

BY-LAWS  
OF  
BETHEL LOCAL DEVELOPMENT CORPORATION

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**BY-LAWS  
OF  
Bethel Local Development Corporation**

**ARTICLE I  
MEMBERS**

**Section 1. Members Authorized:** The members of the Corporation shall be limited to the Directors of the Corporation. The Directors shall be appointed by the Supervisor of the Town of Bethel and shall serve (i) a term of three (3) years if not an official of the Town of Bethel or (ii) so long as such Director continues to hold the public office held at the time such person became a Director in either case or until the earlier designation by the Supervisor of the Town of a new Director to serve in such Director's stead.

**ARTICLE II  
BOARD OF DIRECTORS**

**Section 1. Power of Board and Qualification of Directors:** The Corporation shall be managed by its Board of Directors. A majority of the Board of Directors shall be officials of the Town of Bethel. Each Director shall be at least eighteen years of age.

**Section 2. Number and Term of Office:**

(a) Every Director appointed in accordance with the certificate of incorporation of the Corporation and these By-laws shall be a member of the Board of Directors. As used in this Article, "entire Board of Directors" means the total number of members of the Board of Directors entitled to vote which the Corporation would have if there were no vacancies.

(b) Each Director shall have one vote.

**Section 3. Organization:** At each meeting\_ of the Board of Directors, the Chairman, or, in the absence of the Chairman, a Vice Chairman, shall preside, or in the absence of either of such officers, a chairman chosen by a majority of the Directors present shall preside. The Secretary shall act as secretary of the Board of Directors. In the event the Secretary shall be absent from any meeting of the Board of Directors, the meeting shall select its secretary.

**Section 4. Resignations and Removal of Directors:**

(a) Any Director of the Corporation may resign at any time by giving written notice to the Chairman or to the Secretary. Such resignation shall take effect at the time specified therein or, if no time be specified, then on delivery.

(b) Any of the Directors may be removed for cause by vote of the Board of Directors, provided there is a quorum of not less than a majority of the entire Board of Directors present at the meeting of Directors at which such action is taken. Any or all of the Directors may be removed without cause by vote of the Town Board of the Town of Bethel.

**Section 5. Newly Created Directorships and Vacancies:** Newly created Directorships resulting from an increase in the number of Directors and vacancies occurring in the Board of Directors for any reason shall be filled by appointments made by the Supervisor of the Town of Bethel, regardless of their number.

## **Section 6. Action by the Board of Directors:**

(a) Except as otherwise provided by law or in these By-laws, the act of the Board of Directors means action at a meeting of the Board by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time.

(b) Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all Directors or members of the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Directors or committee members shall be filed with the minutes of the proceedings of the Board or committee. The resolution and the written consents thereto by the Directors or members of the committee may be transmitted by personal delivery, mail, fax transmission or e-mail provided any such written consent shall have affixed the signature of the Director, which signature, if delivered by fax transmission or e-mail, may be a facsimile signature

(c) Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Section 7. Place of Meeting:** The Board of Directors may hold its meetings at the principal office of the Corporation, or at such place or places within or without the State of New York as the Board of Directors may from time to time by resolution determine.

**Section 8. Annual Meetings:** As soon as practical after each annual election of Directors, the Board of Directors shall meet for the purpose of organization and the transaction of other business. Notice of such meeting need not be given. Such first meeting may be held at any other time; and if it is held at another time, notice shall be given as hereinafter provided for special meetings of the Board of Directors.

**Section 9. Regular Meetings:** Regular meetings of the Board of Directors may be held without notice at such times as may be fixed from time to time by resolution of the Board of Directors.

**Section 10. Special Meetings:** Special meetings of the Board of Directors shall be held whenever called by the Chairman, or by any two of the Directors. Notice shall be given of each Special Meeting in the manner provided below and shall indicate the purpose or purposes for which it is being called, shall also state the place, date and hour of the meeting and, unless it is an Annual Meeting, shall also indicate that it is being issued by the direction of the person or persons calling the meeting.

Notice shall be given orally, by e-mail, by telefax or by mail and shall state the purposes, time and place of the meeting. If notice is given orally, in person, or by telephone or e-mail it shall be given not less than one day prior to the meeting. Any notice given by e-mail shall have affixed the signature of the Director, which signature may be a facsimile signature. If notice is given by telefax or by mail, it shall be given not less than three days prior to the meeting.

**Section 11. Waivers of Notice:** Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. A waiver of notice may be given by a Director by e-mail if there is affixed the signature of the Director, which signature may be a facsimile signature

## **Section 12. Quorum:**

(a) A majority of the entire Board of Directors shall constitute a quorum for the transaction of business.

(b) A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice to any Director.

**Section 13. Proxies:**

(a) Every Director may authorize another Director to act by proxy.

(b) Every proxy must be signed by the Director or by his or her attorney-in-fact. 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 in writing at the pleasure of the person executing it, except as otherwise provided by law.

(c) A proxy may be delivered in person by the Director who is the proxy holder, by mail or by e-mail. Any proxy given by a Director by e-mail shall be sufficient only if there is affixed the signature of the Director, which may be a facsimile signature

**Section 14. Compensation:** Directors shall receive no compensation for their services.

**Section 15. Annual Report:** The assets and liabilities, including the trust funds, of the Corporation as of the end of the twelve-month fiscal period terminating not more than six months prior to said meeting.

(a) The principal changes in assets and liabilities, including trust funds, during said fiscal period.

(b) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes during said fiscal period.

(c) The expenses or disbursements of the Corporation for both general and restricted purposes, during said fiscal period.

(d) The number of members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period and a statement of the place where the names and places of residence of the current members may be found.

This report shall be filed with the records of this Corporation and a copy thereof entered in the minutes of the proceedings of the Annual Meeting of the Town Board of the Town of Bethel.

In the discretion of the Board of Directors, the report may be certified by an independent public accounting firm selected by the Board of Directors; the report shall, however, be so certified if requested by the Town Board of the Town of Bethel.

**ARTICLE III  
OFFICERS**

**Section 1. Number:** The officers of the Corporation shall be a Chairman, a Vice Chairman, a Treasurer, a Secretary, an Assistant Secretary and such other officers as the Board of Directors may in its discretion determine. Any two or more offices may be held by the same person, except the offices of Chairman and Secretary.

**Section 2. Term of Office and Qualifications:** Those officers whose titles are specifically mentioned in Section 1 of this Article III shall be elected by the Board of Directors at its Annual Meeting. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each officer shall extend to the first meeting of Directors following the next Annual Meeting and until the officer's successor is elected and qualified.

**Section 3. Additional Officers:** Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine.

**Section 4. Removal of Officers:** Any officer may be removed by the Board of Directors with or without cause at any time.

**Section 5. Resignation:** Any officer may resign at any time by giving written notice to the Board of Directors, or to the Chairman or to the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time be specified, then upon delivery.

**Section 6. Vacancies:** A vacancy in any office shall be filled by the Board of Directors.

**Section 7. Chairman:** The Chairman shall preside at all meetings of the sole member and of the Board of Directors at which the Chairman is present. The Chairman shall act as the chief executive officer of the Corporation and shall supervise generally the management of the affairs of the Corporation subject only to the supervision of the Board. The Chairman may execute all contracts and instruments in the name of the corporation as authorized by the Board. The Chairman shall also perform such other duties as may be assigned from time to time by the Board.

**Section 8. Vice Chairman:** In the absence or incapacity to act of the Chairman, or if the office of Chairman be vacant, the Vice Chairman shall preside at all meetings of the sole member, and shall perform the duties and exercise the powers of the Chairman, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. The Vice Chairman shall have such powers and shall perform such other duties as may be assigned by the Board of Directors or the Chairman.

**Section 9. Treasurer:** The Treasurer shall, if required by the Board of Directors, obtain a bond for the faithful discharge of his duties, in such sum and with such sureties as the Board of Directors shall require. The Treasurer shall keep and maintain the books of account and shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors. The Treasurer shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors.

**Section 10. Secretary:** It shall be the duty of the Secretary to act as secretary of all meetings of the Board of Directors, and to keep the minutes of all such meetings in a proper book or books to be provided for that purpose; the Secretary shall see that all notices required to be given by the Corporation are duly given and served; the Secretary shall keep a current list of the Corporation's Directors and officers and their residence addresses; the Secretary shall be custodian of the seal of the Corporation and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the minute book containing the minutes of all meetings of the sole member, the Board of Directors and any other meetings which may keep minutes, and of all other contracts and

documents which are not in the custody of the Treasurer of the Corporation, or in the custody of some other person authorized by the Board of Directors to have such custody.

**Section 11. Assistant Secretary:** The Assistant Secretary shall perform the duties of the Secretary in the absence or incapacity of the Secretary, or if the office of Secretary be vacant, the Assistant Secretary shall perform such duties as are imposed on the Secretary until such time as the Corporation shall appoint a new Secretary.

**Section 12. Appointed Officers:** The Board of Directors may delegate to any officer or committee the power to appoint and to remove any subordinate officer, agent or employee.

**Section 13. Assignment and Transfer of Stocks. Bonds and Securities:** The Chairman, the Vice Chairman, the Treasurer, the Secretary, the Assistant Secretary, and each of them, shall have power to assign, or to endorse for transfer, under the corporate seal, and to deliver, any stock, bonds, subscription rights, or other securities, or any beneficial interest therein, held or owned by the Corporation.

#### **ARTICLE IV CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS**

**Section 1. Execution of Contracts: Approval of Town Board:**

(a)The Board of Directors, except as in these By-laws otherwise provide, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Directors, or expressly authorized by these By-laws, no officers, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniary in any amount for any purpose.

(b)Approval and authorization of the Town Board of the Town of Bethel shall be a prerequisite to any of the following actions of the Corporation: approval of an annual operating budget; any issuance of obligations by or in the name of the Corporation the existence of which might materially affect the financial condition of the Corporation; and participation by the Corporation in any lease, mortgage or other obligation of the Corporation of any facilities of the Corporation.

**Section 2. Loans:** No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Directors.

**Section 3. Checks. Drafts. etc.:** All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 4. Deposits:** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.



## **ARTICLE V INDEMNIFICATION AND INSURANCE**

### **Section 1. Authorized Indemnification:**

(a) Unless clearly prohibited by law or Section 2 of this Article V, the Corporation shall indemnify any person ("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 or in the right of the Corporation, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this Section, (i) is or was a Director or officer of the Corporation, or (ii) in addition is serving or served, in any capacity, at the request of the Corporation, 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, and any appeal thereof.

(b) Unless clearly prohibited by law or Section 2 of this Article V, the Corporation may, pursuant to written agreement, agree to indemnify, defend, and hold harmless any person from any claims, losses, damages, liabilities, costs or expenses arising out of the performance of the Corporation pursuant to the written agreement to the extent that the claims, losses, damages, liabilities, costs or expenses are caused by the negligence, fault, act or omission of the Corporation, its employees, agents or contractors.

**Section 2. Prohibited Indemnification:** The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

**Section 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 the 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 binding, written commitment to repay the Corporation, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or Section 2 of this Article V. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

**Section 4. Indemnification of Others:** Unless clearly prohibited by law or Section 2 of this Article V, the Board of Directors may approve Corporation indemnification as set forth in Section 1 of this Article V or advancement of expenses as set forth in Section 3 of this Article V, to a person (or the testator or intestate of a person) 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.

**Section 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 of Directors shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-laws. Before indemnification can occur the Board of Directors must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article V. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable, the Board of Directors 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.

**Section 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.

**Section 7. Insurance:** The Corporation is not required to purchase Directors' and officers' liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article V or operation of law and it may insure directly the Directors, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article V as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

**Section 8. Nonexclusive Rights:** The provisions of this Article V shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Directors is authorized to enter into agreements on behalf of the Corporation with any Director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article V, subject in all cases to the limitations of Section 2 of this Article V.

## **ARTICLE VI GENERAL**

**Section 1. Office:** The office of the Corporation shall be at such place in Sullivan County, State of New York, as the Board of Directors may determine.

**Section 2. Books and Records:** There shall be kept at the office of the Corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the sole member and the Board of Directors, (3) a current list of the Directors and officers of the Corporation and their residence addresses, and (4) a copy of these By-laws.

**Section 3. Seal:** The corporate seal shall be in the form of a circle and shall have inscribed thereon the following: Bethel Local Development Corporation 1998 New York Notfor-Profit Corporation.

**Section 4. Interested Directors and Officers:** No contract or other transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more of its Directors or officers are Directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such Director or Directors or officer or officers are present at the meeting of the Board of Directors, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose:

(a) If the material facts as to such Director's or officer's interest in such contract or transaction and as to any such common Directorship, officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested Director or officers; or

(b) If the material facts as to such Director's or officer's interest in such contract or transaction and as to any such common Directorship, officership or financial interest are disclosed in good faith or known to the sole member and such contract or transaction is authorized by vote of the Town Board of the Town of Bethel.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or committee which authorizes such contract or transaction.

**Section 5. Loans to Directors and Officers:** No loans other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its Directors or officers, or to any other corporation, firm, association or other entity in which one or more of its Directors or officers are Directors or officers or hold a substantial financial interest.

**Section 6. Fiscal Year:** The fiscal year of the Corporation shall commence January 1 in each calendar year and end on December 31.

## **ARTICLE VII AMENDMENTS**

**Section 1. Amendments:** The By-laws of the Corporation may be adopted, amended, or repealed by the Corporation with the consent of the Town Board of the Town of Bethel. The By-laws of the Corporation may be amended or repealed by the Town Board of the Town of Bethel at any time.

## **ARTICLE VIII STATUTORY COMPLIANCE**

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

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

**2.1. *Procedures.*** Procedures for disclosing, addressing, and documenting Conflicts of Interest and Related Party Transactions to the Board of Directors, or authorized committee, as appropriate.

**2.2. *Restrictions.*** Stipulations that when the Board of Directors, or authorized committee, as appropriate, is considering a real/potential conflict of interest, the interested party shall not:

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

**2.3. *Definitions.*** Definitions of circumstances that could constitute a conflict of interest.

**2.4. *Documentation.*** Requirements that the existence and resolution of the conflict be documented in the records of the Corporation, including in the minutes of any meeting at which the conflict was discussed or voted upon.

**2.5. *Audit-Related Disclosure.*** Protocols to assure for the disclosures of all real or potential conflicts of interest are properly forwarded to the Audit Committee or Conflicts of Interest Committee, as appropriate, or if there is no such Audit or Conflicts Committee, to the Board of Directors, or another Committee of the Board, as appropriate.

**Section 3. *Conflicts of Interest Policy.*** The Conflicts of Interest 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*.

**Section 4. *Potential Conflicts Disclosure Statement.*** The Potential Conflicts Disclosure Statement of the Corporation required in order to comply with the mandates of Section 2.5 of this Article is annexed hereto, and made a part hereof as *Appendix C*.

**Section 5. *Audit Oversight Policy.*** If required by statute, regulation or contract, if deemed necessary and practicable by the Board of Directors, or if mandated by any empowered governmental agency, the accounts of the Corporation shall be subject to an annual audit report or audit review report prepared by an independent Certified Public Accountant to be overseen by the Board of Directors, or a designated Audit and Finance, or other Committee of the Board of Directors, comprised solely of Independent Directors, pursuant to the terms of the Audit Oversight Policy of the Corporation, a copy of which is annexed hereto, and made a part hereof as *Appendix D*.

## APPENDIX A

### By-Law & Corporate Policy Definitions

- 1. 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.
- 2. Non-Charitable.** 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.
- 3. Related Party.** A “Related Party” means (i) any Director, Officer or Key Employee of the Corporation, or any Affiliate; (ii) any Relative of any Director, Officer or Key Employee of the Corporation, or any Affiliate; or (iii) any entity in which any individual described in clauses (i) and (ii) herein has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).
- 4. Affiliate.** An “Affiliate” of the Corporation means any entity controlled by, in control of, or under common control with, the Corporation.
- 5. Director.** A “Director” means any member of the governing board of the Corporation, whether designated as director, trustee, manager, governor, or by any other title.
- 6. Officer.** An “Officer” means any director, trustee, manager, governor, or by any other title, any individual holding an office of the Corporation identified in the Certificate of Incorporation and/or By-Laws.
- 7. Key Employee.** A “Key Employee” means any person who is in a position to exercise substantial influence over the affairs of the Corporation.
- 8. Relative.** A “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.
- 9. Related Party Transaction.** 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 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.

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

**11. Independent Director.** An “Independent Director” means a Director who:

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

**12. Independent Auditor.** An “Independent Auditor” means any Certified Public Accountant performing the audit of the financial statements of the Corporation who is not, nor is any member of his/her firm, an Officer, Director, Employee or Volunteer of the Corporation or has a Relative who is such an individual.

## APPENDIX B

### Board of Directors Conflicts of Interest Policy

#### 1. Policy Definitions.

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

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

Key Employee. A “Key Employee” means any person who is in a position to exercise substantial influence over the affairs of the Corporation.

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

Related Party. A “Related Party” means (i) any Director, Officer or Key Employee of the Corporation, or any Affiliate; (ii) any Relative of any Director, Officer or Key Employee of the Corporation, or any Affiliate; or (iii) any entity in which any individual described in clauses (i) and (ii) herein has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

Related Party Transaction. 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 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.

Relative. A “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.

#### 2. Policy Requirements.

Any real, or potential, financial transaction with a “Related Party” (as defined herein), particularly any “Related Party Transaction” (as defined herein), and/or any other matter generally constituting a possible conflict of interest, with this Corporation and/or an “Affiliate” (as defined herein) must be addressed in accordance with the terms of this Board of Directors Conflicts of Interest Policy. Any Related Party Transaction, or any other conflicted 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 the majority (50%+1) of the Board of Directors, excluding any individual with voting privileges and an interest in the subject transaction or matter.

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

Prior to initial election, or upon hiring, as appropriate, and annually thereafter, each “Director,” “Officer” and “Key Employee” (each as defined herein) 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 he/she is an Officer, Director, Trustee, Member, Owner (either as a sole proprietor or a partner), 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 conflicting interest, as well as those where a “Relative” (as defined herein) might have a conflicting interest. The Secretary shall provide a copy of all completed disclosure statements to the Audit and Finance Committee or, if there is no such Committee, to the Board of Directors. A copy of each disclosure statement shall be available to any Director on request.

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

If at any time during his or her term of service, a Director, Officer or Key Employee acquires an interest, or circumstances otherwise arise, which could give rise to a real or potential Related Party Transaction, or any other conflicted matter, he or she shall promptly disclose, in good-faith, to the Board of Directors, or an authorized committee thereof, as appropriate, the material facts concerning such interest.

### **5. Conflicts Review Committee.**

Unless another standing committee should have a charge authorizing it to address the topics discussed herein, either an Audit and Finance Committee or an ad hoc Conflicts Review Committee of the Board of Directors, comprised entirely of individuals considered to meet the statutory standard of “Independent Director” (as defined herein) without an interest in the given transaction or matter, shall be duly appointed and convened by the Board to review any real or potential Related Party Transaction, or matter which might be considered to constitute a conflict of interest for a particular “Related Party” (as defined herein). If no Audit and Finance or formal Conflicts Review Committee is charged, the Board (excluding any interested Director) may act in its stead.

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

In any instance where a Related Party Transaction, or other conflicted matter, is being reviewed, and is so material that it would customarily warrant formal approval by the Board of Directors, either the Audit and Finance Committee, or an ad hoc Conflicts Review Committee, (as appropriate) shall thoroughly review the transaction or matter and submit to the Board a recommendation as whether or not it should be approved, or the Board, itself, shall thoroughly review the transaction and render a binding determination as to whether it should be to approved.

### **7. Authorization of Related Party Transactions**

The Corporation shall not enter into any Related Party Transaction, or any other conflicted matter, unless such a transaction or matter is determined by the Board to be fair, reasonable and in the Corporation’s best interest at the time of such determination.



## 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 Employee (to the extent applicable) shall adhere to the following code of conduct:

#### **By-Laws & Policies.**

- be aware of and fully abide by the constitution, bylaws, rules and regulations of the Corporation and policies of the corporation, pursuant to the New York Not-for-Profit Corporation Law (NFPCL).
- assure compliance of the Corporation with respect to all statutes, regulations and contractual requirement.
- respect and fully support the duly-made decisions of the Board of directors in accordance with their fiduciary duties of obedience and loyalty.
- respect the work and recommendations of committees who are duly charged and have convened and deliberated accordingly, pursuant to the NFPCL.
- work diligently to ensure that the board fully assumes its role as a policy-making, governing body.
- view and act towards the Chief Executive Officer as the chief administrative officer with the sole responsibility for the day-to-day management of the organization, including personnel, and for implementation of board policies and directives.

#### **Informed Participation.**

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

### **Conflict of Interest, Representation & Confidentiality.**

- represent the best interests of the corporation at all times and to declare any and all duality of interests or conflicts of interests, material or otherwise, that may impede or be perceived as impeding the capacity to deliberate or act in the good faith, on behalf of the best interests of the Corporation.
- conform to the procedures for such disclosure and actions as stated in the bylaws or otherwise established by the board, pursuant to NFPCL.
- 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 board member's affiliation with the Corporation.
- publicly support and represent the duly made decisions of the Board.
- speak positively of the organization to the Corporation members, and all current and potential stakeholders and constituencies.
- not take any public position representing the Corporation on any issue that is not in conformity with the official position of the corporation.
- not use or otherwise relate one's affiliation with the board to independently promote or endorse political candidates or parties for the purpose of election.
- maintain full confidentiality and proper use of information obtained as a result of board service in accordance with board policy or direction.

### **Interpersonal.**

- speak clearly, listen carefully to and respect the opinions of fellow board members and key staff
- promote collaboration and partnership among all members of the board.
- maintain open communication and an effective partnership with the Board's officer and committee leadership.
- remain "solution focused", offering criticism only in a constructive manner.
- not filibuster or engage in activities during meetings that are intended to impede or delay the progress and work of the board because of differences in opinion or other personal reasons.
- always work to develop and improve one's knowledge and skills that enhances one's abilities as a Director.

**—Annual Potential Conflicts Disclosure Statement—**

As a Director or Officer or Key Employee of the Corporation, prior to being seated on the Board of Directors or commencing employment with the Corporation, as appropriate, and annually thereafter, you are required to truthfully, completely and accurately disclose all information requested herein and to promptly update all such information as circumstances may change from time-to-time. With regard to this Conflicts Disclosure Statement, be advised, all material terms identified by quotation marks are defined by Appendix “A” of the By-Laws of the Corporation, which is entitled “By-Law & Corporate Policy Definitions.”

***Please mark ‘Yes’ or ‘No’ where indicated and provide additional information when requested***

**Financial Information Return Disclosure.**

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

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

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

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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 Employee” of the Corporation?

No \_\_\_\_\_ Yes \_\_\_\_\_ If Yes, briefly describe below & attach a detailed explanation.

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

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

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

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

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5. 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 Directors Conflicts of Interest Policy, which has not been otherwise disclosed herein?

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

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### **Independent Director Assessment Disclosure.**

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

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

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

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

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

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

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

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

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

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5. Are you a current officer or employee of, or do you have a substantial financial interest in, any entity that has made "payments" to, or received payments from, the Corporation or an "Affiliate" of the Corporation, for property or services in an amount which, within the last three (3) fiscal years, exceeds the lesser of twenty-five thousand dollars (\$25,000) or two percent (2%) of such entity's consolidated gross revenue. For purposes of this question, the definition the term "payments" does not include explanation

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

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6. Do you have a Relative who is a current officer or employee of, or has a substantial financial interest in, any entity that has made "payments" to, or received "payments" from the Corporation or an "Affiliate," for property or services in an amount which, within the last three (3) fiscal years, exceeds the lesser of twenty-five thousand dollars (\$25,000) or two percent (2%) of such entity's consolidated gross revenue. For such purposes of this question, the definition the term "payments" does not include charitable contributions.

No \_\_\_\_\_ Yes \_\_\_\_\_ If Yes, briefly describe & attach a detailed explanation

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

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Directors Signature

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Date

## APPENDIX D

### Audit Oversight Policy

**1. Auditing.** If required by statute, regulation or contract, if deemed necessary and practicable by the Board of Directors, or if mandated by any empowered governmental agency, the accounts of the Corporation shall be subject to an annual 011(14 report or audit review report prepared by an independent Certified Public Accountant, an “Independent Auditor” (as defined by these By-Laws). Once retained, neither the Independent Auditor, nor or a partner, associate or employee of the Independent Auditor’s firm or practice; or, a “Relative” (as defined in these By-Laws), or a partner, associate or employee of a Relative’s firm or practice, shall perform any assistance to the Corporation other than that directly related to auditing functions.

**2. Required Duties.** Should statute, regulation or contract require the Corporation to file an audit report or audit review report prepared by an independent Certified Public Accountant, an “Independent Auditor” (as defined by these By-Laws), the Board of Directors, or a designated Audit and Finance, or other, Committee of the Board of Directors, comprised solely of “Independent Directors” (as defined by these By-Laws), shall perform the following duties:

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

**3. Additional Revenue-Imposed Duties.** Should the Corporation be required to file an audit report or audit review report prepared by an Independent Auditor and in the prior fiscal year had, or in the current fiscal year reasonably expects to have, annual revenue in excess of one million dollars (\$1,000,000), by

state statute, the Board, or a designated Audit and Finance Committee, or another Committee of the Board, comprised solely of Independent Directors, shall also be required to perform the following duties:

- i. review with the Independent Auditor the scope and planning of the audit prior to the audit's commencement;
- ii. upon completion of the audit, review and discuss with the Independent Auditor:
  - a) any material risks and weaknesses in internal controls identified by the Independent Auditor;
  - b) any restrictions on the scope of the Independent Auditor's activities or access to requested information;
  - c) any significant disagreements between the Independent Auditor and management of the Corporation; and,
  - d) the adequacy of the Corporation's accounting and financial reporting processes;
- iii. annually consider the performance and independence of the Independent Auditor; and,
- iv. if the duties required by this Section are performed by an Audit and Finance Committee, or another Committee of the Board, report on the Committee's activities to the Board.

#### **4. Affiliate Corporations.**

Should the Corporation control other "Affiliate" (as defined by these By-Laws) subsidiary corporations, the Board of Directors of this Corporation, or a designated Audit Committee comprised solely of this Corporation's Independent Directors, may pursuant to state statute and these By-Laws perform all audit oversight duties stipulated in this Article for any such affiliate or subsidiary corporations.

#### **5. Restrictions.**

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