

**DRAFT BYLAWS**

**OF THE**

**CENTRAL FULTON STREET**  
**DISTRICT MANAGEMENT ASSOCIATION, INC.**  
(d/b/a Fulton Area Business (FAB) Alliance)

**Prepared by Lawyers Alliance for New York**  
**in partnership with the New York City Department of Small Business Services**

**DRAFT**  
**For Consideration and Adoption by the board of the**  
**Central Fulton Street District Management Association, Inc**

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**ARTICLE I**

OFFICES

The principal office of the Central Fulton Street District Management Association, Inc. (the “Corporation”) shall be located at [\_\_\_\_\_], [\_\_\_\_\_], New York, or at such other location as the Board of Directors (collectively, the “Board” or the “Directors” and individually, each a “Director”) from time to time may determine.

**ARTICLE II**

MEMBERS

Section 2.1. Classes of Members. The Corporation shall have three (3) classes of voting members, and one (1) class of non-voting members and individuals may only be a member of one (1) class.

- (a) Class A: Owners of record of real property within the geographical boundaries of the NYC Business Improvement District (the “District”), which owners have applied for membership by submitting the necessary information at the principal office of the Corporation (or such other place as the Officers of the Corporation shall designate), or have registered their membership through any other manner designated by the Board, including but not limited to delivering by first class mail a completed registration card, shall be Class A members of the Corporation.

- (a) Class B: Tenants who are occupants pursuant to a lease of commercial space within the District who are not eligible for Class A membership, which tenants have applied for membership by submitting the necessary information at the principal office of the Corporation (or such other place as the Officers of the Corporation shall designate), or have registered their membership through any other manner designated by the Board, including but not limited to delivering by first class mail a completed registration card, shall be Class B members of the Corporation.
- (b) Class C: Tenants who are occupants pursuant to a lease of a dwelling unit, proprietary lessees who are occupants pursuant to a proprietary lease of residential cooperative units, and cooperative owners of residential property, all being within the District, who are not eligible for Class A or Class B membership, which tenants and proprietary lessees have applied for membership by submitting the necessary information at the principal office of the Corporation (or such other place as the Officers of the Corporation shall designate), or have registered their membership through any other manner designated by the Board, including but not limited to delivering by first class mail a completed registration card, shall be Class C members of the Corporation.
- (c) Class E: Persons or entities with significant interests within the District, such as, but not limited to, a representative appointed from a Community Board having jurisdiction over any part of the District, which person or party has applied for membership by submitting the necessary information at the principal office of the Corporation (or such other place as the Officers of the Corporation shall designate), or have registered their membership through any other manner designated by the Board, including but not limited to delivering by first class mail a completed registration card, shall be a Class E non-voting member of the Corporation.
- (d) While not members of the Corporation, Class D Directors as defined in Section 4.3 of these Bylaws shall be entitled to receive all notices sent to members, generally, and may attend and participate at all membership meetings in a non-voting capacity.

Section 2.2. Termination of Membership. Membership in the Corporation shall continue until terminated by the resignation, withdrawal or expulsion of a member or upon dissolution and liquidation of the Corporation, or upon the death of any member if such member is an individual, and upon dissolution and liquidation if such member is a corporation.

Additionally, (1) each Class A membership shall terminate when the Class A member is no longer an owner of record of real property in the District; (2) each Class B membership shall terminate when the Class B member is no longer a tenant who is an occupant pursuant to a lease of commercial space in the District; (3) each Class C membership shall terminate when the Class C member is no longer (i) a tenant who is an occupant pursuant to a lease of a dwelling unit or

(ii) a proprietary lessee pursuant to a proprietary lease of a residential cooperative unit, in the District, and , and (4) each Class E membership shall terminate (i) after two years or (ii) at such time as the Class E member's appointment by the Community Board or non-profit association or organization shall end, whichever event shall first occur.

Any right or interest of a member in the Corporation shall terminate upon the termination of its membership for any reason. Any member may resign or withdraw from the Corporation upon thirty (30) days prior notice in writing to the Corporation's Secretary. Such resignation or withdrawal shall be effective thirty (30) days from the date of said notice.

### **ARTICLE III**

#### **MEETINGS OF THE MEMBERSHIP**

Section 3.1 Annual Meeting of Members. An annual meeting of members (the "Annual Meeting of Members"), for the purpose of electing Directors and transacting such other business as may come before it shall be held annually at such date, time and place fixed by or under the Bylaws.

Section 3.2. Special Meetings. Special meetings of the membership shall be held at such time and place as may be designated in the notice of meeting, whenever called by a majority of the Board or the Chairperson of the Board. Such meetings may also be convened upon written demand by members entitled to cast ten percent (10%) of the total number of votes entitled to be cast at such meeting, who may, in writing, demand the call of a special meeting specifying the date and month thereof, which shall not be less than two (2) nor more than three (3) months from the date of such written demand. The Secretary of the Corporation, upon receiving such written demand, shall promptly give notice of the special meeting as specified below, or, if the Secretary fails to do so within five (5) business days thereafter, any member signing such demand may give notice of the special meeting.

Section 3.3. Notice of Meetings. Written notice of membership meetings, stating the place, date, and hour thereof and, unless it is the Annual Meeting of Members, stating that it is issued by or at the direction of the person or persons calling the meeting and indicating the purpose or purposes for which the meeting is called, shall be given personally or by mail or by facsimile telecommunications or by electronic mail, to each member entitled to vote at such meeting. If the notice is given personally or by first class mail or by facsimile telecommunications or by electronic mail it shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty (30) nor more than sixty (60) days before such date. If notice by fax or email: "such notice is given when directed to the member's fax number or electronic mail address as it appears on the record

of members, or, to such fax number or other electronic mail address as filed with the corporation's leadership.”

Notice shall not be deemed to have been given electronically if the Corporation is unable to deliver two consecutive notices to the member by facsimile telecommunication or electronic mail; or the Corporation otherwise becomes aware that notice cannot be delivered to the member by facsimile telecommunications or electronic mail.

If, at any time, the membership of the Corporation shall exceed 500 members, then notice may be served by publication in lieu of mailing, in a newspaper published in [\_\_\_\_\_] County once a week for three (3) successive weeks next preceding the date of the meeting, provided that the corporation shall also prominently post notice of such meeting on the homepage of any website maintained by the corporation continuously from the date of publication through the date of the meeting.

The Corporation shall send notice of meetings by first class mail to any member who requests in writing that such notices be sent by such method.

Notice of a meeting need not be given to any member who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting prior to its conclusion the lack of notice of such meeting. Waiver of notice may be written or electronic. If the waiver is written, it must be signed by the member. If the waiver is electronic, it must be able to be reasonably determined to have been sent by the member.

Section 3.4. Record Date. The Board may fix a date as the record date for determining the members entitled to receive notice of, and vote at, any meeting of members; such date shall be not less than ten (10) nor more than fifty (50) days before the meeting. In the event no record date is fixed, the record date for the determination of the members entitled to vote at a meeting of members shall be the close of business on the day before the day on which notice is given. Membership as of the record date will be used to determine quorum and eligibility to vote. If any eligible person is not registered as a member in accordance with these Bylaws or in any other manner proscribed by the Board as of any record date for any particular meeting, then they will not be eligible to vote at such meeting.

Section 3.5. Quorum. Except as otherwise provided by law or in the Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”) or in these Bylaws, the presence, in person or by proxy, of members entitled to cast ten percent (10%) of the total number of votes entitled to be cast or one hundred votes, whichever is lesser, shall constitute a quorum at meetings of members, and the act of a majority of the voting members present at any meeting shall be the act of the members. A member which is a firm or corporation will be deemed to be present if it is represented by a partner or Officer or other proxy. The presence of Class E non-voting members shall be disregarded for quorum purposes.

Section 3.6. Voting. At any meeting of the members, each member present, in person or proxy, and entitled to vote, shall be entitled to one (1) vote.

*[NOTE: By way of clarification, if a person owns multiple properties within the District and such properties are held of record by separate legal entities such as partnerships or limited liability companies, each such entity shall be entitled to its own vote as a Class A member, irrespective of the fact that a single person is the beneficial or ultimate owner of all such properties].*

*[NOTE: The concept of “one person, one vote” is a statutory requirement under New York law. A limited exception, however, is afforded to Class A members by virtue of Section 980-m of the New York General Municipal Law which permits such members to adopt a “weighted voting” methodology. “One person, one vote” is viewed, generally, as a “best corporate governance practice” and is highly recommended.]*

Section 3.7. Vote of Members. Except as otherwise provided by law or in the Certificate of Incorporation or in these Bylaws, and except for the election of Directors, at any meeting of members duly called and held and at which a quorum is present, any corporate action authorized by a majority of the votes cast by members entitled to vote thereon, shall constitute an act of the members.

Section 3.8. Special Actions Requiring Vote of Members. The following corporate actions may not be taken without the specified approval of the members:

- (a) a plurality of the votes cast at a duly constituted meeting of members by the members of the class entitled to vote is required for the election of the Directors of the Corporation representing that class;
- (b) a majority of the votes cast at a meeting of the members is required for (i) a petition for judicial dissolution, or (ii) any amendment of or change to the Corporation’s Certificate of Incorporation; provided, however, that the Board may amend or change the Certification without the necessity of a membership vote if:
  - (1) there are no members entitled to vote thereon;
  - (2) the purpose of the amendment is to specify or change the location of the Corporation’s office or the post office address to which the secretary of state shall mail a copy of any process against the Corporation served upon him or her; or
  - (3) the purpose of the amendment is to make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

- (c) two-thirds of the votes cast at a meeting of the members is required for (i) disposing of all, or substantially all, of the assets of the Corporation, (ii) approval of a plan of merger, (iii) authorization of a plan of non-judicial dissolution, or (iv) revocation of a voluntary dissolution proceeding, provided, however, that the affirmative votes cast in favor of any action described in this subsection (c) shall be at least equal to the minimum number of votes necessary to constitute a quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

Section 3.9. Adjournment. If a quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person or represented by proxy, shall have the power by a majority of the votes so represented to adjourn the meeting from time to time, with notice at the meeting, of the date, time and place of the adjourned meeting and notification shall be given to any voting member not present at the meeting being adjourned.

Subject to any further notice being required by law, at any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted on the original date of the meeting.

Section 3.10. Proxies. Every member entitled to vote at a meeting of members or to express consent or dissent without a meeting may authorize another voting member or members to act for such member by proxy. Every proxy must be in writing and signed by the member or member's duly authorized officer, director, employee or agent, or by email and set forth information from which it can reasonably be determined that the proxy was authorized by that member. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided by law. For the purposes of conducting meetings, all proxies shall be delivered to the Secretary of the Corporation or, upon the absence of the Secretary, the presiding member appointed to act as secretary of the meeting.

Section 3.11. Action without a Meeting. Any action required or permitted to be taken by members at a meeting of the membership, may be taken without a meeting, without prior notice and without a vote, upon the consent of all of the members entitled to vote thereon, which consent shall set forth the action so taken. Such consent may be written or electronic. If the consent is written, it must be signed by the member. If the consent is electronic, it must be able to be reasonably determined to have been sent by the member.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 4.1. General Powers. The business of the Corporation shall be managed by its Board, which shall have general supervision of the Corporation, including all powers not expressly reserved to the membership or expressly granted to others by its Certificate of Incorporation or these Bylaws.

Section 4.2. Size of the Board. The number of voting Directors which shall constitute the Board shall be not less than thirteen (13) and not more than [ ( )], which number shall be set by resolution adopted by a majority [two-thirds (2/3)] of the entire Board, but in no event shall the number of Directors be less than thirteen (13) nor shall the Directors elected by the Class A members constitute less than a majority of voting Directors. As used in these Bylaws the phrase “entire Board” shall mean all of the voting members that would be on the Board assuming no vacancies.]

Section 4.3. Election/Appointment of Directors. Directors shall be elected in accordance with the provisions of Section 3.8 of these Bylaws. The members of Class A shall elect not less than a majority of voting Directors to represent them on the Board from among their number or, if any member be a corporation, partnership, limited liability company or other entity, from among the representatives of such member. The members of Class B shall elect not less than one (1) voting Director to represent them on the Board from among their number or, if any member be a corporation, partnership, limited liability company or other entity, from among the representatives of such member. The members of Class C shall elect not less than one (1) voting Director to represent them on the Board from among their number or, if any member be a corporation, partnership, limited liability company or other entity, from among the representatives of such member. In addition, One voting Director shall be appointed, *ex officio*, by each of the following: the Mayor of the City of New York, the Comptroller of the City of New York, the Brooklyn Borough President and the New York City Council member representing the District or, if there is more than one (1) Council Member representing the District, then, as determined by the Speaker of the New York City Council (each such appointee a “Class D Director” and, collectively, the “Class D Directors”).

Section 4.4. Non-Voting Directors. The number of Class E Directors to be elected to the Board shall be set by resolution adopted by a majority of the entire Board. Class E Director-nominees shall be selected by the Class E members from among their number in such a manner as shall be determined by the Class E members. Class E Directors shall have no voting rights and their presence at Board meetings shall be disregarded for quorum purposes.

Section 4.5. Alternates. Each Class A, Class B and Class C Director, as well as each public official entitled to elect or appoint one (1) or more Directors as set forth in Section 4.3 of these Bylaws, may elect or appoint an alternate for each such Director. In the absence of such a Director from a meeting of the Board, his or her alternate may, upon written notice to the



Secretary of the Corporation, attend such meeting and exercise therein the rights, powers and privileges of the absent Director. When so exercising the rights, powers, and privileges of the absent Director, such alternate shall be subject in all respects to these Bylaws and the applicable law governing Directors.

The Board may designate one or more Directors as alternate members of any Committee of the Board, who may replace any absent member or members at any meeting of such committee.

*Section 4.[ ] Classification of Directors; Terms of Office. The Directors shall be classified, with respect to the terms for which they severally hold office, into two classes, as follows: Class I to hold office initially for a term expiring at the next succeeding annual meeting of the membership, and Class II to hold office initially for a term expiring at the second succeeding annual meeting of the membership, with the Directors of each class to hold office until their successors are duly elected and qualify. At each annual meeting of the membership, the successors to the class of Directors whose term expires at such meeting shall be elected to hold office for a term expiring at the annual meeting of the membership held in the second year following the year of their election. The Directors in each class shall be as follows:*

*majority of Class A Directors);*

*Class II: One half of all Class A Directors (or, if not evenly divisible, the minority of Class A Directors);*

*All Class B Directors;*

*All Class C Directors; and*

*All Class E Directors]*

Section 4.6. Vacancies, Resignations and Removals. Any vacancy created by the death, resignation or incapacity to act of a Director elected by the Class A, B, or C members shall be filled by a plurality of the votes cast at a duly constituted meeting of members, by the class of members entitled to vote. In the event of a vacancy created by the death, resignation or incapacity to act of a Class D Director, the official empowered to appoint such Director shall appoint a new Class D Director. In each of the foregoing circumstances, if a vacancy remains unfilled for six (6) months after it occurs, or by reason of the absence, illness or other inability of one or more of the remaining Director, a quorum of the Board cannot be obtained, the remaining Directors, or a majority of them, may appoint a Director to fill such vacancy. A Director elected or appointed to fill a vacancy shall hold office until the next annual meeting at which the election of Directors is in the regular order of business, and until the election (or appointment) and

qualification of a successor. Any vacancy created by the death, resignation or incapacity to act of a Director elected by the Class E members shall be filled in such in a manner as shall be determined by the Class E members.

Any Director may resign by a notice in writing to the Chairperson or Secretary. The acceptance of any such resignation, unless required by the terms thereof, shall not be necessary to make the same effective.

Any Class A, B, C or E Director may be removed at any time with or without cause by the vote of the class of members which elected such Director. For the avoidance of doubt, where a Director fails to attend three (3) consecutive meetings of the Board, and was not excused from such meetings and failed to have a duly elected alternative pursuant to Section 4.5 attend in his or her stead, such failure to attend shall constitute cause for the purposes of this Section 4.6. A Class D Director may be removed with or without cause by the public official who appointed such Director. Additionally, the fact that a public official who first appointed a Class D Director to the Board no longer holds an office which entitles him or her to appoint a member to the Board shall not terminate the Class D Director's service as a member of the Board unless and until the succeeding public official empowered to make an appointment to the Board shall appoint his or her successor, whereupon such Class D Director shall be deemed to have been removed from the Board. .

Section 4.7. (a) Committees. The Board, by a resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee, a Nominating Committee, a Finance Committee, an Audit Committee, and such other committees of the Board as the Board from time to time may find appropriate (collectively, "Committees of the Board" and individually, each a "Committee of the Board"). Each Committee of the Board shall (i) consist of at least three (3) Directors and (ii) to the extent provided in the resolution establishing such committee, have the authority of the Board, except that no such committee shall have authority as to the following matters:

- (i) The submission to members of any action requiring members' approval under the laws of the State of New York;
- (ii) The filling of vacancies in the Board or in any committee;
- (iii) The fixing of compensation of the Directors for serving on the Board or on any Committee of the Board;
- (iv) The amendment or repeal of these Bylaws or the adoption of new Bylaws; and
- (v) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

(b) Executive Committee. The Executive Committee shall be composed of all of the Officers (who are also Directors) of the Corporation, with a minimum of (3) Directors. The

Chairperson of the Board shall serve as the Chairperson of the Executive Committee. The Executive Committee shall have and may exercise all of the powers of the Board when the Board is not in session, provided that the Executive Committee shall be at all times accountable to and subject to the control of the Board, and provided further that the Executive Committee shall have no authority as to (1) any of the matters contained in clauses (i) through (v) of subsection (a), above, and (2) the removal of Directors.

(c) Nominating Committee. The Nominating Committee shall be chaired by any Director other than the Chairperson and composed of those Officers (who are also Directors) of the Corporation who, by written notice to the Chairperson, elect to be members of the Committee and, at the discretion of the Chairperson, no less than two (2) Directors appointed by the Chairperson, subject to the approval of the Board. The Nominating Committee shall be responsible for preparing a slate of candidates for the Board from those classes of members which elect Directors.

(d) Finance Committee. The Finance Committee shall be chaired by the Treasurer and composed of those Officers (who are also Directors) of the Corporation who, by written notice to the Chairperson, elect to be members of the committee, and at the discretion of the Chairperson, no less than two (2) Directors appointed by the Chairperson, subject to the approval of the Board. In addition, the Directors appointed by the Mayor and the Comptroller shall be members of the Finance Committee. The Finance Committee shall formulate financial policies for review and approval by the Board; shall formulate an annual Budget containing a complete plan of proposed yearly expenditures and estimated revenues for each fiscal year of the Corporation for approval by the Board; and shall conduct such other activities as are assigned to it from time to time by the Board.

(e) Audit Committee To serve as a member of the Audit Committee, all members including the Chairperson must be qualified as “Independent Directors” as defined in the NY Not-For-Profit Corporation Law. The Audit Committee shall be composed of at least three Independent Directors appointed by the Chairperson. The Audit Committee shall be chaired by a member of the Audit Committee selected by vote of its members. In addition, the Class D Director appointed by the Mayor shall be a member of the Audit Committee. The Audit Committee, among other matters shall:

- (i) Review and select an independent auditor for the Corporation;
- (ii) Review with the independent auditor the scope and planning of the audit prior to its commencement;
- (iii) Upon completion of the audit, review and discuss with the independent auditor:

- Any material risk and weaknesses in internal controls identified by the auditor;
- Any restrictions placed on the auditor’s activities or access to information;
- Any significant disagreements between the auditor and the Corporation’s management;
- The adequacy of the Corporation’s accounting and financial reporting processes;
- Annually consider the performance and independence of the auditor;
- Review the financial controls developed and implemented by the Executive Director and other employees of the Corporation; and
- Receive and make recommendations to the Board regarding (1) conflicts of interest reported pursuant to the Corporation’s conflict of interest policy, and (2) complaints asserted pursuant to the Corporation’s “whistleblower” policy.

(f) Other Committees of the Board. The Chairperson shall designate subject to the approval of the Board, from among the members of the Board, other Committee of the Board, each consisting of three (3) or more Directors, as the Chairperson may deem appropriate. The Chairperson may be a non-voting member, *ex-officio*, of each Committee of the Board. The Chairperson may appoint non-voting members (who are Directors) to any such Committee. Each committee shall serve at the pleasure of and be responsible to the Chairperson and to the Board.

(g) Committees of the Corporation. The Board may appoint from time to time any number of persons as a committee of the Corporation (collectively, “Committees of the Corporation” or individually, each a “Committee of the Corporation”), each consisting of at least three (3) or more persons appointed by the Board, and may, but are not required to include Directors. No Committee of the Corporation shall have the power to bind the Corporation, and each such committee and its members shall have only such authority or obligations as the Board may from time to time determine. Each member of a Committee of the Corporation shall serve at the pleasure of the Board. Membership on a Committee of the Corporation shall not convey to any member any power, duty or responsibility of a Director nor constitute membership on the Board.

(h) Committee Procedures. Unless otherwise provided by the Board or these Bylaws, each committee shall have the power to determine the times, places and manner of calling their meetings and their rules of procedure. At every meeting of a committee a quorum must be present in person or by proxy for the transaction of business. A quorum shall consist of the lesser of three (3) or one-half of the members of the committee entitled to vote. Action by committee may be taken upon the affirmative vote of a majority of members present and entitled to vote; provided, however, that any committee may establish a greater than majority voting requirement. Each Committee shall keep minutes of its meetings and report the same to the Board.

Section 4.8. Meetings. Meetings of the Board shall be held at the principal office of the Corporation or at such other place as may be designated by the person or persons calling the meeting. An annual meeting of the Board (the “Annual Board Meeting”) will follow the Annual Meeting of Members. Officer elections shall take place at the Annual Board Meeting. Special meetings of the Board may be called at any time by the Chairperson or a majority of the Directors. Any one or more Directors, or any Committee of the Board, may participate in a meeting of the Board, or a Committee of the Board, by means of a conference telephone or similar communications equipment, or by electronic video screen communication. Participating by such means shall constitute presence in person at a meeting so long as all persons participating can hear each other at the same time and each Director can participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

Section 4.9. Notice of Meetings. Written notice of Board meetings, stating the place, date, and hour thereof and, unless it is the Annual Board Meeting, stating that it is issued by or at the direction of the person or persons calling the meeting and indicating the purpose or purposes for which the meeting is called, shall be provided to each Director then in office at least [three (3)] calendar days in advance of the day on which the meeting is to be held by (i) electronic mail; (ii) facsimile; or (iii) mail, postage pre-paid, addressed to such Director at his or her residence or usual place of business (or such other address as he or she may have designated in a written request filed with the Secretary at least seven (7) calendar days before the day on which the meeting is to be held). Notice of a meeting need not be given to any Board member who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting prior to its conclusion the lack of notice of such meeting. Waiver of notice may be written or electronic. If the waiver is written, it must be signed by the Board member. If the waiver is electronic, it must be able to be reasonably determined to have been sent by the Board member.

Section 4.10. Quorum and Voting. At every meeting of the Board a quorum must be present for the transaction of business. Except as otherwise provided by law or in the Certificate of Incorporation or these Bylaws, if the Board consists of fifteen members or less, the quorum

shall be one-third of the entire Board, and if the Board consists of more than fifteen members, the quorum shall be five Directors plus one (1) additional Director for every ten Directors (or fraction thereof) in excess of fifteen. Action at any Board meeting may be taken upon affirmative vote by a majority of Directors present and entitled to vote. Each Director shall have one vote, with the exception of Class E Directors who shall have no voting power. A Director should represent only one (1) class and each Director shall not be entitled to more than one (1) vote.

Section 4.11. Adjournment. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time and place, and the meeting may be held without further notice or waiver, except that notification shall be given to any Director not present at the meeting being adjourned.

Section 4.12. Action without a Meeting. Except as otherwise provided in the Certificate of Incorporation or by these Bylaws, any action required or permitted to be taken at any meeting by the Board or any Committee of the Board, may be taken without a meeting, without prior notice and without a vote, upon the consent of all of the members of the Board or Committee of the Board entitled to vote thereon, which consent shall set forth the action so taken. Such consent may be written or electronic. If the consent is written, it must be signed by the Board member. If the consent is electronic, it must be able to be reasonably determined to have been sent by the Board member.

Section 4.13. Annual Report of Directors. (a) At each Annual Meeting of Members, the Board shall present a report verified by the Chairperson and Treasurer or by a majority of Directors, called the Annual Report. The Annual Report shall comply with all provisions of the NY Not-For-Profit Corporation law and may include, without limitation, the following:

- (i) the assets and liabilities of the Corporation as of the end of a twelve (12) month fiscal period terminating not more than six (6) months prior to the meeting;
- (ii) the principal changes in assets and liabilities during the fiscal period;
- (iii) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes for that fiscal period;
- (iv) the expenses or disbursements of the Corporation, for both general and restricted purposes for said fiscal period; and
- (e) the number of members of the Corporation as of the date of the report, together with a statement of any increase or decrease in such number during said fiscal period, and a statement of the place where the names and addresses of the current members may be found.

(b) The Annual 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 Annual Meeting of

Members. The Annual Report shall be put before the membership at the Annual Meeting of Members for their acceptance. Given that a quorum is achieved, a majority of votes cast in favor of accepting the Annual Report shall result in such report being accepted. Every member shall be notified at least thirty (30) days prior to the Public Annual Meeting that a copy of the Annual Report is available for inspection or copying at the offices of the Corporation.

Section 4.14. Compensation. Directors shall not receive any compensation for their services as Directors or committee members. Subject to the Corporation's Conflicts of Interest Policy and provided that there is full disclosure of the terms of such compensation and the arrangement has been approved by the Board, this shall not in any way limit reimbursement of or payment for services provided to the Corporation (i) by the Director in any capacity separate from his or her responsibilities as a Director, or (ii) by any organization with which a Director is affiliated. Directors may be reimbursed for their reasonable expenses of attendance at any meetings or other functions of the Corporation or the Board, or any committee thereof. Any compensation agreement shall be filed in the minutes of the Board and included in the Annual Report.

## ARTICLE V

### OFFICERS

Section 5.1. Appointment of Officers. The Board shall appoint the officers of the Board and of the Corporation (collectively, the "Officers" and individually, each an "Officer"). Such Officers shall include, at a minimum, a Chairperson (who shall not be an employee of the Corporation), a Vice Chairperson, a President/Executive Director, a Treasurer, and a Secretary, and may include such other officers as the Board from time to time shall find appropriate. The Officers shall exercise the powers and perform the duties designated in these Bylaws and such other duties that usually pertain to their respective offices or as are properly delegated or assigned to them from time to time by the Board or Chairperson. Each Officer shall hold office for one (1) year (or such other term as prescribed by the Board) and until a successor has been appointed and qualified.

#### Section 5.2. Powers and Duties.

- (a) Chairperson: The Chairperson shall preside at all meetings of the Board and/or members, have the power and authority to sign for the Corporation all deeds and other instruments, and to perform such acts as usually pertain to the office of Chairperson. The Chairperson (provided he or she is also a Director) shall be the chair of the Executive Committee pursuant to Section 4.7.

- (b). Vice- Chairperson: The Vice Chairperson shall have such powers and duties as may be assigned to him or her by the Board. In the absence of the Chairperson, the Vice-Chairperson shall perform the duties of the Chair until such time as the Chairperson shall return to duty or the Board shall have elected a new Chair.
- (c) President/Executive Director: The President/Executive Director, who shall be the chief member of the Corporation's professional staff, shall manage the affairs of the Corporation on behalf of and at the direction of the Board, and shall serve at the will of the Board, except as provided to the contrary by contract. The President/Executive Director is authorized to employ and discharge any other employee of the Corporation, and to execute instruments of all kinds on behalf of the Corporation in the ordinary course of business.
- (d) Secretary: The Secretary shall keep minutes of the proceedings of the Board, and shall give or cause to be given, all notices in accordance with the provisions of these Bylaws or as required by law. The Secretary shall be custodian of the corporate records, custodian of the corporate seal, maintain membership rolls and in general shall perform all the duties incident to the office of Secretary and such other duties as may be assigned by the Board.
- (e) Treasurer: The Treasurer shall have the custody of the Corporation's funds, and shall keep correct and complete books and records of account. The Treasurer will make all books and records available to any Director upon request. The Treasurer shall prepare and certify all financial reports of the Corporation, or cause the same to be prepared and certified by a firm of certified public accountants, and in general shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board. The Treasurer (provided that he or she is also a Director) shall be chair of the Finance Committee pursuant to Section 4.7(d).

Additionally, all of the Officers (provided that they are also Directors) shall be members of the Executive Committee pursuant to Section 4.7(b).

Section 5.3. Removals. Any Officer may be removed with or without cause by a majority vote of the Board. The removed Officer may be replaced by a majority vote of the Board.

## **ARTICLE VI**

### AMENDMENTS



These Bylaws may be amended by the Board, provided that written notice of the amendment has been sent to each voting member of the Corporation with conspicuous notification in the notification for the subsequent Annual Meeting of Members. Bylaw amendments may be repealed at the Annual Meeting of Members by those members entitled to vote at the record date.

If any Bylaw regulating an impending election of Directors is adopted, amended, or repealed by the Board, there shall be set forth in the notice of the next Annual Meeting of Members of the members, the Bylaw so adopted, amended, or repealed, together with a concise statement of the changes made.

## **ARTICLE VII**

### **INDEMNIFICATION**

The Corporation shall, to the fullest extent permitted by law, purchase and maintain insurance to indemnify its Directors or Officers and indemnify and advance expenses to each individual made, or threatened to be made, a party to any action by reason of the fact that such individual, or his or her testator, is or was a Director or Officer of the Corporation or served any other corporation or entity at the request of the Corporation. No indemnification may be made to or on behalf of any such person if (a) his or her acts were committed in bad faith or were the result of his or her active and deliberate dishonesty and were material to such action or proceeding or (b) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled in the transaction or matter in which indemnification is sought.

## **ARTICLE VIII**

### **INVESTMENTS**

Section 8.1. Investments and Proxies. The Board shall have the power to make investments of the funds of the Corporation and to change the same and may sell, from time to time, any part of the securities of the Corporation or any rights or privileges that may accrue thereon.

Section 8.2. Transfer and Assignment. The Board may authorize any Officer, Director or other person or persons to execute such form of transfer or assignment as may be customary or necessary to constitute a transfer of bonds or other securities in the name of or belonging to the Corporation. A corporation or person transferring any such bonds or other securities pursuant to a form of transfer or assignment so executed shall be fully protected and shall not have any duty to inquire whether or not the Board has taken action in respect thereof.

Section 8.3. Loans. The Corporation will not enter into any loans without the approval of the Board.

## **ARTICLE IX**

### MISCELLANEOUS

Section 9.1. Fiscal Year. The fiscal year of the Corporation shall be July 1 through June 30.

## **ARTICLE X**

### DEFINITIONS

Section 10.1 Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Corporation.

Section 10.2 Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, including direct or indirect remuneration as well as gifts or favors that are not insubstantial or other arrangement involving the Corporation.

Section 10.3 Independent Director. A member of the Board of Directors (the “Board”) who:

- (a) Has not been an employee of the Corporation or an Affiliate of the Corporation within the last three years;
- (b) Does not have a Relative who has been a Key Employee of the Corporation or an Affiliate of the Corporation within the last three years;
- (c) Has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three years (not including reasonable compensation or reimbursement for services as a Director, as set by the Corporation);
- (d) Does not have a substantial Financial Interest in and has not been an employee of, and does not have a Relative who has a substantial Financial Interest in or was an

Officer of, any entity that has made payments to or received payments from, the Corporation or an Affiliate of the Corporation in excess of the lesser of: (a) \$25,000 or (b) 2% of the Corporation's consolidated gross revenue over the last three years (payment does not include charitable contribution);

(e) Is not in an employment relationship under control or direction of any Related Party and does not receive payments subject to approval of a Related Party;

(f) Does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

Section 10.4 Key Employee. A Key Employee is a person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Corporation. This includes, but is not limited to:

(a) Voting members of the Board;

(b) Presidents, chief executive officers, chief operating officers or employee of any other title with similar responsibilities;

(c) Treasurers and chief financial officers or employee of any other title with similar responsibilities; or

(d) A "highly compensated" employee, within the meaning of section 4958 of the Internal Revenue Code and guidance issued by the Internal Revenue Service, who is in a position to exercise substantial influence over the affairs of the Center.

Section 10.5 Related Parties. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation include:

(a) Directors, Officers, or Key Employees of the Corporation or an Affiliate of the Corporation;

(b) Relatives of Directors, Officers, or Key Employees;

(c) any entity in which a person in (i) or (ii) has a 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 5%;

(d) Founders of the Corporation;

(e) Substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);

(f) Persons owning a controlling interest (through votes or value) in the Corporation;

(g) Any non-stock entity controlled by one or more Key Employees.

Section 10.6 Relative. A Relative is a spouse, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half-blood), or spouse of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half-blood), or a domestic partner as defined in section 2994-A of the New York Public Health Law.

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