

Indemnification of Trustees, Officers & Employees

Section 1. *Indemnification Obligations.* Provided that it first obtains, and subsequently maintains a Trustees and Officers (D&O) liability insurance policy with coverage limits deemed reasonably appropriate by qualified professionals, the Corporation shall indemnify its Members, Trustees, Officers, employees and volunteers against judgments, fines, amounts paid in settlement and reasonable expenses and costs, including attorneys fees, in connection with any claim asserted against the Member, Trustee, Officer, employee or volunteer by court action, or otherwise, by reason of the fact that such person was a Trustee, Officer, employee or volunteer of the Corporation and acting in good-faith for a purpose which such person reasonably believed to be in the best interest of the Corporation, and was not unlawful, unethical or immoral. Any such indemnification 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 XIV.

Fundamental Corporate Changes

Section 1. *By-Law Amendment.* These By-Laws may be amended, repealed or altered, by a two-thirds (2/3) majority vote of the Trustees present at any Annual Meeting, Regular Meeting or Special Meeting of the Board called for that purpose, excepting that the Board shall have no authority to amend, repeal or alter Article III, this Article XIV or any other By-Law applicable to the rights, entitlements and/or obligations of the Members. Any amendment, repeal or alteration of the By-Laws authorized by the Board shall be presented to the Membership at the next Annual Meeting or Special Meeting of the Membership called for that purpose, and may be vetoed, in whole or in part, or otherwise modified by majority vote of the Members present. The Membership may by majority vote of the Members present at any Annual Meeting or Special Meeting of the Membership called for that purpose, amend, repeal or alter Article III, this Article XIV, any other By-Law applicable to the rights, entitlements and/or obligations of the Members or the By-Laws, in their entirety, with or without the consent of the Board,

Section 2. *Certificate of Incorporation Amendment.* The Certificate of Incorporation of the Corporation may be changed or amended, in whole or in part, by a two-thirds (2/3) majority vote of each the Board of Trustees and those entitled to cast ballots for a resolution of the Membership, provided all statutory approvals are subsequently secured and any Certificate of Amendment or Restated Certificate of Incorporation is accepted for filing by the New York Department of State.

Section 3. *Purchase, Lease, Sale, Mortgage, Disposition of Real Property or Other Assets.* The purchase, lease (for five (5)-or more years), sale, mortgage or disposition of all, or substantially all, of the real property or other assets of the Corporation shall only be authorized by a two-thirds (2/3) majority vote of the Board of Trustees and a two-thirds (2/3) majority vote of those entitled to cast ballots for a resolution of the Membership.

Section 4. *Creation of Corporate Affiliate Relationship.* The Corporation may only enter into any affiliate arrangement, such as a parent/subsidiary relationship with another corporation, or form a new corporation for purposes of establishing an affiliate relationship, by a two-thirds (2/3) majority vote of each the Board of Trustees and those entitled to cast ballots for a resolution of the Membership.

Section 5. *Merger or Consolidation.* This Corporation may be merged or consolidated by a two-thirds (2/3) majority vote of each the Board of Trustees and those entitled to cast ballots for a resolution of the Membership, provided all statutory approvals are subsequently secured and any Certificate of Merger or Consolidation is accepted for filing by the New York State Department of State.

Section 6. *Dissolution.*

6.1. *Procedure.* This Corporation may be dissolved by a two-thirds (2/3) majority vote of each the Board of Trustees and those entitled to cast ballots for a resolution of the Membership, provided all statutory approvals are subsequently secured and a Certificate of Dissolution is accepted for filing by the New York Department of State.

6.2. *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 qualified under Section 501(c)(3) of the Internal Revenue Code with purposes similar to those of this Corporation.

APPENDIX A—By-Law & Corporate Policy Definitions

1. **Affiliate-** means any entity controlled by, or in control of, the Corporation.
2. **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. **Trustee-** means any member of the governing board of the Corporation, whether designated as Trustee, trustee, manager, governor, or by any other title.
4. **Entire Board -** means the total number of Trustees entitled to vote which the Corporation would have if there were no vacancies. If the By-Laws provide that the Board shall consist of a fixed number of Trustees, then the “Entire Board” shall consist of that number of Trustees. If the By-Laws provide that the Board may consist of a range between a minimum and maximum number of Trustees, then the “Entire Board” shall consist of the number of Trustees within such range that were elected as of the most recently held election of Trustees, as well as any Trustees whose terms have not yet expired.
5. **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, Trustee, Employee or Volunteer of the Corporation or has a Relative who is such an individual.
6. **Independent Trustee-** means a Trustee who:
 - i. is not, and has not been within the last three (3) 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) 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 Trustee or reasonable compensation for service as a Trustee if permitted by statute and regulation; ,
- 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, 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; or
 - iv. is not and does not have a relative who is a current owner, whether wholly or partially, Trustee, officer or employee of the Corporation's outside auditor or who has worked on the corporation's audit at any time during the past three (3) years.
 - For purposes of this definition, the term "payment” does not include charitable contributions, 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.
7. **Key Employee-** means any person who is in a position to exercise substantial influence over the affairs of the Corporation, or has been in the prior 5 years.
 - A description of relevant factors is at 26 CFR §53.4958-3(e)(2); note, this includes persons who have contributed more than \$5,000, if it exceeds 2% of total contributions that year, in any of the five most current tax years.
 8. **Member-** means any person 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. For instance, if a Membership is authorized to elect Trustees or approve By-Laws changes.
 9. **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.
 10. **Officer-** means any Trustee, 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.

- 11. Related Party-** means:
- i. any Trustee, Officer or Key Employee of the Corporation or any Affiliate, or any other person who exercises the powers of Trustees, officers or key employees over the affairs of the corporation or any affiliate of the corporation;
 - ii. any Relative of any individual described in clause (i); or
 - iii. any entity in which any individual described in clauses (i) and (ii) herein has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).
- 12. 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 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.
- 13. Relative-** of an individual means his or her spouse, domestic partner, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses or domestic partners of brothers, sisters, children, grandchildren and/or great-grandchildren.

APPENDIX B—Board of Trustees 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 Trustees 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 Board of Trustees, excluding any Trustees 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 Trustees:
 - i. the current, or prior, service of an Officer, Trustee or Key Employee of this Corporation, or a Relative thereof, all as defined herein, as an officer, Trustee, 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, Trustee 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 by the Board of Trustees:
- i. the current, or prior, service of an Officer, Trustee or Key Employee of this Corporation, or a Relative thereof, all as defined herein, as an officer, Trustee, 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, Trustee 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. Trustee, as defined by statute;
 - iii. Key Employee [any person who is in a position to exercise substantial influence over the affairs of the Corporation, or has been in the prior 5 years, such as Trustees or Officers]
 - a. A description of relevant factors is at 26 CFR §53.4958-3(e)(2); note, this includes persons who have contributed more than \$5,000, if it exceeds 2% of total contributions that year, in any of the five most current tax years.
 - 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, Trustee, Key Employee, founder or substantial contributor;
 - vii. partnership or professional corporation where an Officer, Trustee 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, Trustee or Key Employee, or a Relative thereof, directly or indirectly, holds a thirty-five percent (35%), or greater, ownership or beneficial interest; or,
 - ix. corporate entity where an Officer, Trustee or Key Employee, or a Relative thereof, serves as an officer, Trustee, trustee, key employee or partner, or the equivalent thereof.

3. General Disclosure.

Prior to initial election, and annually thereafter, each Trustee 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 Trustee's knowledge, any entity of which such Trustee is an officer, Trustee, 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 Trustee might have a real or potential interest. The Secretary shall provide a copy of all completed disclosure statements to the Board of Trustees, or another authorized committee thereof, as appropriate. A copy of each disclosure statement shall be available to any Trustee on request.

4. Specific Disclosure.

If at any time during his or her term of service, a Trustee, 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 Board of Trustees, or an authorized committee thereof, as appropriate, the material facts concerning such interest.

5. *Process of Review.*

Unless the Board of Trustees elects to directly assume such responsibility, the Audit and Finance Committee, or another designated Committee of the Board, shall thoroughly review any real, or potential, Conflict of Interest or Related Party Transaction, or any other interested matter and submit to the Board a recommendation as whether or not it should be approved.

6. *Affiliate Transactions.*

The current, or prior, service of an Officer, Trustee or Key Employee of this Corporation, or a Relative thereof, all as defined by statute, as an officer, Trustee, trustee, key employee or partner, or the equivalent thereof, of any corporate entity that is, i) considered to be an Affiliate, as defined by statute; ii) otherwise, controlled by, or controls, this Corporation, and/or; iii) is an Affiliate of any corporate entity controlled by, or that controls, this Corporation, shall not, standing alone, be considered a Conflict of Interest or a Related Party Transaction for purposes of interpretation of the definition of either term or consideration of any such matter by the Board of Trustees.

7. *Personal Benefit from Common Transactions.*

The current, or prior, receipt by an Officer, Trustee 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, shall not be considered a Conflict of Interest or a Related Party Transaction for purposes of interpretation of the definition of either term, or consideration of any such matter, by the Board of Trustees, 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.

8. *Standard of Review.*

For purposes of this policy, amongst the considerations of the Board of Trustees, the Audit and Finance Committee, or another authorized Committee of the Board, as appropriate, 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 an ordinary business matter unworthy of additional non-customary review and/or documentation.

9. *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 the Board to be fair, reasonable and in the Corporation's best interest at the time of such determination.

10. *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 Board of Trustees, the Audit and Finance Committee, or another authorized designated Committee of the Board, as appropriate 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 (2/3s) majority vote of the Trustees and/or committee members, as appropriate, present at the meeting; and,
- iii. contemporaneously document the basis for approval by the Board, or authorized committee, as appropriate, 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, Trustees, or committee members, present at times of deliberations; names of those who voted in favor, opposed, abstained or were absent; and, the specific action authorized.

11. Restrictions.

With respect to any Conflict of Interest and/or Related Party Transaction, or any other conflicted matter, considered by the Board, the Audit and Finance Committee, or another authorized designated Committee of the Board, as appropriate, 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 Board, or authorized committee thereof, meeting prior to the commencement of deliberations or related voting.

12. 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 Trustees. 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 Trustees;
- 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 Trustee 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, Trustee, and/or,
- iv. ***compensation-related transactions*** — transactions related to compensation, or reimbursement of a Related Party, or otherwise conflicted Trustee, 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 Trustee, to attempt to improperly influence the decision-maker(s) or reviewer(s) in a given Related Party Transaction, or other conflicted matter.

13. Audit-Related Disclosure.

It shall be the duty of the Secretary to see to it that all newly-received and annually-submitted Trustee 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 Trustees, or the chair an authorized committee thereof, as appropriate, in an effort to assure that they are properly considered for auditing purposes.

14. Nepotism.

If a “Relative” (as defined by Appendix “A”), or a household member, of an employee or Trustee is considered for employment or retention by the Corporation as an employee or contractor, a presumption of a Conflict of Interest and Related Party Transaction is created. The terms of this Conflicts of Interest and Related Party Transaction Policy will govern the consideration of such a matter. In cases where a Related Party, or household member of a conflicted individual, is found to be the best candidate for a given position and is hired as an employee or retained as a contractor, the Corporation shall document that the employee/contractor is qualified and paid a reasonable salary/rate in accordance with other corporate employees and contractors. In addition, such employee or contractor shall not be supervised by, or be in the line of supervision of, the Related Party or conflicted household member.

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

—Code of Ethical Conduct—

This Corporation is committed to maintaining the highest standard of conduct in carrying out our fiduciary obligations in pursuit of our tax-exempt mission and purposes. As such, each and every Trustee, Officer and Key Employee (to the extent applicable) shall adhere to the following code of conduct:

By-Laws & Policies.

- be aware of and fully abide by the By-Laws, policies and procedures of the Corporation
- assure compliance of the Corporation with respect to all applicable statutes, regulations and contractual requirements
- respect and fully support the duly-made decisions of the Board of Trustees in accordance with all applicable fiduciary duties, including those related to care, loyalty and obedience
- respect the work and recommendations of committees, which are duly charged and have convened and deliberated accordingly
- work diligently to ensure that the Board fully assumes its role as a policy-making, governing body
- understand that the Executive Director, as the Corporation’s chief administrative officer, has the sole responsibility for the day-to-day management of the Corporation—specifically, including the supervision of personnel—and for implementation of Board policies and directives

Informed Participation.

- attend most, if not all, meetings of the Board of Trustees and assigned committees
- remain informed of all matters, including financial, that come before the Board and/or assigned committees
- respect and follow the “chain of command” of the Board and administration
- constructively and appropriately bring to the attention of the Board, Officers, committee chairs and/or appropriate staff any questions, personal views, opinions and comments of significance on relevant matters of governance, policymaking and corporate constituencies
- oppose, on the record, actions of the Board with which one disagrees or is in serious doubt
- appropriately challenge, within the structure and By-Laws of the Corporation, those binding decisions that violate the legal, fiduciary or contractual obligations of the Corporation
- do not fully commit to vote a particular way on an issue before participating in a deliberation session in which the matter is discussed and action taken.
- act in ways that do not interfere with the duties or authority of staff

Conflict of Interest, Representation & Confidentiality

- represent the best interests of the Corporation at all times and to declare any and all duality of interests or conflicts of interests, material or otherwise, that may impede or be perceived as impeding the capacity to deliberate or act in the good faith, on behalf of the best interests of the Corporation
- conform to the procedures for such disclosure and actions as stated in the By-Laws or otherwise established by the Board of Trustees
- not seek or accept, on behalf of self or any other person, any financial advantage or gain that may be offered because, or as a result, of the Trustee's affiliation with the Corporation.
- publicly support and represent the duly made decisions of the Board
- always speak positively of the Corporation when communicating with current and potential stakeholders and constituencies
- not take any public position representing the Corporation on any issue that is not in conformity with the official position of the Corporation
- not use or otherwise relate one's affiliation with the Board to independently promote or endorse political candidates or parties for the purpose of election
- maintain full confidentiality and proper use of information obtained as a result of Board service in accordance with Board policy or direction

Interpersonal.

- speak clearly, listen carefully to and respect the opinions of fellow Trustees and Key Employees
- promote collaboration and partnership among all Trustees
- maintain open communication and an effective partnership with the Corporation's Officers and various committees, if any
- remain "solution focused," offering criticism only in a constructive manner
- not filibuster or engage in activities during meetings that are intended to impede or delay the progress and work of the Board because of differences in opinion or other personal reasons
- always work to develop and improve one's knowledge and skills that enhances one's abilities as a Trustee

—Annual Potential Conflicts Disclosure Statement—

As a Trustee or Officer or Key Employee of the Corporation, prior to your being seated on the Board of Trustees 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. With regard to this Conflicts Disclosure Statement, be advised, all material terms identified by quotation marks are defined by Appendix “A” of the By-Laws of the Corporation, which is entitled “By-Law & Corporate Policy Definitions.”

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, Trustee, trustee, key employee, partner or member of, or hold a thirty-five percent (35%) or greater ownership or beneficial interest, or in the case of a partnership or professional corporation a direct or indirect ownership interest in excess of five percent (5%), in, an entity, which during the most recently completed, or current, fiscal year, had, or are reasonably anticipated to have, a direct, or indirect, business relationship, with the Corporation?

_____ _____ If Yes, briefly describe below & attach a detailed explanation
No Yes

2. Have you, individually, or through an entity where you hold a thirty-five percent (35%) or greater ownership or beneficial interest, 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, had, or are reasonably anticipated to have, a direct, or indirect, business relationship, with any individual who is a current or former “Officer,” “Trustee” or “Key Employee” of the Corporation?

_____ _____ If Yes, briefly describe below & attach a detailed explanation
No Yes

3. Do you have a “Relative” 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*, briefly describe below & attach a detailed explanation

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

No Yes If *Yes*, briefly describe below & attach a detailed explanation

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

No Yes If **No**, briefly describe below &/or attach a detailed explanation

Independent Trustee Assessment Disclosure.

In order to qualify as an “Independent Trustee,” as defined by the New York Not-for-Profit Corporation Law, an Officer or Trustee 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 Trustee from serving on the Board of Trustees.

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

_____ _____
No Yes If *Yes*, briefly describe below & attach a detailed explanation

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

_____ _____
No Yes If *Yes*, briefly describe below & attach a detailed explanation

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*, briefly describe below & attach a detailed explanation

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*, briefly describe below & attach a detailed explanation

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. For purposes of this question, the definition the term “payments” does not include charitable contributions.

_____ _____
No Yes If Yes, briefly describe below & attach a detailed explanation

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. For purposes of this question, the definition the term “payments” does not include charitable contributions.

_____ _____
No Yes If Yes, briefly describe below & attach a detailed explanation

—*Certification*—

I, the undersigned, certify that I have read and understand this Code of Ethical Conduct & 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 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.

Trustee Signature

Date

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 Trustees, the accounts of the Corporation shall be subject to an annual audit report or audit review report prepared by “Independent Auditor” (as defined by Attachment “A”) to be overseen by the Audit and Finance Committee, which shall be comprised solely of “Independent Trustees” (as defined by Attachment “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 Attachment “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 Audit and Finance Committee, which shall be comprised solely of “Independent Trustees” (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 Trustees or the Entire Board, itself.

4. Revenue-Imposed Duties.

The Audit and Finance 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,
- (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 Trustees.

5. *Affiliate Corporations.*

Should the Corporation control other "Affiliate" (as defined by Attachment "A") subsidiary corporations, the Audit & Finance 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 Trustees may participate in any Audit and Finance Committee deliberations or voting relating to matters set forth in this Article.

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 Member, Trustee or Officer of the Corporation, or; (b) is serving or served, in any capacity, at the request of the Corporation, as a Member, Trustee 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 Trustees 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.

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 Trustee 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 Trustees 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 Trustees 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 Members, Trustees, 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 Member, Trustee, 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.