

SAMPLE BY-LAWS
OF
THE NYC DISTRICT MANAGEMENT ASSOCIATION, INC.
(the “Corporation”)

Prepared by the Lawyers Alliance for New York

In partnership with the New York City Department of Small Business Services

Updated as of July 20, 2010

ARTICLE I

OFFICES

The principal office of the Corporation shall be located at ABC Management Association (DMA), 1234 A Street, New York, NY 10038, or at such other location within the ABC Business Improvement District area (the "District") as the Board of Directors ("Board" or "Directors") may determine.

ARTICLE II

MEMBERS

Section 2.1. Classes of Members. The Corporation shall have five (5) classes of members:

- (a) Class A: Owners of record of real property in the District, which owners have applied for membership by filling out an address card at the principal office of the Corporation (or such other place as the officers of the Corporation shall designate), shall be Class A members of the Corporation.
- (b) Class B: Tenants who are occupants pursuant to a lease of commercial space within the District who are not eligible for Class A membership, which tenants have applied for membership by filling out an address card at the principal office of the Corporation (or such other place as the officers of the Corporation shall designate), shall be Class B members of the Corporation.
- (c) Class C: Tenants who are occupants pursuant to a lease of a dwelling unit and proprietary lessees who are occupants pursuant to a proprietary lease of residential cooperative units within the District who are not eligible for Class A or Class B membership, which tenants and proprietary lessees have applied for membership by filling out an address card at the principal office of the Corporation (or such other place as the officers of the Corporation shall designate), shall be Class C members of the Corporation.
- (d) Class D: One representative appointed by each of the Mayor of the City of New York, the Comptroller of the City of New York, the President of the Borough of [_____]¹ and the Member of the New York City Council representing the District or, if there is more than one Council Member representing the District, then by the Speaker of the New York City Council, shall be Class D members of the Corporation.

¹ Insert the Borough in which the District is located.

(e) Class E: One representative appointed from each Community Board within the jurisdiction of the District, and any other interested party whether non-profit association or organization or an individual, which party has applied for membership by filling out an address card at the principal office of the Corporation (or such other place as the officers of the Corporation shall designate), shall be a Class E non-voting member of the Corporation.

An individual may only be a member of one class.

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

Additionally (1) each Class A membership shall terminate when the Class A member is no longer an owner of record of real property in the District; (2) each Class B membership shall terminate when the Class B member is no longer a tenant who is an occupant pursuant to a lease of commercial space in the District; (3) each Class C membership shall terminate when the Class C member is no longer (i) a tenant who is an occupant pursuant to a lease of a dwelling unit or (ii) a proprietary lessee pursuant to a proprietary lease of residential cooperative units, in the District; (4) each Class D membership shall terminate when the person who appointed such member is no longer the Mayor of the City of New York, the Comptroller of the City of New York, the President of the Borough of [_____]², or the New York City Council member representing the District, as the case may be, and (5) each Class E membership shall terminate after two years.

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

Section 2.3. Termination caused by Absence. Any member of Class A, B, or C who fails to attend two consecutive meetings, was not excused from such meetings, or failed to have a representative attend in their stead, shall have their membership terminated.

Section 2.4. Record Date. The Board may fix a date as the record date for determining the members entitled to receive notice of, and vote at, any meeting of members; such date shall be not less than ten (10) nor more than fifty (50) days before the meeting. In the event no record date is fixed, the record date for

² Insert the Borough in which the District is located.

the determination of the members entitled to vote at a meeting of members shall be the close of business on the day before the day on which notice is given. Membership as of the record date will be used to determine quorum, voting privileges and eligibility in elections.

ARTICLE III

MEETINGS OF THE MEMBERSHIP

Section 3.1. Public Annual Meeting. A public annual meeting of the membership for the purpose of electing Directors and transacting such other business as may come before it shall be held each year at such date, time, and place within the District as shall be specified by the Board, [or, if not so specified, as may be determined by the Chairperson of the Board.]³

An annual meeting of the Board will immediately follow the Public Annual Meeting.

Section 3.2. Special Meetings. Special meetings of the membership shall be held at such time and place within the District as may be designated in the notice of meeting, whenever called by a majority of the Board or the Chairperson of the Board. Such meetings may also be convened upon written demand by members entitled to cast ten percent (10%) of the total number of votes entitled to be cast at such meeting, who may, in writing, demand the call of a special meeting specifying the date and month thereof, which shall not be less than two (2) nor more than three (3) months from the date of such written demand. The Secretary of the Corporation, upon receiving such written demand, shall promptly give notice of the special meeting as specified below, or, if the Secretary fails to do so within five (5) business days thereafter, any member signing such demand may give notice of the special meeting.⁴

Section 3.3. Notice of Meetings. Written notice of membership meetings, stating the place, date, and hour thereof and, unless it is the annual meeting [or public hearing], stating that it is issued by or at the direction of the person or persons calling the meeting and indicating the purpose or purposes for which the meeting is called, shall be given personally or by mail⁵ to each member entitled to vote at such meeting. If the notice is given personally or by first class mail it shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty (30) nor more than sixty (60) days before such date. If, at any time, the membership of the Corporation shall exceed 500 members, then notice may be

³ As a practical matter, inserting this provision may make it logistically easier to set the date, time and place of each annual meeting of members.

⁴ See N-PCL Section 603(c)

⁵ See N-PCL Section 605(a).

served by publication in lieu of mailing, in a newspaper published in [_____] ⁶ County once a week for three (3) successive weeks next preceding the date of the meeting.

Section 3.4. Quorum. Except as otherwise provided by law or in the Certificate of Incorporation or in these by-laws, the presence, in person or by proxy, of members entitled to cast ten percent (10%) of the total number of votes entitled to be cast or one hundred votes, whichever is lesser, shall constitute a quorum at meetings of members, and the act of a majority of the voting members present at any meeting shall be the act of the members. A member which is a firm or corporation will be deemed to be present if it is represented by a partner or officer or other proxy.

Section 3.5. Voting. At any meeting of the members, each member present, in person or by proxy, and entitled to vote, shall be entitled to one vote. Except in respect of matters requiring the authorization of a specific class of members, a member of multiple classes shall be entitled to vote only as a member of the highest class of which he or she is a member, and shall not be entitled to more than one vote. Upon demand of any member, any vote for Directors or upon any question before the meeting, shall be by ballot.

Section 3.6. Vote of Members. Except as otherwise provided by law or in the Certificate of Incorporation or in these by-laws, and except for the election of Directors, at any meeting of members duly called and held and at which a quorum is present, any corporate action authorized by a majority of the votes cast by members entitled to vote thereon, shall constitute an act of the members.

Section 3.7. Special Actions Requiring Vote of Members: The following corporate actions may not be taken without the specified approval of the members:

- (a) a plurality of the votes cast at a meeting of members by the members of the class entitled to vote is required for the election of the Directors of the Corporation;
- (b) a majority of the votes cast at a meeting of the members is required for (i) any amendment of or change to the Certificate of Incorporation, or (ii) a petition for judicial dissolution;
- (c) two-thirds of the votes cast at a meeting of the members is required for (i) disposing of all, or substantially all, of the assets of the Corporation, (ii) acquisition or disposition of any real property of the Corporation (iii) approval of a plan of merger, (iv) authorization of a plan of non-judicial dissolution, or (v) revocation of a voluntary dissolution proceeding, provided, however, that the affirmative votes cast in favor of any action described in this

⁶ Insert the County in which the District is located.

subsection (c) shall be at least equal to the minimum number of votes necessary to constitute a quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

Section 3.8. Adjournment. If a quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person or represented by proxy, shall have the power by a majority of the votes so represented to adjourn the meeting from time to time, with **notice** at the meeting, of the date, time and place of the adjourned meeting and **notification** shall be given to any voting member not present at the meeting being adjourned.

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

Section 3.9. Action without a Meeting. Any action required by the laws of the State of New York to be taken at a meeting of the membership, or any action which may be taken at any meeting of the membership, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote thereon. The action shall be filed in the minutes of the forthcoming Annual Meeting of the Membership.

ARTICLE IV

BOARD OF DIRECTORS

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

Section 4.2. Size of the Board. The number of voting Directors which shall constitute the Board shall be not less than thirteen (13), of which no fewer than seven (7) Directors must be Class A members. The Board, by resolution adopted by vote of a majority of the then authorized number of Directors, may increase or decrease the number of Directors, but in no event shall the number of Directors be less than thirteen (13) and in no event shall the Directors from the Class A members constitute less than a majority of Directors.

Section 4.3. Election of Directors. Directors shall be elected in accordance with the provisions of Section 3.7 of these by-laws. The members of Class A shall elect not less than seven (7) Directors to represent them on the Board from among their number or, if any members be a corporation or partnership, from among the representatives of such member. In no event shall

the number of Directors elected from Class A constitute less than a majority of the entire voting Board. The members of Class B shall elect not less than one (1) Director to represent them on the Board from among their number or, if any member be a corporation or partnership, from among the representatives of such member. The members of Class C shall elect not less than one (1) Director to represent them on the Board from among their number or, if any member be a corporation or partnership, from among the representatives of such member. One Class D Director shall be appointed by each of the following: the Mayor of the City of New York, the Comptroller of the City of New York, the [_____] ⁷ Borough President and the New York City Council member representing the District.

Section 4.4. Non-Voting Directors. A representative of each Community Board within the jurisdiction of the District shall be nominated by the Chairperson of each such Community Board to serve as a non-voting Director. Additionally the non-Community Board members of Class E shall elect up to three (3) non-voting Directors to represent them on the Board from among their number or, if any members be a corporation or partnership, from among the representatives of such member.

Section 4.5. Classification of Directors; Terms of Office. The Directors shall be classified, with respect to the terms for which they severally hold office, into two classes, as follows: Class I to hold office initially for a term expiring at the next succeeding annual meeting of the membership and Class II to hold office initially for a term expiring at the second succeeding annual meeting of the membership, with the directors of each class to hold office until their successors are duly elected and qualify. At each annual meeting of the membership, the successors to the class of Directors whose term expires at such meeting shall be elected to hold office for a term expiring at the annual meeting of membership held in the second year following the year of their election. The Directors in each class shall be as follows:

Class I: One half of all Class A Directors (or, if not evenly divisible, the majority of Class A Directors)

All Class D Directors

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

All Class B Directors

All Class C Directors

Section 4.6. Vacancies, Resignations and Removals. Any vacancy created by the death, resignation or incapacity to act of a Director elected by the Class A, B, C or E members, shall be filled by a plurality of the votes cast at a

⁷ Insert the Borough in which the District is located.

meeting of members, by the class of members entitled to vote.⁸ In the event of a vacancy created by the death, resignation or incapacity to act of a Class D Director, the official empowered to appoint such Director shall appoint a new Class D Director. In the event of a vacancy created by the death, resignation or incapacity to act of a Community Board Director, a new Director shall be appointed by the respective Community Board. In each of the foregoing circumstances, if a vacancy remains unfilled for six months after it occurs, and by reason of the absence, illness or other inability of one or more of the remaining Directors a quorum of the Board cannot be obtained, the remaining Directors, or a majority of them, may appoint a Director to fill such vacancy.⁹ A Director elected or appointed to fill a vacancy shall hold office until the next annual meeting at which the election of directors is in the regular order of business, and until the election (or appointment) and qualification of a successor.¹⁰

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

Any Class A, B, C, or E Director may be removed at any time with or without cause by the vote of the class of members which elected such Director. For the avoidance of doubt, where a Director fails to attend three (3) consecutive meetings of the Board, and was not excused from such meetings and failed to have a representative attend in his or her stead, such failure to attend shall constitute cause for the purposes of this Section 4.6. A Class D Director may be removed with or without cause by the public official who appointed such Director. Additionally, any Class D Director shall be removed, by the public official who appointed such Director, immediately prior to the time at which such official no longer holds an office which entitles him or her to appoint a member to Class D membership. Upon such removal the newly elected official empowered to make an appointment to Class D membership shall appoint a new member to Class D who shall serve as a Director.

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

⁸ See N-PCL Section 705(b).

⁹ See N-PCL Section 705(b)

¹⁰ See N-PCL Section 705(c)

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

(b) Executive Committee. The Executive Committee shall be composed of at least three (3) Directors, appointed by a resolution adopted by a majority of the entire Board¹¹. The Chairperson of the Board shall serve as the Chairperson of the Executive Committee. The Executive Committee shall have and may exercise all of the powers of the Board when the Board is not in session, provided that the Executive Committee shall be at all times accountable to and subject to the control of the Board, and provided further that the Executive Committee shall have no authority as to the following matters: (i) the submission to the members of any action requiring members' approval by law; (ii) the filling of vacancies on the Board or in any committee; (iii) the fixing of compensation of the Directors for serving on the Board or on any committee of the Board; (iv) the amendment or repeal of these by-laws or the adoption of new by-laws; (v) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable; and (vi) the removal of Directors.

(c) Nominating Committee.¹² The Nominating Committee shall be chaired by the Secretary or the Vice-Chairperson and composed of those Officers of the Corporation who, by written notice to the Chairperson, elect to be members of the Committee and, at the discretion of the Chairperson, no less than two (2) Directors (who are not Officers) appointed by the Chairperson, subject to the approval of the Board. The Nominating Committee shall be responsible for preparing a slate of candidates for the Board of Directors from those classes of members which elect Directors.]

(d) Finance Committee.¹³ The Finance Committee shall be chaired by the Treasurer and composed of those Officers of the Corporation who, by written notice to the Chairperson, elect to be members of the committee, and at the discretion of the Chairperson, no less than two (2) directors (who are not officers)

¹¹ See Section 712(a) of the N-PCL: A standing committee of the Board must be comprised of members of the Board only (three at minimum), and each such committee member must be approved by the Board. Any other committee (eg. a committee comprised of officers who are not Board members) shall be a committee of the Corporation (rather than a committee of the Board).

¹² See Note 1 above re: standing committees of the Board. Clauses 4.7(c) – (f) should be drafted to clarify that only Board members may sit on standing committees of the Board.

¹³ See Note 1 above re: standing committees of the Board. Clauses 4.7(c) – (f) should be drafted to clarify that only Board members may sit on standing committees of the Board.

appointed by the Chairperson, subject to the approval of the Board. In addition, the Directors appointed by the Mayor and the Comptroller shall be members of the Finance Committee. The Finance Committee shall formulate financial policies for review and approval by the Board; shall formulate an annual Budget containing a complete plan of proposed yearly expenditures and estimated revenues for each fiscal year of the Corporation for approval by the Board; and shall conduct such other activities as are assigned to it from time to time by the Board.]

(e) [Audit Committee].¹⁴ The Audit Committee shall be chaired by the Vice-Chairperson and composed of those Officers of the Corporation who, by written notice to the Chairperson, elect to be members of the Committee, and at the discretion of the Chairperson, no less than two (2) Directors (who are not officers) appointed by the Chairperson, subject to the approval of the Board. In addition, the Directors appointed by the Mayor and the Comptroller shall be members of the Audit Committee. The Audit Committee shall recommend an auditor for the Corporation to be appointed by the Board; shall define the scope of the audit to be performed, shall review the annual financial statements of the Corporation prior to their submission to the Corporation members; and shall conduct such other activities as are assigned to it from time to time by the Board.]

(f) [Other Standing Committees].¹⁵ The Chairperson shall designate subject to the approval of the Board, from among the members of the Board, other Standing Committees, each consisting of three (3) or more Directors, as the Chairperson may deem appropriate. The Chairperson may be a non-voting member, ex-officio, of each Standing Committee. The Chairperson may appoint non-voting members to any such Committee. Each committee shall serve at the pleasure of and be responsible to the Chairperson and to the Board.

(g) [Special Committees]. The Chairperson may designate, subject to the approval of the Board, any other special committees of the Board ("Special Committees"), each consisting of at least three (3) or more Directors and any other members as the Chairperson may deem appropriate, with such powers and duties as the Board may prescribe. The Chairperson may be a non-voting member, ex-officio, of each Special Committee. A Special Committee is a committee of the Board that is limited in its responsibilities, including by duration or by project. [Notwithstanding the foregoing, if any voting members of any Special Committee are not Directors, any and all actions undertaken or approved

¹⁴ See Note 1 above re: standing committees of the Board. Clauses 4.7(c) – (f) should be drafted to clarify that only Board members may sit on standing committees of the Board.

¹⁵ See Note 1 above re: standing committees of the Board. Clauses 4.7(c) – (f) should be drafted to clarify that only Board members may sit on standing committees of the Board.

by such Special Committee must be submitted to the entire Board for its approval.]^{16]}

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

Section 4.8. Regular Meetings. The Board shall meet at such times and such places as may be determined by action of the Board with five (5) days notice by mail, telephone, fax or email.

An annual meeting of the Board (the "Annual Board Meeting") will immediately follow the Public Annual Meeting. Officer elections shall take place at the Annual Board Meeting.

Section 4.9. Special Meetings. Special meetings of the Board may be called at any time by the Chairperson or a majority of the Directors on five (5) days' notice by mail, telephone, fax or email.

Section 4.10. Quorum and Voting. At every meeting of the Board a quorum must be present for the transaction of business. Except as otherwise provided by law or in the Certificate of Incorporation or these by-laws, if the Board consists of fifteen members or less, the quorum shall be one-third of the entire number of Directors, and if the Board consists of more than fifteen members, the quorum shall be five Directors plus one additional Director for every ten Directors (or fraction thereof) in excess of fifteen. Action at any Board meeting may be taken upon affirmative vote by a majority of Directors present and entitled to vote. Each Director shall have one vote, with the exception of any Class E and Community Board Director(s) who shall be non-voting Directors. [Where a Director represents multiple classes of members of the Corporation, that Director shall not be entitled to more than one vote.]

Section 4.11. Adjournment. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time and place, and the meeting may be held without further notice or

¹⁶ Note: this clause is recommended to ensure that the Board does not delegate its fiduciary duties to non-Board members. If a Special Committee is comprised of voting members who are not Board members, it is best to ensure that their actions are approved by the entire Board so that the Board is in compliance with its obligations under Section 712(d) of the N-PCL.

waiver, except that notification shall be given to any Director not present at the meeting being adjourned.

Section 4.12. Action without a Meeting. Any action required or permitted to be taken at any meeting by the Board or any committee thereof may be taken without a meeting if all of the members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action and the resolution and the written consents are filed with the minutes of proceedings of the Board or the committee.

Section 4.13. Meeting by Conference Telephone. Any one or more members of the Board 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 4.14. Compensation. Directors shall not receive any compensation for their services as Directors or committee members. Subject to Article X hereof (Conflicts of Interest Policy) provided that there is full disclosure of the terms of such compensation and the arrangement has been approved by the Board, this shall not in any way limit reimbursement of or payment for services provided to the Corporation (i) by the Director in any capacity separate from his or her responsibilities as a Director, or (ii) by any organization with which a Director is affiliated.¹⁷ Directors may be reimbursed for their reasonable expenses of attendance at any meetings or other functions of the Corporation or the Board, or any committee thereof. Any compensation agreement shall be filed in the minutes of the Board and included in the Annual Report of Directors.

Section 4.15. Annual Report of Directors. At each Public Annual Meeting, the Board of Directors shall present a report verified by the Chairperson and Treasurer or by a majority of Directors showing in appropriate detail the following or as otherwise may be required by law: (a) the assets and liabilities of the Corporation as of the end of a twelve (12) month fiscal period terminating not more than six (6) months prior to the meeting; (b) the principal changes in assets and liabilities during the fiscal period; (c) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes for that fiscal period; (d) the expenses or disbursements of the Corporation, for both general and restricted purposes for said fiscal period; and (e) the number of members of the Corporation as of the date of the report, together with a statement of any increase or decrease in such number during said fiscal period, and a statement of the place where the names and addresses of the current members may be found. The foregoing report shall be filed with the records of the Corporation and

¹⁷ BEST PRACTICE NOTE: Executives who are employed and paid by the DMA generally should not sit on the Board of the DMA. If however, this is unavoidable, the executive in question should be an ex-officio **non-voting** Board member.

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

Section 4.16. Interim Board of Directors. Notwithstanding Section 4.3 hereof (Election of Directors), there shall be an Interim Board of Directors as defined in this Section, which Interim Board shall exercise all of the powers of the Corporation specified in Section 4.1 hereof (General Powers) until such time as the Board of Directors is elected, in accordance with Sections 3.7 and 4.3 hereof, at the first Public Annual Meeting of the Corporation.

The Interim Board of Directors shall consist of the Incorporators of the Corporation.

Section 4.17. Alternates. [Each class of members and each public official entitled to elect or appoint one or more Directors may elect or appoint an alternate for each such Director. In the absence of a Director from a meeting of the Board, his or her alternate may, upon written notice to the Secretary of the Corporation, attend such meeting and exercise therein the rights, powers and privileges of the absent Director. When so exercising the rights, powers, and privileges of the absent Director, such alternate shall be subject in all respects to these by-laws and the applicable law governing Directors.]¹⁸

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.

ARTICLE V

OFFICERS

Section 5.1. Appointment of Officers. The Board shall appoint the officers of the Corporation. Such officers shall include a Chairperson, one or more Vice-Chairpersons, a Treasurer, and a Secretary, and may include such other officers as the Board from time to time shall find appropriate. The officers shall exercise the powers and perform the duties designated in these by-laws and such other duties that usually pertain to their respective offices or as are properly delegated or assigned to them from time to time by the Board or Chairperson. Each officer shall hold office for such term as will be prescribed by the Board and until a successor has been appointed and qualified.

¹⁸ See Section 703(d) of the N-PCL

Section 5.2. Powers and Duties.

- (a) Chairperson¹⁹: The Chairperson shall preside at all meetings of the Board and/or members, have the power and authority to sign for the Corporation all deeds and other instruments, and to perform such acts as usually pertain to the office of Chairperson.
- (b) Vice-Chairperson: During the absence or disability of the Chairperson, the Vice-Chairperson or, if there shall be more than one, the Senior Vice-Chairperson shall have all the powers and functions of the Chairperson. Each Vice-Chairperson shall perform such duties as the Board shall prescribe. Each Vice-Chairperson may be assigned a committee to chair.
- (c) Secretary: The Secretary shall keep minutes of the proceedings of the Board, and shall give, or cause to be given, all notices in accordance with the provisions of these by-laws or as required by law. The Secretary shall be Chairperson of the Nominating Committee. The Secretary shall be custodian of the corporate records, custodian of the corporate seal, maintain membership rolls and in general shall perform all the duties incident to the office of Secretary and such other duties as may be assigned by the Board.
- (d) Treasurer: The Treasurer shall have the custody of the Corporation's funds, and shall keep correct and complete books and records of account. The Treasurer will make all books and records available to any Director upon request. The Treasurer shall prepare and certify all financial reports of the Corporation, or cause the same to be prepared and certified by a firm of certified public accountants, and in general shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board. The Treasurer shall be Chairperson of the Finance Committee.

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

ARTICLE VI

¹⁹ Clarification is required as to whether the Chairperson / CEO is also a member of the Board.

AMENDMENTS

These by-laws may be amended or repealed at the Public Annual Meeting by those members at the time entitled to vote in the election of Directors, or by the Board, provided that written notice of the proposed amendment or repeal has been sent to each Director or voting member of the Corporation, as the case may be, at least five (5) days in advance of the date set for the Board meeting, or in the notification for the next Public Annual Meeting.

If any by-law [regulating an impending election of directors] is adopted, amended, or repealed by the Board, there shall be set forth in the notice of the next meeting of the members for the election of Directors, the by-law so adopted, amended, or repealed, together with a concise statement of the changes made.²⁰

ARTICLE VII

MISCELLANEOUS

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be July 1st through June 30th.

Section 7.2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the laws of the State of New York, the Certificate of Incorporation of the Corporation, or the By-laws, a waiver thereof in writing, signed by the Chairperson, Vice-Chairperson, Secretary, or Treasurer of the Corporation or the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 7.3. Year-End Fiscal Report. A year end fiscal report shall be presented to the membership at the Public Annual Meeting. Notification of the report's completion and availability to be viewed shall be given at least thirty (30) days before the Public Annual Meeting at which it will be presented.

Section 7.4. Public Hearing. The Corporation may, at the discretion of the Board, hold an annual public hearing at least sixty (60) days prior to submitting to the City its proposed final budget for the next succeeding year. Such hearing may be held on the same day as the Public Annual Meeting of the membership or such other date as the Board may designate.

²⁰ Note that this provision goes further than what is required by Section 602(e) of the N-PCL. Section 602(e) requires that such notice / statement be provided to members only where the relevant by-law regulates an impending election of directors.

Such public hearing may include a presentation of all planning, capital and service programs proposed and allow reasonable time for discussion of all issues.

ARTICLE VIII

INDEMNIFICATION

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

ARTICLE IX

INVESTMENTS

Section 9.1. Investments and Proxies. The Board shall have the power to make investments of the funds of the Corporation and to change the same and may sell, from time to time, any part of the securities of the Corporation or any rights or privileges that may accrue thereon. Investments will be limited to the following: FDIC insured accounts or securities backed by the full faith and credit of the United States government or the governments of New York State or New York City.

Section 9.2. Transfer and Assignment. The Board may authorize any officer, Director or other person or persons to execute such form of transfer or assignment as may be customary or necessary to constitute a transfer of bonds or other securities in the name of or belonging to the Corporation. A corporation or person transferring any such bonds or other securities pursuant to a form of transfer or assignment so executed shall be fully protected and shall not have any duty to inquire whether or not the Board has taken action in respect thereof.

Section 9.3. Loans. The Corporation will not enter into any loans without the approval of the Board.

ARTICLE X

CONFLICTS OF INTEREST, CONTRACTS AND SERVICES OF OFFICERS AND DIRECTORS

Section 10.1. Disclosure.

(a) Prior to election to the Board, and thereafter on an annual basis, all Directors shall disclose in writing, to the best of their knowledge, any Interest (as defined below) that such Director may have in any corporation, organization, partnership or other entity which provides professional or other goods or services to the Corporation for a fee or other compensation, and any position or other material relationship that such Director may have with any other entity with which the Corporation has an attorney-client or other business relationship (collectively, a "Conflict of Interest"). A copy of each disclosure statement shall be available to any Director of the Corporation on request.

(b) If at any time during his or her term of service, a Director acquires any Interest or otherwise a circumstance arises which may pose a Conflict of Interest, that Interest or other Conflict shall be promptly disclosed in writing to the Board by the person concerned.

(c) When any matter for decision or approval, in which a Director has an Interest or other Conflict, comes before the Board or any committee, that Interest or other Conflict shall be immediately disclosed to the Board or relevant committee by that Director.

Section 10.2. Definition of "Interest". Whether a Director has an Interest in an entity shall be determined by whether that Director would derive a significant individual economic benefit, either directly or indirectly, from any transaction or relationship involving such entity or any decision on a matter involving such entity by the Board or a committee. The fact that an entity may take positions on legislative matters of general impact shall not constitute a Conflict of Interest.

Section 10.3. Abstention from Vote. No Director shall vote on any matter in which he or she has a Conflict of Interest; provided however, that any Director disclosing a Conflict of Interest may be counted in determining the presence of a quorum, at a meeting of the Board or a committee thereof.

Section 10.4. Absence from Discussion. Unless requested by the Board or the relevant committee to remain present during the meeting, any Director who has a Conflict of Interest in a matter shall leave the room in which discussion regarding that matter is carried on and shall not participate in the final deliberation or decision regarding the matter, provided however, that the interested Director may participate in any discussion regarding his or her absence and the interested Director shall be given an opportunity to disclose and

explain the interested transaction to the Board prior to the Board discussion and vote on the transaction without the presence of the interested Director.

Section 10.5. Minutes. The minutes of the meetings of the Board or Committee shall reflect that the Conflict of Interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is doubt as to whether a Conflict of Interest exists, the matter shall be resolved by a vote of the Board or its committee, excluding the person concerning whose situation the doubt has arisen.

Section 10.6. Attempts to Influence. Directors shall not attempt to influence other Directors regarding matters in which they have a Conflict of Interest, without first disclosing that Conflict of Interest.

Section 10.7. Contract Review Committee. The Board may, in its discretion establish a Contract Review Committee consisting of at least three (3) Directors to review any contract that is proposed for approval by the Board respecting which a Director may have a Conflict of Interest (an "Interested Party Contract)". If no Contract Review Committee has been duly appointed, at any time, the Board or another committee so authorized by the Board (not including the Directors having an interest in the applicable contract) shall serve such role. The Contract Review Committee or Board shall review the Interested Party Contract and determine whether to authorize the contract; provided that if the contract is of a magnitude that it would otherwise require Board approval, the Contract Review Committee shall submit the contract to the Board with its recommendation whether or not to approve it. The Contract Review Committee or the Board must approve an Interested Party Contract by a majority vote of the disinterested Directors entitled to vote on the matter.