

BY-LAWS
OF
FRIENDS OF ELIZABETH STREET GARDEN INC.

(formed under the New York Not-for-Profit Corporation Law)

ARTICLE I. – OFFICES

Section 1.1 Location. The principal office of the Corporation within the State of New York shall be located at 235 Elizabeth Street, Ste. 23, New York, NY 10012. The Corporation may also maintain additional offices at such other places within or outside the State of New York as the Board of Directors may from time to time determine.

ARTICLE II. – BOARD OF DIRECTORS

Section 2.1 Power of Board and Qualifications of Directors. The Corporation shall be managed by its Board of Directors. The Corporation shall have no members and all corporate powers shall vest in the Board of Directors. Each director shall be at least eighteen years of age.

Section 2.2 Number of Directors. (a) The number of directors shall be not less than three. Subject to such limitation, the number of directors shall consist of such number as shall be determined from time to time by a majority vote of the entire Board, except that in no case may any decrease in the number of directors shorten the term of any incumbent director. For purposes of these By-Laws, the entire Board shall consist of the total number of directors entitled to vote if there were no vacancies.

(b) The Board shall additionally have one ex-officio director (the “*Ex-Officio Director*”) appointed by the Chair of Community Board No. 2, Manhattan (“*CB 2*”). The Ex-Officio Director shall be appointed by the Chair of CB 2 annually or with reasonable promptness upon vacancy due to resignation or removal in accordance with Sections 2.7 and 2.8. The Ex-Officio Director shall not be entitled to vote or have any other decisionmaking rights and shall not be counted for purposes of any quorum. Unless otherwise specified in this Section 2.2(b) or elsewhere in these By-Laws, the Ex-Officio Director shall be treated the same, and shall have the same rights and responsibilities, as the other directors of the Board.

Section 2.3 Election and Term of Directors. At each annual meeting of the Board of Directors, the Board of Directors shall elect directors. Each director shall hold office for a term of one year until the next annual meeting of the Board of Directors and until his successor has been elected and qualified.

Section 2.4 Quorum of Directors and Action by the Board. Unless a greater proportion is required by law, by the Certificate of Incorporation, or by these By-Laws, (a) a majority of the Board if the number of directors is five or less or (b) one-third of the entire Board if the number of directors is more than five shall constitute a quorum for the transaction of

business or of any specified item of business, and, except as otherwise provided by law or by the Certificate of Incorporation or these By-Laws, the vote of a majority of the directors present at the meeting at the time of such vote, if a quorum is then present, shall be the act of the Board.

The Certificate of Incorporation or these By-Laws may be amended to provide for a greater quorum or to provide for a greater number of directors that shall be necessary for the transaction of business or any specified item of business, provided such amendment is authorized by vote of two-thirds of the entire Board.

Section 2.5 Meetings of the Board. An annual meeting of the Board of Directors shall be held for the election of directors and the transaction of such other business as may properly come before the meeting on a date to be determined annually by the Board.

Regular meetings of the Board shall be held at such times as may be fixed by the Board. Special meetings of the Board may be held at any time whenever called by the President or other corporate officer, or by any director upon written demand of not less than one-fifth of the entire Board.

Meetings of the Board of Directors may be held at such places within or without the State of New York as may be fixed by the Board for annual and regular meetings and in the notice of meeting for special meetings.

No notice need be given of regular meetings of the Board of Directors. Notice of each special meeting of the Board shall be given to each director either by mail not later than noon, New York time, on the fifth business day prior to the meeting, or by written message emailed or hand-delivered to each director not later than noon, New York time, on the second business day prior to the meeting. Notices shall be deemed to have been given by mail when deposited in the United States mail, by email at the time email is sent, and by messenger at the time of delivery by the messenger. Notices by mail, email or messenger shall be sent to each director at the address designated by him for that purpose, or, if none has been so designated, at his last known residence or business address. Oral or telephonic notices of meetings shall not be permitted.

A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the Board of Directors.

Notice of a meeting of the Board of Directors need not be given to any director who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, either prior to or at the commencement of such meeting, the lack of notice to him. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director by signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means, including a facsimile signature. If electronic, the transmission of the waiver must be sent by email and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting to another time or

place shall be given in the manner described above to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

Section 2.6 Informal Action by Directors; Meetings by Conference Telephone. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by the Board may be taken without a meeting if all directors consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If 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 a facsimile signature. If electronic, the transmission of the consent must be sent by email 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 consents thereto by the directors shall be filed with the minutes of proceedings of the Board.

Any one or more of the directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment or by electronic video screen communication. Such participation 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 or committee.

Section 2.7 Resignations. Any director of the Corporation may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective.

Section 2.8 Removal of Directors. Any one or more or all of the directors may be removed for cause by action of the Board of Directors, provided there is a quorum of not less than a majority of the entire Board present if such action is taken at a meeting of the Board rather than by consent in accordance with Section 2.6.

Section 2.9 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, may be filled by vote of a majority of the directors then in office, provided there shall be three or more directors in office. If there shall be fewer than three directors serving at any time, the directors then in office shall promptly by unanimous vote name at least such number of directors as shall be necessary to have three directors in office. A director elected to fill a vacancy shall hold office until the next annual meeting at which the election of directors is in the regular order of business and until his successor is elected and qualified.

Section 2.10 Purchase, Sale, Mortgage or Lease of Real Property. No purchase of real property shall be made by the Corporation, and the Corporation shall not sell, mortgage, lease, exchange or otherwise dispose of its real property, unless authorized by a majority of the directors of the Board or of a majority of a committee authorized by the Board. If such property constitutes, or would constitute upon the purchase thereof, all or substantially all of the assets of

the Corporation, then the vote of two-thirds of the entire Board of Directors shall be required. If the Corporation authorizes a committee to act, the committee shall promptly report any actions taken to the Board, and in no event after the next regularly scheduled meeting of the Board.

Section 2.11 Disposition of All or Substantially All the Assets of the Corporation. If the Corporation wishes to sell, lease or exchange all or substantially all of its assets, such action may be made upon such terms and conditions and for such consideration as may be authorized by the vote of two-thirds of the entire Board of Directors. The Corporation shall then be required to seek approval for such action from the Attorney General or the supreme court in the judicial district or of the county court of the county in which the Corporation has its office or principal place of carrying out the purposes for which it was formed, upon notice to the Attorney General.

Section 2.12 Annual Report. The President and Treasurer shall present at the annual meeting of the Board a report, verified by the President and Treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in detail the following:

- (1) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve-month fiscal period terminating not more than six months prior to said meeting;
- (2) the principal changes in assets and liabilities, including trust funds, during said fiscal period;
- (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and
- (4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

The annual report shall be filed with the records of the Corporation, and a copy or abstract thereof entered in the minutes of the proceedings of the annual meeting of the Board.

Section 2.13 Compensation of Directors. The Corporation may pay compensation to directors in such reasonable amounts as may be fixed from time to time by the Board of Directors for services rendered to the Corporation in such capacities. 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.

Section 2.14 Audit Oversight. If in any fiscal year the Corporation has gross revenue exceeding \$500,000, the Board, or a designated audit committee of the Board comprised solely of independent directors, shall oversee the accounting and financial reporting process of the Corporation and the audit of the Corporation's financial statements. The Board, or the designated 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.

In addition to those duties set forth above, if in the prior fiscal year the Corporation had, or in the current fiscal year reasonably expects to have, gross revenue exceeding \$1,000,000, the Board, or a designated audit committee of the Board comprised solely of independent directors, shall:

- (1) review with the independent auditor the scope and planning of the audit prior to the audit's commencement;
- (2) upon completion of the audit, review and discuss with the independent auditor:
 - (a) any material risks and weaknesses in internal controls identified by the auditor;
 - (b) any restrictions on the scope of the auditor's activities or access to requested information;
 - (c) any significant disagreements between the auditor and management; and
 - (d) the adequacy of the Corporation's accounting and financial reporting process.
- (3) annually consider the performance and independence of the independent auditor; and
- (4) if the duties required by this Section are performed by an audit committee, report on the committee's activities to the Board.

Only independent directors may participate in any Board or committee deliberations or voting relating to the Board's audit oversight responsibilities. For purposes of these By-Laws, independent directors shall mean a director (i) who is not, and has not been within the last three years, an employee of the organization or any of its affiliates; (ii) who has not received, in any of the last three years, more than \$10,000 in direct compensation from the organization or an affiliate of the organization; (iii) is not a current employee of and does not have a substantial financial interest in any entity that has made payments to, or received from, the organization or an affiliate of the organization property or services with a value exceeding \$25,000 or 2% of the organization's gross revenue for any of the last three years; and (iv) who does not have any relative who is described in (i), (ii), and (iii).

Section 2.15 Conflict of Interest. The Board, or a designated audit committee of the Board, shall oversee the adoption, implementation of, and compliance with a conflict of interest policy adopted by the Corporation if this function is not otherwise performed by another committee of the Board comprised solely of independent directors.

ARTICLE III. – COMMITTEES

Section 3.1 Executive Committee and Other Committees of the Board. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other committees of the Board, each consisting of three or more directors, and each of which, to the extent provided in the resolution, shall have all the authority of the Board, except that no such committee shall have authority as to the following matters:

- (1) filling vacancies in the Board of Directors or in any committee;
- (2) fixing compensation of the directors for serving on the Board or on any committee;
- (3) amending or repealing the By-Laws or adopting new By-Laws;
- (4) amending or repealing any resolution of the Board which by its terms cannot be amended or repealed; or
- (5) removing directors.

The Board may designate one or more directors as alternate members of any standing committee who may replace any absent member or members at any meeting of such committee.

Section 3.2 Committees Other Than Committees of the Board. Committees other than committees of the Board shall be committees of the Corporation. Such committees of the Corporation may be elected or appointed in the same manner as officers of the Corporation. No such committee shall have the authority to bind the Board. Provisions of these By-Laws and the Not-for-Profit Corporation Law applicable to officers generally shall apply to members of such committees.

Section 3.3 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business.

In the absence of a contrary provision by the Board of Directors or in rules adopted by such committee, a majority of the entire authorized number of members of each committee shall constitute a quorum for the transaction of business, the vote of a majority of the members of a committee present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and each committee shall otherwise conduct its business in the same manner as the Board of Directors conducts its business under Article II of these By-Laws.

Section 3.4 Informal Action by Committees. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by a committee may be taken without a meeting if all members of such committee consent in writing to the adoption of a resolution authorizing the action. Such consent may be written or electronic.

If written, the consent must be executed by each member of such committee by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means, including a facsimile signature. If electronic, the transmission of the consent must be sent by email and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by such member of the committee. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of the proceedings of such committee.

Any one or more members of any committee may participate in a meeting of such committee by means of conference telephone or by electronic video screen communication. Such participation 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 of the committee 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.

Section 3.5 Service of Committees. Each committee of the Board shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty under the law to the Corporation.

ARTICLE IV. – OFFICERS

Section 4.1 Officers. The Board of Directors shall elect or appoint a President, a Secretary and a Treasurer. The Board may elect or appoint one or more Vice-Presidents, Assistant Vice-Presidents, Assistant Secretaries, Assistant Treasurers and other officers and may give any of them such further designation or alternate titles as it considers desirable. The Board may also, if it so decides, choose a Chairman of the Board and a Vice-Chairman of the Board from among its members. Any two or more offices may be held by the same person, except the offices of President and Secretary, or the offices corresponding thereto. No employee of the Corporation shall serve as Chairman of the Board or hold any other title with similar responsibilities.

Section 4.2 Term of Office and Removal. Each officer shall hold office for the term for which such officer is elected or appointed and until his or her successor has been elected or appointed and qualified. All officers shall be elected or appointed annually.

Any officer elected or appointed by the Board may be removed by the Board of Directors with or without cause at any time. Removal of an officer without cause shall be without prejudice to such officer's contract rights, if any, and the election or appointment of an officer shall not of itself create contract rights.

Section 4.3 Powers and Duties of Officers. All officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the Corporation as may be provided by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer to give security for the faithful performance of his or her duties.

The duties and powers of the officers shall be as follows:

Chairman of the Board

The Chairman of the Board, if there shall be one, shall preside at all meetings of the Board of Directors at which the Chairman is present and shall perform such other duties as the Board may designate.

President

The President shall be the chief executive officer of the Corporation and shall be responsible for the administration and operation of the business and affairs of the Corporation. The President, or any other proper officer of the Corporation thereunto authorized by the Board of Directors, may sign any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time. In the absence of the Chairman of the Board, the President shall preside at all meetings of the Board of Directors and, subject to the supervision of the Board, shall perform all duties customary to that office and shall supervise and control all of the affairs of the Corporation in accordance with policies and directives approved by the Board. The President shall additionally be an ex officio member of all standing committees with voting rights.

Vice-President

In the absence of the President or in the event of the President's inability or refusal to act, the Vice-President shall perform the duties of the President, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe by resolution, or as the President may from time to time provide, subject to the powers and the supervision of the Board.

Secretary

The Secretary shall: (a) keep the minutes of the meetings of the Board of Directors and committees of directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation (if any) and see that the seal of the Corporation is affixed to all documents, if necessary, the execution of which on behalf of the Corporation under its seal, if necessary, is duly authorized in accordance with the provisions of these By-Laws; and (d) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board of Directors.

Treasurer

The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Corporation. The Treasurer shall receive and give or cause to be given receipts and acknowledgments for moneys paid in on account of the Corporation and shall pay out of the funds on hand all just debts of the Corporation of whatever nature upon maturity of the same. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuable property of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Directors may designate. Whenever required by the Board, the President, or the Finance Committee, the Treasurer shall render a statement of accounts. The Treasurer shall at all reasonable times exhibit the books and accounts to any officer or director of the Corporation, and shall perform all duties incident to the office of Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board. The Treasurer shall, if required by the Board, give such bond or security for the faithful performance of the Treasurer's duties as the Board may require.

Assistant Secretaries and Assistant Treasurers

The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties and have such powers as the Board of Directors may from time to time prescribe by resolution, or as the Treasurer or the Secretary, respectively, may from time to time provide, subject to the powers and the supervision of the Board.

Section 4.4 Agents and Employees. The Board of Directors may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board. The Board may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

Section 4.5 Compensation of Officers, Agents and Employees. Officers may receive compensation in such reasonable amounts as may be fixed by a majority vote of the entire Board of Directors. 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.

ARTICLE V. – INDEMNIFICATION AND INSURANCE

Section 5.1 Indemnification. The Corporation shall indemnify each person made, or threatened to be made, a party to any action or proceeding, other than one by or in the right of the Corporation to procure a judgment in its favor, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate is or was a director or officer of the Corporation, or serves or served at the request of the Corporation any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, penalties, 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, provided that such officer or director acted in good faith for a purpose which he or she reasonably believed to be in (or, in the case of service to any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to) the best interests of the Corporation, and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful; and provided further that no such indemnification shall be required with respect to any settlement or other non-adjudicated disposition of any threatened or pending action or proceeding unless the Corporation has given its prior consent to such settlement or other disposition.

The Corporation shall indemnify any person, as above provided, in connection with an action by or in right of the Corporation to procure a judgment in its favor, except that no such indemnification shall be made in respect of (i) a threatened action or a pending action which is otherwise disposed of, or (ii) any claim, issue or matter as to which such person shall have been adjudged liable to the Corporation, unless, and only to the extent that, the court in which the action was brought or, if no action was brought, any court of competent jurisdiction determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

The Corporation shall advance or promptly reimburse, upon request, any person entitled to indemnification hereunder for all expenses, including attorneys' fees, reasonably incurred in defending any action or proceeding in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced or reimbursed or allowed by the court exceed the amount to which such person is entitled; provided, however, that such person shall cooperate in good faith with any request by the Corporation that common counsel be utilized by the parties to an action or proceeding who are similarly situated unless to do so would be inappropriate because of actually or potentially differing interests between or among such parties.

Nothing herein shall limit or affect any right of any person otherwise than hereunder to indemnification or expenses, including attorneys' fees, under any statute, rule, regulation, certificate of incorporation, by-law, insurance policy, contract or otherwise.

In case any provision in this Article shall be determined at any time to be unenforceable in any respect, the other provisions shall not in any way be affected or impaired thereby, and the affected provision shall be given the fullest possible enforcement in the circumstances, it being the intention of the Corporation to afford indemnifications and advancement of expenses to its directors and officers, acting in such capacities or in the other capacities mentioned herein, to the fullest extent permitted by law.

A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in the first two paragraphs of this Article shall be entitled to indemnification as authorized in such paragraphs. Except as provided in the

preceding sentence and unless ordered by a court, any indemnification under this Article shall be made by the Corporation if, and only if, authorized in the specific case:

- (1) By the Board of Directors acting by a quorum consisting of directors who are not parties to such action or proceeding (“disinterested directors”) upon a finding that the director or officer has met the standard of conduct set forth in the first, and pursuant to the second, paragraph of this Article, or,
- (2) By the Board of Directors upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the standard of conduct set forth in this Article has been met by such director or officer.

Section 5.2 Insurance. The Corporation shall have the power to purchase and maintain insurance (i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of Section 5.1, (ii) to indemnify directors and officers in instances in which they may be indemnified by the Corporation under the provisions of Section 5.1, and (iii) to indemnify directors and officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of Section 5.1, provided that, in this latter case, all legal requirements be met with regard to the contract of insurance.

No insurance so purchased and maintained may provide for any payment, other than the cost of defense, to or on behalf of any director or officer (i) if a judgment or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that the person personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) in relation to any risk the insurance of which is prohibited under New York insurance law.

Section 5.3 Conditions for Indemnification and Insurance. Notwithstanding anything herein to the contrary, in no case shall the Corporation indemnify, reimburse, or insure any person for any taxes imposed on such individual under Chapter 42 of the Internal Revenue Code of 1986, as amended (the “Code”). Further, if at any time the Corporation is deemed to be a private foundation within the meaning of Section 509 of the Code, then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or taxable expenditure, as defined in Section 4941(d) or 4945(d), respectively, of the Code. Moreover, the Corporation shall not indemnify, reimburse, or insure any person in any instance where such indemnification, reimbursement, or insurance is inconsistent with Section 4958 of the Code, any other provision of the Code applicable to corporations described in Section 501(c)(3) of the Code, the New York Not-for-Profit Corporation Law, or any other applicable law. Any application to a court for indemnification must be made upon notice to the Attorney General.

ARTICLE VI. – PROVISIONS AFFECTING DIRECTORS AND OFFICERS

Section 6.1 Related Party Transactions. The Corporation shall not enter into any related party transaction, except as approved pursuant to the procedures set out in the Corporation's Conflict of Interest Policy. A related party transaction is any transaction, agreement or other arrangement in which a related party has a financial interest and in which the Corporation or any affiliate is a participant. A related party includes any director, officer or key employee of the Corporation, any relative of such person, or any entity in which any such person or relative of such person has a 35% or greater ownership interest, as these terms are defined in the Corporation's Conflict of Interest Policy.

Section 6.2 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, except that the Corporation may make a loan to any corporation which is a "charitable corporation" under the Not-for-Profit Corporation Law of the State of New York. A loan made in violation of this paragraph shall be a violation of the duty to the Corporation or of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

Section 6.3 Conditions for Loans or Other Transactions. This Article shall, in no event, be construed to authorize any act of self-dealing within the meaning of Section 4941 of the Code, or any other act expressly prohibited by the Code, the New York Not-for-Profit Corporation Law, or any other applicable law.

Section 6.4 Limitation of Director's Liability. Unless otherwise provided by law, the personal liability of a director to the Corporation for monetary damages for breach of duty as a director shall be limited to an amount equal to the amount of compensation received by the director for serving the Corporation during the calendar year in which the violation occurred (and if the director received no such compensation from the Corporation during the calendar year of the violation, such director shall have no liability to the Corporation for breach of duty) if such breach did not:

- (A) involve a knowing and culpable violation of law by the director;
- (B) enable the director to receive an improper personal economic gain;
- (C) show a lack of good faith and conscious disregard for the duty of the director to the Corporation under circumstances in which the director was aware that his or her conduct or omission created an unjustifiable risk of serious injury to the Corporation; or

- (D) constitute a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the Corporation.

Any repeal or modification of this Section shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VII. – MISCELLANEOUS

Section 7.1 Garden Membership. The Board may set out policies and procedures for a supporting membership. The membership will have no governance, voting or control rights and shall not be “members” for purposes of the New York Not-for-Profit Corporation Law.

Section 7.2 Fiscal Year. The fiscal year of the Corporation shall be the calendar year or such other period as may be fixed by the Board of Directors.

Section 7.3 Corporate Seal. The corporate seal, if any, shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.4 Books and Records to be Kept. The Corporation shall keep at its principal office in the State of New York: (a) correct and complete books and records of account, (b) minutes of the proceedings of the Board of Directors and any committee of the Corporation, and (c) a current list of the directors and officers of the Corporation. Any of the books, minutes and records of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

If any person authorized by law demands to inspect a list of directors and officers, the Corporation shall make such list available to the person within two business days and for a period of one week.

Section 7.5 Amendment to the Certificate of Incorporation and By-Laws. The Certificate of Incorporation may be amended or changed by vote of a majority of the entire Board pursuant to Section 802 of the New York Not-for-Profit Corporation Law. By-Laws of the Corporation may be adopted, amended or repealed by action by the Board of Directors pursuant to Section 2.4 of these By-Laws.