

# **FRANCISCAN MOUNTAIN RETREAT, INC.**

## **Corporate By-Laws**

### **ARTICLE I.**

#### **Name, Office & Corporate Status**

Section 1. *Name.* The Corporation shall be known as: Franciscan Mountain Retreat, Inc. (hereinafter “The Corporation”).

Section 2. *Office.* The principal office of the Corporation shall be located in the County of Allegany, 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 3. *Corporate Status.* The Corporation is a New York Not-for-Profit Corporation, a “Charitable Corporation” as defined by the Not-for-Profit Corporation Law, and exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

### **ARTICLE II.**

#### **Corporate Purposes & Document Construction**

Section 1. *Corporate Purposes.* The purposes of the Corporation 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.

Franciscan Mountain Retreat, Inc. is organized for the promotion of religious instruction, inquiry and investigation under the auspices of the Roman Catholic Church.

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

This Corporation shall have no “Member” or “Members” or “Membership,” as said terms may be defined, or implied, by the New York Not-for-Profit Corporation Law.

**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, specifically including, but not limited to, the Chair, Animator and Executive Director of the Franciscan Mountain Retreat, 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, twelve (12), but no more than, twenty-four (24) 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. At all times, at least one member of the Board of Trustees shall be a professed member of Holy Province or its successor, and if possible at least one shall be a member of St. Bonaventure University.

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. The certificate of the Secretary of this Corporation stating the names of those persons who are either *ex-officio* or elected members of the Board of Trustees shall be conclusive evidence of the designation of such persons for the purpose of determining the members of the Board of Trustees of this 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 a 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.

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.

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

5.1. *Selection Procedure.* At each Annual Meeting, the Board of Trustees, 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.

- i. *The Nominating Committee shall report the names of candidates to the Board and the Board shall determine which such candidates shall be invited to accept the nomination and the order in which they shall be invited.*

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.

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 Board of Trustees. 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 Board may elect, by a vote of a majority of Trustees, a permanent successor for the vacated 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 Chair or the Secretary. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board of Trustees, the Chair or the Secretary, and the acceptance of the resignation shall not be necessary to make it effective.

Section 7. *Removal.* Any Trustee may be removed, with, or without, cause, by a two-thirds majority vote of the Board of Trustees at any Annual Meeting, Regular Meeting or Special Meeting of the Board called for that purpose. A decision to remove a Trustee may temporarily restrict, or permanently prohibit, the Trustee in question from being reelected to the Board, at the sole, and exclusive, discretion of the then-seated Board. Prior to any Meeting where a vote is to be taken to remove a Trustee, the Trustee in question, and all other Trustees, shall receive specific notice of said anticipated action, in a manner sufficient to comply with all other requirements of this Article and afforded a reasonable opportunity to argue in his/her defense.

#### Section 8. *Meetings.*

8.1. *Annual Meetings.* The Board of Trustees, by yearly resolution of the Board, shall convene an Annual Meeting for the purpose of electing Trustees, appointing Officers and transacting such other and further business of the Corporation. Reasonable advance notice of the Annual Meeting, including time, date and location, shall be given by means of establishing a customary meeting date, publishing the date of the meeting on the website of the Corporation, or shall be given by 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 four (4) Regular Meetings. At least one such meeting shall be held at Mt. Irenaeus, West Clarksville, Allegany County, New York. 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 Chair, the Secretary upon request of the Chair of the Board, or the President of the Franciscan Mountain Retreat, or upon the written petition of six (6) or more 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 Chair or the Secretary, either before or after the Meeting, or who attends the meeting without protesting prior to formal commencement, the lack of formal notice.

Section 10. *Quorum.* A quorum shall be required for the legal and proper conduct of the business of the Board of Trustees. A majority 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. Less than a quorum shall have the power to adjourn a meeting.

Section 11. *Voting.* Each Trustee shall have one (1) vote.

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

12.1. *Action Defined.* Except as otherwise provided by statute and/or Article XI of 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.

12.2. *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.

12.3. *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, accepting the limitations of rural broadband. Participation by such means shall constitute presence in person at a meeting of the Board. Due to the value we place in our relationships and time spent at Mt. Irenaeus, there is a strong preference for in person participation.

Section 13. *Presumption of Concurrence.*

13.1. *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.

13.2. *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, 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 14. *Attendance.* A Trustee who has missed the majority of the meetings of the Board of Trustees within the calendar year may be asked to resign. In the event it is determined that a given Trustee will not fulfill the majority meeting requirement if he or she is not present at the next scheduled Regular Meeting of the Board, the Secretary shall submit a notice, by regular mail, facsimile and/or electronic mail, to such a Trustee advising him/her that if he/she does not attend said meeting, a motion to this effect will be made for his/her permanent removal.

## **ARTICLE V.**

### **Officers**

Section 1. *Officers, Appointment, Term.* The Board of Trustees shall appoint by majority vote a Chair, Vice Chair, Secretary and Treasurer, and such other Officers as it may determine are needed from time-to-time, who shall be given such duties, powers and functions as hereinafter provided. Officers shall be appointed to hold office for one (1) year from the date of appointment. Each Officer shall hold office for the term for which he/she is appointed and until his or her successor has been appointed.

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

Section 3. *Duties.*

3.1. Chair. The Chair shall be the principal volunteer executive officer of the Corporation and shall in general monitor and supervise the business and affairs of the Corporation. He/she shall preside at all meetings of the Board of Trustees and shall be an ex officio member of all Committees of the Board and Committees of the Corporation, unless otherwise precluded by statute, regulation and/or these By-Laws. In consultation with the Animator and Executive Director of the Franciscan Mountain Retreat, he/she shall have the responsibility for developing the agenda for all Trustee Meetings. The Chair 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 Chair is the sole Officer or Trustee authorized to speak on behalf of the Corporation, unless the Chair 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 Chair shall perform such other duties as from time-to-time may be assigned to him/her by the Board.

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

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 register of the post office address, telephone number and, where appropriate electronic address of each Officer, Trustees and members of committees who do 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 Chair, 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 Chair and/or the Board.

3.4. *Treasurer.* The Treasurer shall be responsible for the supervision and accounting of all funds received or expended by the 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, and, but not as Chair of any such Committee of the Board. The Treasurer shall provide a financial report at all Regular Meetings of the Board in a format prescribed by the Board. The Treasurer shall perform other duties as from time-to-time may be assigned to him/her by the Chair and/or the Board.

## **Article VI.**

### **Executive Director, Animator, Founder, Director of Life and Ministries**

While it is required by law that the corporation enumerate in our bylaws a defined reporting structure and specific responsibilities, our culture is one of collaboration/service; conversatio/conversation in decision making as a reflective dynamic; contemplation/a sustained consciousness of unity “all in all”; companioning/mutual mentoring, a way of ongoing learning. Our practice, based on our foundational documents and mission, is to use a flat management model, with the team working closely with one another in the key decisions being made on behalf of Mt. Irenaeus.

1. *Animator:* The Animator is an active member of the Mountain Community who operates in a servant leadership role in assuring that the ongoing mission and charism of Mt. Irenaeus is alive and growing! As the Mountain’s Chief Mission Officer, the Animator works closely with all Mountain Communities in assuring personal formation and acts in a collaborative role in the ongoing evolution of Mountain Ministries and programming. The animator shall propose new initiatives to the board and shall provide insight to them so that they might reclaim and express in a new way the Mission of the Mountain.
2. *Executive Director.* The Executive Director (ED) will have overall responsibility for Mt. Irenaeus and will function as its chief executive officer, always conscious of being in service to the Mission

of the Mountain. The Executive Director will oversee all operational responsibilities, including planning, advancement, financial, and buildings and grounds.

3. *Founder*: The Founder will hold a lifetime role as mentor/advisor to the Board of Trustees and Management Team. This will include mission, operations, strategic visioning and relationships with key stakeholders of Mt. Irenaeus for as long as he is willing and able.
4. *Director of Life and Ministries*: The Director of Life and Ministries develops ministerial outreach primarily to the St. Bonaventure University community in coordination and collaboration with the Friars of Mt. Irenaeus and others in the larger Mountain community. The Director of Life and Ministries also develops and enriches the culture of Mt. Irenaeus, sustaining its manner of life and ministry.

## **ARTICLE VII.**

### **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 appointed by the Board and shall have either standing authority and/or may be designated specific authority from time-to-time by the Board to take action that would legally bind the Board and/or the Corporation, provided such Committee of the Board appointments are made by approval of a majority of the Entire Board. In accordance with statutory limitations, no Committee of the Board shall have authority with respect to 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 to, amendment, or repeal, of these By-Laws or the adoption of new By-Laws;
- v. amendment, or repeal, of any resolutions of the Board, which by its terms, shall not be capable of amendment or repeal;
- vi. the election or removal of Officers and Trustees;
- vii. the approval of a merger or plan of dissolution;
- viii. the adoption of a resolution recommending to the Members an action on the sale, lease, exchange or other disposition of all or substantially all the assets of The Corporation or, if there are no Members entitled to vote, the authorization of such transaction; or
- ix. the approval of amendments to the Certificate of Incorporation.

Additional limitations on the authority of Committees of the Board may exist as stated in these By-Laws or by majority vote of the Board of Trustees.

Section 3. *Committees of the Corporation.* Committees of the Corporation shall be comprised of, at least, three (3) individuals appointed by the 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.

Section 4. *Standing Committees.* The Board shall function through a series of standing committees. These shall include an Executive Committee, Nominating Committee, Communications Committee, Personnel Committee, Legal and Governance Committee, Building & Grounds Committee, Advancement Committee, Finance Committee, and such others as may, in the judgment of the Board, be needed.

Section 5. *Selection.* Candidates for the Chair of standing committees, except for the Executive Committee and the Nominating Committee, will be proposed by the Nominating Committee and elected by a majority of the Board. Candidates for membership on the standing committees, except for the Executive Committee and the Nominating Committee, will be proposed by the Nominating Committee and elected by a majority of the Board. At the discretion of the Nominating Committee, the appointment of standing committee members may be delegated to the Committee Chair. Board members appointed to all standing committees shall serve for a three (3) year term and may succeed themselves. The Chair of the Board shall have the authority to fill vacancies occurring on a committee before termination of a regular term. At the discretion of the Chair of the Board, the appointment of such interim committee members may be delegated to the Committee Chair.

Section 6. *Ex Officio Committee Members.* The Chair of the Board, the Executive Director and the Animator of the Franciscan Mountain Retreat shall be ex officio members of all standing committees.

Section 7. *Committee Members.* Each standing committee shall be composed of at least one (1) Trustee who shall act as the Chair. Individual Trustees may be assigned to more than one standing committee. In addition, one student may be proposed for each standing committee by the Nominating Committee.

Section 8. *Committee Consultants.* The Chair of the Board may, upon the recommendation of the Animator and/or Executive Director, assign to each standing committee a number of consultants from the staff, student body, or other subject matter experts as deemed necessary to further the work of the standing committee.

Section 9. *Committee Meetings.* Committee meetings shall be held upon the call of the Chair of the committee, the Chair of the Board, the Animator of the Franciscan Mountain Retreat, the Executive Director or upon request of a majority of the committee members.

#### Section 10. *Duties and Responsibilities of Standing Committees*

10.1. *Executive Committee.* The Executive Committee shall be composed of Trustees as follows: Chair, Vice Chair, Secretary, Treasurer, Animator, Director of Life and Ministries, Executive Director and the Chair of each standing committee.

- i. The Executive Committee may transact such business of the Corporation as the Trustees may authorize, except to make removals from office.
- ii. The Vice Chair of the Board shall be the Chair of the Executive Committee.



- iii. The Secretary or her/his designee shall take minutes of the meeting which shall be made available to any Board member upon request.

10.2. *Mountain Executive Leadership Team (MELT)*. The Mountain Executive Leadership Team shall be comprised of the Chair, Vice Chair, Founder, Secretary, Treasurer, Animator, Executive Director and Director of Life and Ministries. They shall meet at least six times per year and shall handle the planning of Board meetings and strategic planning for the Franciscan Mountain Retreat.

10.3. *Nominating Committee*. The Nominating Committee shall have the responsibility for making nominations for the election of Trustees, of the officers of the Board, and in conjunction with the Animator and Executive Director of the Franciscan Mountain Retreat, the chair of all standing committees other than the Executive Committee and the Nominating Committee.

- i. The Committee, in conjunction with the Council of Spirit and Life shall have the responsibility for conducting an orientation and initiation for newly elected Trustees.

10.4. *Building & Grounds*. The areas of responsibility of this Committee shall be determined from time to time by resolution of the Board of Trustees

- i. Ensuring the adequacy and condition of all capital assets.
- ii. Planning for the future by development and keeping current physical planning policies for land, buildings and equipment.
- iii. Providing new structures; rehabilitating or removing older structures as directed and approved by the Board.

10.5. *Advancement Committee*. The areas of responsibility of this Committee shall be determined from time to time by resolution of the Board of Trustees.

- i. The Chair and/or Executive Director of the Franciscan Mountain Retreat shall also have the right to appoint other consultants to this Committee as he/she deems necessary.

10.6. *Finance and Budget Committee*. The areas of responsibility of this Committee shall be determined from time to time by resolution of the Board of Trustees.

- i. The Chair and/or Executive Director of the Franciscan Mountain Retreat shall also have the right to appoint other consultants to this Committee as he/she deems necessary.
- ii. The Treasurer shall be the Chair of the Finance and Budget Committee.

10.7. *Legal Governance Committee*. The areas of responsibility for this Committee shall be determined from time to time by resolution of the Board of Trustees. This Committee shall respond to any legal requests of the Board and determine whether or not the issues to be addressed can be handled in-house or need to be referred.

10.8. *Communications Committee*. The areas of responsibility for this Committee shall be determined from time to time by resolution of the Board of Trustees. This Committee shall help guide many aspects of communications to help ensure a common message, voice and palette to the many people who minister on behalf of or share life with us.

10.9. *Ad Hoc Committees.* From time to time, the need may arise to appoint an Ad Hoc Committee of the Board. The appointment of members to any such Committee shall be made by the Chair of the Board of Trustees who shall consult with the Animator and/or Executive Director of the Franciscan Mountain Retreat with reference thereto, and such committee should be concerned only with temporary or emergency matters.

## **ARTICLE VIII.**

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

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

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 review to be prepared by an Independent Auditor (as defined by statute) to be overseen by either the Board of Trustees, or an authorized Committee of the Board, in a manner compliant with all applicable statutory, regulatory and contractual obligations.

## **ARTICLE IX.**

### **Statutory Compliance**

Section 1. *Conflicts of Interest & Related Party Transaction Protocols.* The Board 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 Persons 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 by the Board of Trustees, or an authorized committee thereof, as appropriate:
  - (a) Conflicts of Interest,
  - (b) possible Conflicts of Interest for a determination as to whether a conflict exists, and,
  - (c) Related Party Transactions,
- ii. *Restrictions.* stipulations that when the Board of Trustees, or an authorized committee, as appropriate, is considering a real/potential Conflict of Interest or Related Party Transactions, 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 2. *Conflicts of Interest & Related Party Transaction Conflicts Policy.* The Conflicts of Interest and Related Party Transaction Policy of the Corporation, required in order to comply with the mandates of Section 2 of this Article, is annexed hereto and made a part hereof as **Appendix “B.”** This policy may only be amended, modified, or repealed by a two-thirds majority vote of the 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 3. *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 4. *Whistleblower Protection Protocols.* The Corporation shall endeavor to protect any “Trustee,” “Officer” or employee, including any “Key Employee” (each as defined by statute) or volunteer who provides substantial services to the Corporation, from intimidation, bullying, harassment, discrimination or other forms of retaliation on the part of the Corporation, or any of its Trustees, Officers, employees, including Key Employees, or volunteers, as a consequence of the good-faith filing of a report relative to possible violations of any statute, regulation, applicable ethical standard or policy or procedure of the Corporation. Should the Corporation have twenty (20) or more employees (full-time, part-time, or a combination thereof) and annual revenue exceeding one million dollars (\$1,000,000), and/or, otherwise, be mandated by applicable statute, regulation and/or contractual obligation, the Corporation shall adhere to the terms of a written Whistleblower Protection Policy, which, in the absence of such considerations, shall be considered advisable, but not required.

## **ARTICLE X.**

### **Indemnification of Trustees, Officers & Employees**

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

## ARTICLE XI.

### Fundamental Corporate Changes

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

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

Section 3. *Creation of Corporate Affiliate Relationship.* This Corporation may enter into an Affiliate (as defined by statute) relationship, 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 majority vote of the Trustees present at any Annual Meeting, Regular Meeting, or Special Meeting called for that purpose.

Section 4. *Merger or Consolidation.* This Corporation may be merged or consolidated by a two-thirds majority vote of the Trustees present at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose, provided all statutory approvals are subsequently secured and any Certificate of Merger or Consolidation is accepted for filing by the New York Department of State.

Section 5. *Dissolution.*

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

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

## 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) **Director**- means any member of the governing board of the Corporation, whether designated as director, 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, Director, employee or volunteer of the Corporation or has a Relative who is such an individual.
- 6) **Independent Director** - means a Director who:
  - i. is not, and has not been within the last three (3) years, an Employee or Key Person 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 Person (as defined by these By- Laws) of the Corporation or an Affiliate;
  - ii. has not received, and does not have a Relative who has received, in any of the last three (3) fiscal years, more than ten thousand dollars (\$10,000) in direct compensation from the Corporation or an Affiliate (other than reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director if permitted by statute and regulation);
  - 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 provided payments, property or services to, or received payments, property or services from, the Corporation or an Affiliate of the Corporation if the amount paid by the Corporation or the entity, or received by the Corporation from the

entity for such property or services, in any of the last three (3) fiscal years, exceeded the lesser of:

- a. ten thousand dollars (\$10,000) or two percent (2%) of such entity's consolidated gross revenues, if the entity's consolidated gross revenue was less than five hundred thousand dollars (\$500,000);
  - b. twenty-five thousand dollars (\$25,000), if the entity's consolidated gross revenue was five hundred thousand dollars (\$500,000) or more but less than ten million dollars (\$10,000,000);
  - c. one hundred thousand dollars (\$100,000), if the entity's consolidated gross revenue was ten million dollars (\$10,000,000) or more; or.
- iv. is not and does not have a Relative who is a current owner, whether wholly or partially, Director, 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 “compensation” does not include reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director;
  - 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, or payments made by the Corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Corporation are available to individual members of the public on the same terms, and such services received by the Corporation are not available from another source.

**7. Key Person** - means any person, other than a Trustee or Officer, whether or not an employee of the Corporation, who:

- i. has responsibilities, or exercises powers or influence over the Corporation, as a whole in a manner similar to the responsibilities, powers, or influence of Trustee and Officers;
- ii. manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or,
- iii. alone, or with others, controls or determines a substantial portion of the Corporation's capital expenditures or operating budget.

**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 Trustee 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 director, trustee, manager, governor, or by any other title, any individual holding an office of the Corporation identified in the Certificate of Incorporation and/or By-Laws.

**11. 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 & Related Party Transaction 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 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 transaction, or the Related Party’s financial interest in the transaction is *de minimis*;
  - ii. the transaction would not customarily be reviewed by the Board in the ordinary course of business and is available to others on the same or similar terms; or
  - iii. the transaction constitutes a benefit provided to a Related Party solely as a member of a class of the beneficiaries that the Corporation intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

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 (of the Corporation or any Affiliate), as defined by statute;
  - ii. Director (of the Corporation or any Affiliate), as defined by statute;
  - iii. Key Person (of the Corporation or any Affiliate), as defined by statute;
  - iv. founder of the Corporation;
  - v. individual who has made substantial monetary contributions to the Corporation;
  - vi. Relative of an Officer, Director, Key Person, founder or substantial contributor;
  - vii. entity where an Officer, Director or Key Person, founder or substantial contributor or a Relative thereof, directly or indirectly, holds a thirty-five percent (35%), or greater, ownership or beneficial interest; or,
  - viii. partnership or professional corporation where an Officer, Director or Key Person, founder or substantial contributor or a Relative thereof, directly or indirectly, has an ownership interest in excess of five percent (5%).



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

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

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

If at any time during his or her term of service, a Director, Officer or Key Person 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 & 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, Director or Key Person of this Corporation, or a Relative thereof, all as defined by statute, as an officer, director or employee, 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.

### ***7. Standard of Review.***

For purposes of this policy, amongst the considerations of the Board of Trustees, the Audit & 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.

### ***8. 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, or an authorized committee thereof, to be fair, reasonable and in The Corporation's best interest at the time of such determination.

**9. *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 & 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 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.

**10. *Restrictions.***

With respect to any Conflict of Interest and/or Related Party Transaction, or any other conflicted matter, considered by the Board, the Audit & 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.

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

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

## **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 Director, Officer and Key Person (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 corporate compliance with respect to all 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
- 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 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

#### **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 good faith, on behalf of the best interests of the Corporation
- 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 Director’s affiliation with the Corporation.
- publicly support and represent the duly made decisions of the Board
- 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.**

- maintain open communication and an effective partnership with the Corporation’s Officers and various committees, if any
- 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

**—Annual Potential Conflicts Disclosure Statement—**

As a Trustee or Officer or Key Person 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.

***Please circle ‘Yes’ or ‘No’ & provide additional information when requested***

**Financial Information Return Disclosure**

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

1. Have you served as an Officer, Director, Trustee, Key Person, 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 exceeding 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?

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

2. Have you, individually, or through an entity where you hold a thirty-five percent (35%) or greater ownership or beneficial interest, 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,” “Director” or “Key Person?”

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

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**, attach a detailed explanation of the circumstances.

4. Have you, or did you have a Relative who, during the most recently completed, or current, fiscal year, had, or is reasonably anticipated to have, any transaction with the Corporation that might reasonably be considered a real or potential conflict of interest pursuant to the Corporation’s Board of Trustees Conflicts of Interest Policy, which has not been otherwise disclosed herein?

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

5. The Corporation relies upon a comprehensive written Conflicts of Interest & Related Party Transaction Policy, has the Board of Trustees neglected to provide you with a current draft of this policy or a sufficient opportunity to review and discuss its terms?

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

## Independent Director Assessment Disclosure

*Please circle 'Yes' or 'No' & provide additional information when requested*

In order to qualify as an "Independent Director," as defined by statute, an Officer or Director must respond in the ***negative*** to each of the following questions, although failure to respond to all questions in the negative shall not necessarily preclude such an Officer or Director from serving on the Board of Trustees.

1. Are you currently, or have you been within the last three (3) fiscal years, an Employee or a Key Person of the Corporation, or an Affiliate of the Corporation?

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

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

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

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

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

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

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

5. Are you, or a Relative, a current officer or employee of, or have a substantial financial interest in, any entity that has provided payments\* (see notes below), property or services to, or received payments, property or services from, the Corporation, or an Affiliate of the Corporation, if the amount paid by the Corporation, or an "Affiliate," to the entity or received by the Corporation, or an Affiliate, from the entity for property or services, within the last three (3)-fiscal years, exceeded the lesser of ten thousand dollars (\$10,000) or two percent (2%) of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than five hundred thousand dollars (\$500,000); twenty-five thousand dollars (\$25,000) if the entity's consolidate gross revenue was five hundred thousand dollars (\$500,000) or more but less than ten million dollars (\$10,000,000); one hundred thousand dollars (\$100,000) if the entity's consolidate gross revenue was ten million dollars (\$10,000,000) or more?

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

6. Are you, or a Relative, a current owner (wholly or partially), Director, Officer or Employee of the Corporation's outside auditor, or have otherwise worked on the Corporation's outside audit at any time during the past three (3) fiscal years?

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

—*Certification*—

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title (Officer or Director)

\* *Note: for purposes of the Questions above, the 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, or payments made by the Corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Corporation are available to individual members of the public on the same terms, and such services received by the Corporation are not available from another source.*

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

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

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

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

The Corporation shall not indemnify any person if a judgment, or other final adjudication, adverse to any Indemnified Person establishes, or the Board of 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 Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested 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 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 Director, Officer, employee or volunteer to provide them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article, subject to the limitations of Section 2 herein.