

BYLAWS¹

SCENIC HUDSON, INC.

Adopted on June 14, 2001
Revised October 6, 2005
Revised further June 19, 2014
Revised further October 10, 2014
Revised further March 15, 2016
Revised further June 15, 2017
Revised further March 18, 2021
Revised further October 22, 2021

ARTICLE I

NAME AND SEAL

1.1 **Name.** The corporation shall be known as Scenic Hudson, Inc. (the “Corporation”).

1.2 **Seal.** The Board of Directors of the Corporation (the “Board”) may, at its pleasure, obtain a seal for the Corporation in whatever form is desired by the Board.

ARTICLE II

MEMBERS

The Corporation shall have no members, within the meaning of Section 601 of the Not-for-Profit Corporation Law of New York (the “NPCL”) as amended by the New York Not-for-Profit Revitalization Act (the “NPRA”).

ARTICLE III

BOARD OF DIRECTORS

3.1 **Powers.** The property and affairs of the Corporation shall be managed by the Board. All corporate powers shall be vested in and may be exercised by the Board of the Corporation, except as otherwise provided by law or in the Certificate of Incorporation or these Bylaws. As provided in the Bylaws of The Scenic Hudson Land Trust, Inc. (the “Land Trust”) and Hudson Highlands Fjord Trail, Inc. (“Fjord Trail”), the Corporation shall be the sole member of the Land Trust and Fjord Trail, and shall act in that capacity through the Board of the Corporation.

¹ The November 28, 2016 amendments to the NPCL which take effect on May 27, 2017 (the “2016 Amendment”) address several issues affecting bylaws and are noted as applicable throughout this draft. Edits have been made to conform to amendments requiring stricter standards.

3.2 **Number.** The Corporation shall have at least twenty five (25) but no more than thirty three (33) Directors. The number of Directors shall be fixed within that range from time to time by the affirmative vote of a majority of the entire Board, provided that no decrease in the number of Directors shall shorten the term of any incumbent Director.

Pursuant to the NPCL (as amended by the NPRA), the term “entire Board” wherever used in these Bylaws means the total number of Directors entitled to vote which the Corporation would have at the time in question if there were no vacancies, consisting of the number of Directors that were in office as of the most recently held election of Directors.

3.3 **Election and Terms of Office.**

(a) **Ex-Officio Directors.** The total number of Directors shall include two (2) persons who shall serve ex officio, with full voting rights, in their capacities as the Chair of the Land Trust and the Chair Emeritus of the Corporation if that position exists. Each person serving as an ex-officio Director shall remain in office for so long as he or she shall continue to serve as the Chair of the Land Trust or the Chair Emeritus of the Corporation.

(b) **Elected Directors.** The remaining number of Directors shall be elected at the annual meeting or any other meeting of the Board. For the purpose of staggering their terms of office, the Directors, other than the ex-officio Directors or Former Board Chairs, shall be divided into three classes as nearly equal in number as may be possible. At each annual meeting of the Board or such other meeting of the Board, the successors to the class of Directors whose term shall expire that year shall be elected to hold office for the term of three years, so that the term of office of one class of Directors shall expire each year. Each Director shall continue in office until his or her successor shall have been elected and qualified, or until his or her earlier death, resignation or removal. Elected Directors generally serve two consecutive three-year terms, but shall not, unless such Director is a Former Board Chair, or is serving as an officer, be eligible for re-election as a Director for a period of one year after the completion of the second consecutive full term. Should the Board Membership and Governance Committee deem it necessary, under unusual circumstances, and in the best interest of the Corporation, a Director’s term may be extended up to a maximum of one full term.

3.4 **Resignation.** Any Director may resign at any time by giving written notice to the Chair, the Secretary or the Board. The resignation shall take effect at any time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director who fails to attend four successive Board meetings without reasons deemed acceptable by the Chair and a Vice Chair shall be deemed to have resigned as a Director and shall be so notified by the Chair or the Secretary of the Board.

3.5 **Removal.** Any Director may be removed at any time with or without cause by the vote of a majority of the entire Board.

3.6 **Vacancies.** Any vacancy among the elected Directors arising at any time from any cause, including resignation and the authorization of an increase in the number of Directors, may be filled for the unexpired portion of the term at any meeting of the Board by the affirmative

vote of a majority of the total number of Directors then in office, regardless of their number and the quorum requirement.

3.7 **Annual Meeting.** The annual meeting of the Board shall be held in the month of October on a date and at a time and place determined by the Chair.

3.8 **Regular and Special Meetings.** Regular meetings of the Board shall be held at such time and place as the Board or the Chair shall from time to time determine. Special meetings of the Board may be called at any time by the Chair or a Vice Chair and shall be called by the Chair or the Secretary upon the written request of one-fourth of the Directors then in office. Such request shall state the purpose of the proposed meeting and shall contain the names of the Directors requesting the meeting.

3.9 **Place of Meetings.** All meetings of the Board shall be held at the location, within or without the State of New York, which is fixed by the Board or the person or persons calling the meeting.

3.10 **Notice of Meeting.** Regular meetings of the Board may be held without notice if the time and place of such meetings are fixed by the Board. In the case of regular meetings that are not fixed by the Board, special meetings and annual meetings, written notice of the meeting shall be given at least three (3) days in advance of the meeting, in person or by telefax, special delivery mail, express mail delivery, e-mail or by other electronic communication. Written notice also may be given by first class mail if it is given at least five (5) days in advance, and shall be deemed given when deposited in the United States mail, postage prepaid. Notice of special meetings shall state the purpose of the proposed meeting and, if applicable, shall contain the names of the Directors requesting the meeting.

3.11 **Waivers of Notice.** Notice of a meeting need not be given to any Director who submits a waiver of notice, whether before or after the meeting. Such waiver may be written or electronic. If written, the waiver must be executed by the Director signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. In addition, the attendance of any Director at a meeting, without protesting lack of notice thereof, shall constitute a waiver of notice by the Director.

3.12 **Quorum and Action of the Board.** A quorum of the Board shall consist of a majority of the entire Board.

(a) Except as otherwise provided by law or by other express provision of these Bylaws, the affirmative vote of a majority of the Directors present at any meeting of the Board at which a quorum is present shall be the act of the Board. Whether or not there is a quorum at any meeting, a majority of the Directors who are present may adjourn the meeting from time to time. No notice of any adjourned meeting needs to be given and at any such adjourned meeting at which a quorum is present, any business may be transacted which might

have been transacted at the meeting as originally called. The Directors shall act only as a Board, and the individual Directors shall have no power as such.

(b) The affirmative vote of at least three-fourths of the entire Board² shall be required to approve: (i) the disposition of all or substantially all of the assets of the Corporation; (ii) a plan of merger or consolidation of the Corporation; or (iii) a plan of dissolution and distribution of assets of the Corporation.

(c) The Corporation shall not (i) subject to Section 3.12(b), sell, mortgage, lease, exchange or otherwise dispose of its real property or (ii) purchase real property, in each case, unless authorized by the vote of a majority of the entire Board or a committee authorized by the Board; provided that, if such property constitutes or would constitute, upon the purchase thereof by the Corporation, all or substantially all of the assets of the Corporation, then (x) the vote of at least two-thirds of the entire Board shall be required or (y) if there are twenty-one (21) or more Directors, then the vote of a majority of the entire Board shall be sufficient.³

3.13 **Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if all Directors consent to the adoption of a resolution authorizing such action. Such consent may be written or electronic. If such consent is written, the consent must be executed by the Director, by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If such consent is electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. The resolution and the written or electronic consents thereto shall be filed with the minutes of the proceedings of the Board.

3.14 **Presence at a Meeting by Conference Telephone.** Any one or more Directors who is not physically present at a meeting of the Board may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting 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.

3.15 **Organization.** Each meeting of the Board shall be presided over by the Chair, or in his or her absence by a Vice Chair, or in their absence by a person chosen by the Directors present. The Secretary shall act as secretary of each meeting of the Board. In the absence of the Secretary, the person presiding over the meeting shall appoint a secretary of the meeting.

² The NPCL does permit a lower voting standard for such approvals, 2/3 vote cast at such meeting at least equal to the quorum. Recommend keeping higher voting standard of 3/4 vote of entire Board.

<http://codes.findlaw.com/ny/notforprofit-corporation-law/npc-sect-903.html>

<http://codes.findlaw.com/ny/notforprofit-corporation-law/npc-sect-1002.html>

<http://codes.findlaw.com/ny/notforprofit-corporation-law/npc-sect-613.html>

³ This section reflects NPCL §509(a) and (b) governing the purchase and the disposition of real property. However, cross reference to Section 3.12(b) is needed since the disposition of all or substantially all assets is subject to a higher voting standard. <http://codes.findlaw.com/ny/notforprofit-corporation-law/npc-sect-509-nr2.html>

3.16 **Compensation.** No compensation shall be paid to the Directors for their services as such Directors, but they may be reimbursed for travel and actual expenses necessarily incurred by them in performing duties on behalf of the Corporation at the direction of the Board. No person who may benefit from such compensation may be present at or otherwise participate in any Board or committee deliberation or vote concerning such person's compensation; provided that nothing in this section shall prohibit the Board or authorized committee from requesting that a person who may benefit from such compensation present information as background or answer questions at a committee or Board meeting prior to the commencement of deliberations or voting related thereto.

3.17 **Honorary or Emeritus Directors.** The Board may, from time to time, elect Honorary or Emeritus Directors, including, but not limited to, former Directors. Honorary and Emeritus Directors may be invited to attend Board meetings and be consulted by the officers and the Board, but shall not have the rights, duties or obligations of Directors. Honorary Directors shall be elected for a one-year term renewable annually. Emeritus Directors may be appointed for a term set by the Board or for an indefinite term and shall serve in that capacity at the discretion of the Board.

3.18 **Duties of Former Board Chairs.** It is expected that attendance, committee participation and overall contributions, financial and otherwise, of Former Board Chairs will be commensurate with those of other Directors.

ARTICLE IV

COMMITTEES

4.1 **General Powers and Membership.** The Board by a vote of the majority of the entire Board may, from time to time, as may be deemed necessary or advisable establish an Executive Committee, Finance Committee, Board Membership and Governance Committee, Investment Committee, Audit Committee, Legal Committee and other committees of the Board, each consisting of three or more Directors; and other committees not of the Board, consisting of any number of persons, who need not be Directors, such as the Program Committees.⁴ The Chair, with the advice and consent of the Board, shall appoint all committee chairs and members. Each committee of the Board shall have and may exercise, when the Board is not in session, the powers which the Board shall specifically confer. Each committee not of the Board shall have the powers which the Board shall specifically confer, but shall not have the authority to bind the Board. All action by any committee shall be reported to the Board at a subsequent meeting of the Board.

4.2 **Executive Committee.** Unless otherwise expressly provided by law or by resolution of the Board, the Executive Committee shall have and may exercise all the powers of the Board when the Board is not in session except for the following: (a) the powers listed in paragraphs 3.12(b) and (c); (b) the power to fill vacancies in the Board or any committee; (c) the

⁴ The 2016 Amendment permits a majority of directors present at a board meeting at which a quorum is present to create committees (other than the executive committee) where currently a majority vote of the entire board is required to create a committee.

power to remove a Director or an officer appointed by the Board; (d) the power to amend or repeal these Bylaws; and (f) the power to amend the certificate of incorporation.⁵

4.3 **Finance Committee.** The Finance Committee shall have general responsibility to oversee the financial and budgetary matters of the Corporation. The Finance Committee annually shall review management's proposed budget and after such review may recommend the same to the Board for adoption or may recommend the proposed budget with such modifications as the Finance Committee may choose to make. The Finance Committee shall also review any modifications proposed to be made to any budget after adoption.⁶

4.4 **Investment Committee.** Except as otherwise provided by an applicable gift instrument, the Investment Committee shall have all the authority of the Board under law to act in the investment and reinvestment of all funds or assets of the Corporation, including: (a) to delegate to officers, employees or other agents of the Corporation, including investment counsel, advisors or managers, the authority to act in the place of the Investment Committee in investment and reinvestment of such funds and assets; (b) to contract with independent investment counsel, advisors or managers, including banks or trust companies, so to act, with custodial or depository organizations, and with other providers of services necessary or appropriate for the Investment Committee to carry out its responsibilities; (c) to authorize the payment of compensation for all such services to any such counsel, advisor, manager, custodian or depository or other service provider; and (d) to authorize such person or persons as the Committee may designate to execute and deliver on behalf of the Corporation proxies to vote on stock owned by the Corporation. As required by the NPCL (as amended by the NPRA), each contract pursuant to which investment authority is so delegated shall provide that it may be terminated by the Corporation at any time, without penalty, upon not more than sixty days' notice.

4.5 **Board Membership and Governance Committee.** The Board Membership and Governance Committee shall (a) review the composition of the Boards of the Corporation, the Land Trust and Fjord Trail; (b) establish eligibility criteria for election to each of those Boards; (c) identify and recruit persons meeting those criteria; (d) nominate Directors to fill vacancies in the Boards of the Corporation, the Land Trust and Fjord Trail and nominate a slate of Directors and officers for approval at the annual meetings or other meetings of the Board; and (e) advise the board on governance issues and related actions required.

4.6 **Audit Committee.**

(a) The Audit Committee shall be comprised solely of independent directors.

(b) The Audit Committee shall oversee the accounting and financial reporting processes with respect to the assets and funds of the Corporation, the Land Trust and Fjord Trail and the audits of the Corporation's, the Land Trust's and Fjord Trail's financial statements. The Audit Committee shall 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.

⁵ The 2016 Amendment expanded the list of non-delegable powers. Some of the new non-delegable powers were already deemed non-delegable in the Bylaws.

⁶ Language deleted as these are functions of the Audit Committee.

(c) The Audit Committee shall, in addition to those duties set forth in paragraph (b) of this section:

(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: (1) any material risks and weaknesses in internal controls identified by the auditor; (2) any restrictions on the scope of the auditor's activities or access to requested information; (3) any significant disagreements between the auditor and management; and (4) the adequacy of the Corporation's, the Land Trust's and Fjord Trail's accounting and financial reporting processes;

(iii) annually consider the performance, compensation and independence of the independent auditor; and

(iv) report on the committee's activities to the Board.

(d) The Board or the Audit Committee shall oversee the adoption, implementation of, and compliance with any conflict of interest policy or whistleblower policy adopted by the Corporation if this function is not otherwise performed by another committee of the Board comprised solely of independent directors.

(e) Pursuant to the NPCL (as amended by the NPRA), the Audit Committee shall ensure that the Corporation prepares and files an annual financial report on the form then prescribed by the Attorney General that is: (i) compliant with generally accepted accounting principles ("GAAP"), (ii) includes a statement of any changes in the information required to be contained in the Corporation's registration form, (iii) is executed by the President or other authorized officer and the chief fiscal officer of the Corporation, and (iv) is accompanied by (a) a \$25 filing fee and (b) an audited financial statement that includes an independent certified public accountant ("CPA") review report which itself contains a signed opinion of the CPA that the financial statements of the Corporation are presented fairly in all material respects and in conformity with GAAP.

(f) Only independent directors may participate in any Board or Audit Committee deliberations or voting relating to matters set forth in this section.

(g) As used in this section, "independent director" shall mean a Director who:

(i) is not, and has not been within the last three years, an employee or a key person⁷ of the Corporation or an affiliate (as defined in section 8.2) of the Corporation, and does not have a relative (as defined in section 8.2) who is, or has been within the last three years, a key person of the Corporation or an affiliate of the Corporation;

⁷ See definition of "key person" in Section 8.2(c)(iv).

(ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than \$10,000 in direct compensation from the Corporation or an affiliate of the Corporation (other than reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director);

(iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an affiliate of the Corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of \$25,000 or 2% of such entity's consolidated gross revenues.⁸ For purposes of this clause (iii), "payment" does not include charitable contributions.⁹

(iv) is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three years.¹⁰

4.7 **Legal Committee.**

(a) The Legal Committee shall oversee the development and implementation of protocols related to litigation, contracts, document retention, hire of outside council (paid or pro bono), assessment of liability exposure and other legal initiatives for the Corporation, the Land Trust and Fjord Trail.

(b) Directors who serve on the Legal Committee are deemed to be doing so in their capacity as Directors and are therefore not considered to be providing legal advice to the Corporation, the Land Trust or Fjord Trail.

(c) Any actual or perceived conflicts of interest in connection with a Director's participation as a member of the Legal Committee will be addressed pursuant to Article VIII (b) of these bylaws.

4.8 **Program Committees.** The Program Committees shall have the duties and responsibilities as described in the charters thereof. For the avoidance of doubt, the Program Committees, as committees not of the Board, as described in section 4.1 hereof, shall have no power to bind the Board.

⁸ The 2016 Amendment revised the definition of "independent director" to include a sliding scale to trigger disqualification based on the entity's consolidated gross revenue. The disqualification threshold for entities with consolidated gross revenues (i) between \$500,000 and \$10 million is \$25,000 and (i) of \$10 million or more is \$100,000. Based on the 2016 annual report, SH had gross revenue of approximately \$8 million. While state law would permit an increase in the disqualification threshold if SH's gross revenue were to be greater than \$10 million, the bylaws are maintaining the more restrictive standard.

⁹ The 2016 Amendment removes from consideration payments made by the corporation at fixed or non-negotiable rates or amounts for services received as long as such services are available to the public on the same terms and the services are not available from another source. This change would contemplate payments for routine services such as those to utility companies.

¹⁰ Additional restriction that was already in effect prior to the 2016 Amendment and that was not included previously in the bylaws.

4.9 **Meetings.** Each committee shall adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings.

4.10 **Committees' Quorum and Manner of Acting.** At each meeting of a committee, a majority of the committee members shall be present in person to constitute a quorum for the transaction of business, and the affirmative vote of a majority of the committee members present in person at a meeting at which a quorum is present shall be the act of the committee. The committee members shall act only as a committee, and the individual committee members shall have no power as such.

4.11 **Action Without a Meeting.** Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting, if all committee members consent in to the adoption of a resolution authorizing such action. Such consent may be written or electronic. If such consent is written, the consent must be executed by the committee member, by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If such consent is electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the committee member. The resolution and the written or electronic consents thereto shall be filed with the minutes of the proceedings of the committee.

4.12 **Presence at a Meeting by Conference Telephone.** Any member of a committee who is not physically present at a meeting of such committee may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each member can participate in all matters before the committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the committee.

4.13 **Removal.** Any committee member may be removed from the committee, either with or without cause, at any time, by resolution of the Board.

4.14 **Vacancies.** Any vacancy in a committee shall be filled by the Chair of the Board in the manner prescribed by these Bylaws for the original appointment to the committee.

ARTICLE V

OFFICERS AND PRESIDENT

5.1 **Number, Election and Term of Office.** The elected officers of the Corporation shall be a Chair, one or more Vice Chairs, a Secretary, a Treasurer and such other officers as the Board may from time to time deem necessary or advisable. In addition, the person who is serving as the Chair of the Land Trust shall serve as an ex officio officer of the Corporation and shall remain an ex officio officer for so long as he or she shall continue to serve as Chair of the Land Trust. The elected officers of the Corporation shall be elected from among the Directors by the Board at the annual meeting. Elected officers shall serve for the term of one (1) year but shall hold office until their successors are elected and have qualified. Elected officers generally will

serve up to three consecutive terms but may serve no more than five consecutive terms in the same office, except the Board, upon the recommendation of the Board Membership and Governance Committee, may extend the term of an incumbent Chair under unusual circumstances. No person may hold more than two offices. No instrument required to be signed by more than one officer shall be signed by the same individual in more than one capacity.

5.2 **Resignation.** Any officer may resign at any time by giving written notice to the Chair, the Secretary or the Board. The resignation shall take effect at any time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.3 **Removal.** Any officer may be removed either with or without cause, at any time, by a majority vote of the entire Board.

5.4 **Vacancies.** Any vacancy in an elected office arising at any time from any cause shall be filled for the unexpired term by vote of the Board from a slate prepared by the Chair of the Board Membership and Governance Committee and the Secretary.

5.5 **Chair.** Subject to paragraph 3.15, the Chair shall preside at all meetings of the Board, shall serve as the chair of the Executive Committee and shall be an ex officio member of all committees. No employee of the Corporation shall serve as Chair or hold any other title with similar responsibilities.

5.6 **Vice Chairs.** Vice Chairs shall have such duties as may be from time to time assigned to them by the Chair or by the Board. In the event of the absence or disability of the Chair, the Board may designate a Vice Chair to perform the duties of the Chair, and, when so acting, such Vice Chair shall have all the powers of the Chair.

5.7 **Secretary.** The Secretary shall make or cause to be made a record of all meetings of the Board and all Committees of the Board, and shall keep them in books to be kept for the purposes. The Secretary shall have charge of such books, documents and papers as the Board may determine. The Secretary shall have custody of the corporate seal, if any then exists, and shall affix the corporate seal, when required by law or authorized or ordered by the Board. The Secretary shall see that all notices and reports are duly given or filed in accordance with these Bylaws or as required by law, and shall perform such other duties as usually pertain to that office or as are properly required by the Chair or the Board.

5.8 **Treasurer.** The Treasurer shall have charge over and establish procedures for custody of all funds, property and securities of the Corporation. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all monies and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks and depositories as the Board may designate. The Treasurer shall exhibit or cause to be exhibited, at all reasonable times, his or her books of account and records to any Director of the Corporation upon application during business hours in the office of the Corporation where such books and records are kept, and shall render a statement of the condition of the finances to the Board of the Corporation at the annual meeting and at other meetings whenever required by the Board. It shall

be a duty of the Treasurer to arrange to have the financial books, records, and transactions of the Corporation audited by certified public accountants designated by the Finance Committee at least once a year. The Treasurer shall perform such other duties as usually pertain to that office or as are properly required by the Chair or the Board.

5.9 **Compensation.** No officer other than the President shall receive compensation from the Corporation for services performed in an official capacity, but officers may be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of their official duties by authority of the Board. No person who may benefit from such compensation may be present at or otherwise participate in any Board or committee deliberation or vote concerning such person's compensation; provided that nothing in this section shall prohibit the Board or authorized committee from requesting that a person who may benefit from such compensation present information as background or answer questions at a committee or Board meeting prior to the commencement of deliberations or voting related thereto.

5.10 **President.** The Board shall select the President of the Corporation. The President shall manage the business of the organization, and shall appoint, discharge and fix compensation of all other staff of the organization. All employees shall be responsible to the President and subject to his or her supervision. The President is responsible to the Board and shall report to it.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Corporation shall, to the fullest extent permitted by law, indemnify and advance expenses to each individual made, or threatened to be made, a party to any action or proceeding by reason of the fact that such individual is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other entity, in each case against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action or proceeding or any appeal therein. For purposes of this Article VI, "proceeding" includes any investigation, whether conducted by any governmental body or agency or by the Corporation or its authorized counsel or agents.

ARTICLE VII

EXECUTION OF INSTRUMENTS

7.1 **Contracts, Instruments.** The Board or any authorized committee, subject to the provisions of Section 4.1, may authorize any officer or officers, agent or agents to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation; such authority may be general or may be confined to specific instances.

7.2 **Deposits.** Funds of the Corporation may be deposited from time to time to the credit of the Corporation with the depositories which are selected by the Board.

7.3 **Orders for the Payment of Money and Evidences of Indebtedness.** All checks, drafts or other orders for the payment of money, notes, acceptances, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by the officer or officers, agent or agents of the Corporation, and in the manner which shall be determined from time to time by resolution of the Board. Endorsements for deposit to the credit of the Corporation in any of its authorized depositories may be made, without counter- signature, by any officer of the Corporation or may be made by hand-stamped impression in the name of the Corporation, unless otherwise provided by resolution of the Board.

7.4 **Sale or Transfer of Securities.** Stock certificates, notes, bonds or other securities held or owned by the Corporation may be sold, transferred or otherwise disposed of when endorsed for transfer by the officer or officers, agent or agents of the Corporation, and in the manner which shall be determined from time to time by resolution of the Board or of any committee to which the power to authorize such sale, transfer or other disposal shall have been delegated.

ARTICLE VIII

MISCELLANEOUS

8.1 **Conflicts of Interest.**

(a) **Generally.** Whenever a matter arises for action by the Board, or in situations when the Corporation engages in an activity where there is a possible conflict or the appearance of conflict between the interests of the Corporation and an outside or personal interest of a Director or that of a person close to him or her, the outside interest of the Director shall be made a matter of record. In those cases where the Director is present when a vote is taken in connection with such a question, he or she shall abstain. In such cases, he or she shall also absent himself or herself from the discussion unless requested to remain by the Chair. The Director may, however, briefly state a position on the matter, and answer pertinent questions of the Board. The minutes of all actions taken on such matters shall clearly reflect that these requirements have been met. All Directors shall avoid public discussion of any matters that the Board may deem confidential.

(b) **Conflict of Interest Policy.** The Corporation shall adopt a conflict of interest policy to ensure that its Directors, officers and key employees act in the Corporation's best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in section 715 of the NPCL (as amended by the NPRA). The conflict of interest policy shall include, at a minimum, the following provisions:

- (i) a definition of the circumstances that constitute a conflict of interest;
- (ii) procedures for disclosing a conflict of interest to the Audit Committee or, if there is no Audit Committee, to the Board;

(iii) a requirement that the person with the conflict of interest not be present at or participate in Board or committee deliberation or vote on the matter giving rise to such conflict;

(iv) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict;

(v) a requirement that the existence and resolution of the conflict be documented in the Corporation's records, including in the minutes of any meeting at which the conflict was discussed or voted upon; and

(vi) procedures for disclosing, addressing, and documenting related party transactions in accordance with section 715 of the NPCL (as amended by the NPRA) and section 8.2.¹¹

The conflict of interest policy shall require that prior to the initial election of any Director, and annually thereafter, such Director shall complete, sign and submit to the Secretary of the Corporation a written statement identifying, to the best of the Director's knowledge, any entity of which such Director 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. The policy shall require that each Director annually resubmit such written statement. The Secretary of the Corporation shall provide a copy of all completed statements to the chair of the Audit Committee or, if there is no Audit Committee, to the Chair of the Board.

8.2 Related Party Transactions.

(a) The Corporation shall not enter into any related party transaction unless the transaction is determined by the Board to be fair, reasonable and in the Corporation's best interest at the time of such determination.

(b) Any Director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the Board, or an authorized committee thereof, the material facts concerning such interest. With respect to any related party transaction involving the Corporation and in which a related party has a substantial financial interest, the Board, or an authorized committee thereof, shall: (1) prior to entering into the transaction, consider alternative transactions to the extent available; (2) approve the transaction by not less than a majority vote of the Directors or committee members present at the meeting; and (3) contemporaneously document in writing the basis for the Board or authorized committee's approval, including its consideration of any alternative transactions. No related party may participate in deliberations or voting relating to the transaction in which such related party has an interest; provided that the Board or authorized committee may request that a related party present information concerning a related party transaction at a Board or committee meeting prior to the commencement of deliberations or voting relating thereto.

¹¹ See separate draft with revisions to current conflict of interest policy (last revised March 20, 2008) to include the last requirement to address provisions on related party transactions.

(c) As used in these By-Laws, 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 of the Corporation is a participant¹², where:

(i) an “affiliate” of the Corporation means any entity controlled by, in control of, or under common control with the Corporation;

(ii) a “related party” means (i) any director, officer or key person of the Corporation or any affiliate of the Corporation; (ii) any relative of any director, officer or key person of the Corporation or any affiliate of the Corporation; or (iii) any entity in which any individual described in the foregoing clauses (i) and (ii) has a thirty-five percent 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;

(iii) a “relative” of an individual means his or her (i) spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner as defined in section 2994-a of the New York State Public Health Law; and

(iv) a “key person” means any person, other than a director or officer, whether or not an employee of the Corporation, who (i) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or (iii) alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget.¹³

8.3 **Whistleblower Policy.**

(a) The Corporation shall adopt a whistleblower policy to protect from retaliation persons who report suspected improper conduct. Such policy shall provide that no Director, officer, employee or volunteer of the Corporation who in good faith reports any action or suspected action taken by or within the Corporation that is illegal, fraudulent or in violation of any adopted policy of the Corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequences.

(b) The whistleblower policy shall include the following provisions:

¹² The 2016 Amendment eases the related party transaction rules by including certain exceptions for transactions that (i) are de minimis, (ii) would not customarily be reviewed by the boards of similar organizations in the ordinary course of business and are available to others on the same or similar terms, or (iii) constitute a benefit provided to a related party only as a member of a class of beneficiaries that the corporation intends to benefit as part of its mission, as long as the benefit is available to similarly situated members of the same class on the same terms.

¹³ The 2016 Amendment replaces the term “key employee” with the broader term “key person” which definition helps to determine who qualifies as a “related party” for purposes of restrictions.

(i) procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information;

(ii) a requirement that an employee, officer or Director of the Corporation be designated to administer the whistleblower policy and to report to the Audit Committee or other committee of independent Directors or, if there are no such committees, to the Board, except that Directors who are employees may not participate in any Board or committee deliberations or voting relating to the administration of the whistleblower policy;¹⁴

(iii) the person who is the subject to a whistleblower complaint may not be present at or participate in Board or committee deliberations or vote on the matter relating to such complaint, provided that the Board or committee may request that the person who is subject to the complaint present information as background or answer questions at a Board or committee meeting prior to the commencement of deliberations or voting relating thereto;¹⁵ and

(iv) a requirement that a copy of the policy be distributed to all Directors, officers, employees and to volunteers who provide substantial services to the Corporation.

ARTICLE IX

FISCAL YEAR

The fiscal year of the Corporation shall commence July 1st and end June 30th.

ARTICLE X

AMENDMENTS

The Bylaws of the Corporation may be amended, consistent with the NPCL (as amended by the NPRA), at any meeting of the Board by an affirmative vote of the majority of the entire Board (except for any amendments to paragraph 3.12(b), which shall require an affirmative vote of three-fourths of the entire Board), provided, to the extent required by law (but only to that extent), the substance of the Bylaw amendment is set forth in the notice of the meeting.

¹⁴ The 2016 Amendment adds a prohibition that an employee who is also a director may not take part in any board or committee deliberations concerning the administration of whistleblower policies.

¹⁵ The 2016 Amendment adds a requirement for whistleblower policies to provide that any person who is the subject to a complaint may not be present at or participate in board/committee deliberations or voting on the matter (although the board/committee may request the person to further information prior to deliberations or voting).