

NY CREATES BOARD OF DIRECTORS MEETING

December 18, 2019

3:00 PM

NFE 2107

AGENDA

1. Call to order
2. Introduction of New Members
3. Resolution No. 1 - NY CREATES Organizational Matters
4. New Business
5. Public Comment
6. Next Board of Directors meeting: TBD
7. Adjournment

**TO: New York Center For Research, Economic Advancement, Technology, Engineering and Science (“ NY CREATES”) Board of Directors**  
**RE: Organizational Meeting**

**Background:**

On May 5, 2018, the State of New York, State University of New York (“SUNY”), and Empire State Development (“ESD”) announced the creation of the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) to serve as a resource for public-private academic research within New York State and SUNY to create and lead industry-connected research, economic development and commercialization that attracts investment and creates high-tech jobs.

NY CREATES was established as a New York not-for-profit corporation on May 8, 2018 with the filing of a certificate of incorporation with the New York State Department of State. The Research Foundation for the State University of New York (“RF”) by Resolution BD2019-10 dated May 15, 2019 approved the creation of NY CREATES and authorized its management to take all steps necessary and appropriate for the establishment of NY CREATES. Pursuant to and in accordance with authorization provided by Resolution BD2019-10, membership into NY CREATES by RF was accepted and directors were appointed on December 16, 2019 by an act of its management. SUNY Polytechnic Institute Foundation, Inc. (“SPF”) by resolutions dated September 27, 2019 and November 21, 2019 (collectively the “Resolutions”) approved the reorganization of Fuller Road Management Corporation (“FRMC”) and Fort Schuyler Management Corporation (“FSMC”), including the creation of NY CREATES, accepted membership in NY CREATES, authorized its Chief Executive Officer to execute member unanimous written consents for NY CREATES, FRMC and FSMC, and authorized its Chief Executive Officer to take any such actions as are necessary and appropriate to effectuate the reorganization. Pursuant to and in accordance with the authorization provided by the SPF Resolutions, directors were appointed on December 16, 2019 by an act of its Chief Executive Officer.

The members of NY CREATES by unanimous written consent dated December 17, 2019, designated At-Large Directors, the Chair and the Vice Chair of the board of directors of NY CREATES.

NY CREATES will assume control of the two existing affiliated corporations, FRMC and FSMC. NY CREATES will become the sole member of FRMC and FSMC by replacing their existing members, the RF and SPF. In addition, each director of NY CREATES shall be deemed to have been appointed a director of FRMC and FSMC by virtue of being a director of NY CREATES. Further, the officers of NY CREATES will serve ex-officio as the officers of FRMC and FSMC in the same office that such individuals hold with NY CREATES and each director of NY CREATES serving on a committee of NY CREATES shall be deemed to have been appointed as a member of the corresponding committee of FRMC and FSMC. Lastly, all ex-officio non-voting advisory representatives to the NY CREATES board shall be deemed to be ex-officio non-voting advisory representatives to the boards of FRMC and FSMC.

NY CREATES management team will manage all projects in the FRMC and FSMC economic development portfolio as well as RF sponsored industry partner programs through coordination with RF and SUNY (the “NY CREATES Enterprise”). Consistent with the SUNY Chancellor’s May 5, 2018 statement, NY CREATES will also connect with SUNY Polytechnic Institute and other SUNY Institutions to support academic/industry related programs and educational opportunities, and provide the ability to expose students to cutting-edge research opportunities and internships.

A single management team across the NY CREATES Enterprise will streamline the management and improve the effectiveness of the current FRMC, FSMC and RF economic development portfolio.

**Proposal:**

1. Organize NY CREATES by (i) approving and accepting the certificate of incorporation of NY CREATES as filed with the Department of State on May 8, 2018, (ii) approving and accepting the NY CREATES by-laws as adopted by the initial directors, (iii) appointing officers of NY CREATES, (iv) establishing audit and finance committees, and (v) adopting various governance policies and guidelines.

2. Assume control of FRMC and FSMC by (i) accepting sole membership in FRMC and FSMC, (ii) approving certificates of amendments of the certificate of incorporations of FRMC and FSMC for NY CREATES to be the sole member, (iii) approving amended and restated by-laws of FRMC and FSMC to allow individuals serving as NY CREATES directors, officers, advisory representatives and committee members to serve ex-officio as the directors, officers, advisory representatives and committee members of FRMC and FSMC.

3. Approve binding of a Directors and Officers Insurance Policy.

**Action Requested:**

Adopt Resolution No. 1 to organize NY CREATES, assume control of FRMC and FSMC, bind a Directors and Officers Insurance Policy and authorize the President, the Chief Financial Officer and the Treasurer, each of them without the other, to execute, acknowledge and deliver any documents as such officer may deem necessary or appropriate to effectuate the purposes and intents of the foregoing resolution.

RESOLUTION OF THE BOARD OF DIRECTORS OF  
NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT, TECHNOLOGY,  
ENGINEERING AND SCIENCE CORPORATION  
(d/b/a “NY CREATES”)

DECEMBER 18, 2019

RESOLUTION NO: 1

WHEREAS, pursuant to a Certificate of Incorporation filed with the Department of State on May 8, 2018 the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) was formed under Section 402 of the Not-for-Profit Corporation Law (the “Corporation”); and

WHEREAS, pursuant to a resolution adopted by unanimous written consent dated December 13, 2019, the Initial Directors accepted the Certificate of Incorporation and adopted By-Laws of the Corporation; and

WHEREAS, pursuant to and in accordance with the Corporation’s By-Laws, the Research Foundation for the State University of New York (the “Research Foundation”) and the SUNY Polytechnic Institute Foundation, Inc. (the “SUNY Poly Foundation”) are the Corporation’s Members; and

WHEREAS, the Research Foundation by Resolution BD2019-10 dated May 15, 2019 approved the creation of NY CREATES and authorized its management to take all steps necessary and appropriate for the establishment of NY CREATES; and

WHEREAS, pursuant to and in accordance with authorization provided by the Research Foundation resolution dated May 15, 2019, membership into NY CREATES was accepted and directors were appointed on December 16, 2019 by an act of its management; and

WHEREAS, the SUNY Poly Foundation by resolutions dated September 27, 2019 and November 21, 2019 (collectively the “Resolutions”) approved the reorganization of Fuller Road Management Corporation and Fort Schuyler Management Corporation, including the creation of NY CREATES, accepted membership in NY CREATES, authorized its Chief Executive Officer to execute member unanimous written consents of NY CREATES, Fuller Road Management Corporation and Fort Schuyler Management Corporation, and authorized its Chief Executive Officer to take any such actions as are necessary and appropriate to effectuate the reorganization; and

WHEREAS, pursuant to and in accordance with authorization provided by the SUNY Poly Foundation Resolutions, directors were appointed on December 16, 2019 by an act of its Chief Executive Officer; and

WHEREAS, pursuant to and in accordance with the Corporation’s By-Laws, the Members unanimously designated a Director to Serve as Chair and one to serve as Vice Chair by Unanimous Written Consent dated December 17, 2019; and

WHEREAS, the appointed Board of Directors desires to organize the Corporation by accepting and approving the Certificate of Incorporation and By-Laws adopted by the Initial Directors and to appoint officers, form committees and adopt Corporate policies pursuant to and in accordance with the approved Corporate By-Laws; and

WHEREAS, the appointed Board of Directors further desires to accept membership in the Fuller Road Management Corporation and Fort Schuyler Management Corporation as the sole member and to approve amendments to the certificates of incorporation and By-Laws of each to effectuate same;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CORPORATION, AS FOLLOWS:

SECTION 1: The Corporation's Board of Directors hereby approves and accepts the Certificate of Incorporation of the Corporation as filed with the Department of State on May 8, 2018 and accepted by the Initial Directors by unanimous written consent dated December 13, 2019, and attached hereto as Exhibit A.

SECTION 2: The Corporation's Board of Directors hereby approves and accepts the By-Laws, as adopted by the Initial Directors by unanimous written consent dated December 13, 2019 and attached hereto as Exhibit B.

SECTION 3: The Corporation's Board of Directors hereby appoints the following individuals as Officers of the Corporation in the positions identified next to their names to serve at the pleasure of the Board with compensation to be commensurate with the position and experience of the individual as shall be determined and established by the Audit Committee:

President:	Dr. Douglas A. Grose
Chief Administrative Officer:	Patricia Arciero-Craig
Acting General Counsel:	Patricia Arciero-Craig
Treasurer:	Scott Bateman
Secretary:	Patricia Bucklin
Chief Operating Officer:	Paul Kelly
Chief Financial Officer:	Timothy Taylor

SECTION 4: The Corporation's Board of Directors hereby establishes an Audit Committee and appoints the following qualified Directors to serve on the Audit Committee at the pleasure of the Board of Directors for a term of one (1) year or until his or her successor is elected:

1. Michael Abbott - Chair
2. Alicia Barton
3. Meng-Ling Hsiao
4. Joan McDonald
5. Kenneth Tompkins

SECTION 5: The Corporation's Board of Directors hereby establishes a Finance Committee and appoints the following Directors to serve on the Finance Committee at the pleasure of the Board of Directors for a term of one (1) year or until his or her successor is elected:

1. Kristin Proud - Chair
2. Christine Chung
3. Michael Frame
4. Franklin Hecht
5. Brad Johnson

SECTION 6: The Corporation's Board of Directors hereby approves and accepts membership in the Fuller Road Management Corporation as the sole member and hereby approves the Certificate of Amendment of the Certificate of Incorporation and the Restated By-Laws of Fuller Road Management Corporation, attached hereto as Exhibit C.

SECTION 7: The Corporation's Board of Directors hereby approves and accepts membership in the Fort Schuyler Management Corporation as the sole member and hereby approves the Certificate of Amendment of the Certificate of Incorporation and the Restated By-Laws of Fort Schuyler Management Corporation, attached hereto as Exhibit D.

SECTION 8: The Corporation's Board of Directors hereby adopts all written corporate policies and procedures of Fuller Road Management Corporation and Fort Schuyler Management Corporation, as may be amended from time to time, as its own policies and procedures, including, but not limited to, the Audit Committee and Finance Committee charters. All references therein to Fuller Road Management Corporation and Fort Schuyler Management Corporation shall be substituted and replaced with NY CREATES.

SECTION 9: The Corporation's Board of Directors hereby approves the binding of a Directors and Officer's Insurance Policy as described in the summary provided to the Board.

SECTION 10. The President, the Chief Financial Officer and the Treasurer, each of them without the other, are hereby authorized, on behalf of the Corporation, to execute, acknowledge and deliver any and all documents as such officer may deem necessary or appropriate in order to effectuate the purposes and intents of the foregoing resolution.

SECTION 11. The President, the Chief Financial Officer and the Treasurer, each of them without the other, are hereby authorized and directed to take such actions as are necessary and appropriate to effectuate the foregoing resolutions.

SECTION 12: This Resolution shall take effect immediately.

CERTIFICATION

NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT, TECHNOLOGY,  
ENGINEERING AND SCIENCE CORPORATION

RESOLUTION NO: 1

The undersigned, being the duly elected and qualifying officer of NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT, TECHNOLOGY, ENGINEERING AND SCIENCE CORPORATION (the "Corporation"), certifies that the following constitutes a true and correct copy of a resolution adopted by the Board of Directors of the Corporation on December 18, 2019, as it appears in the records of the Corporation in my possession as of the date I have signed this Certification.

I further certify that, as of the date I have signed this Certification, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

Signed on this 18th day of December 2019.

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EXHIBIT A

NY CREATES CERTIFICATE OF INCORPORATION



FILING RECEIPT

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ENTITY NAME: NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT,  
TECHNOLOGY, ENGINEERING AND SCIENCE CORP.  
DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT) TYPE: C COUNTY: ALBA

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FILED:05/08/2018 DURATION:PERPETUAL CASH#:180508000899 FILM #:180508000845

FILER: \_\_\_\_\_ EXIST DATE \_\_\_\_\_  
HARRIS BEACH PLLC 05/08/2018  
99 GARNSEY ROAD  
  
PITTSFORD, NY 14534

ADDRESS FOR PROCESS:  
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THE CORPORATION 257 FULLER ROAD  
ATTN COUNSEL  
ALBANY, NY 12203

REGISTERED AGENT:  
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SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL SERVICE CODE: AL

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FEES	160.00	PAYMENTS	160.00
FILING	75.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	160.00
HANDLING	75.00	OPAL	0.00
		REFUND	0.00

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**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 9, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

180508000 845

**CERTIFICATE OF INCORPORATION  
OF**

**NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT,  
TECHNOLOGY, ENGINEERING AND SCIENCE CORP.**

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the corporation is New York Center for Research, Economic Advancement, Technology, Engineering and Science Corp.
2. The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
3. The purposes for which the corporation is being formed and will be operated are for the exclusively charitable or public purposes of advancing scientific research, education and economic development within the State of New York. Specifically, the purpose of the corporation is to facilitate the attraction and expansion of innovative research and development projects and facilities, and to develop strategic assets that support the growth of high technology companies throughout the State in cooperation with the State University of New York and the New York State Urban Development Corporation d/b/a Empire State Development.
4. The corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body. No consent or approval is required.
5. Nothing contained herein shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(a)-(v) of the Not-for-Profit Corporation Law.
6. Nothing contained herein shall authorize this corporation to operate a school, a college, a university or other entity providing post-secondary education, a library, or a museum or historical society.
7. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive grants, gifts, and contributions from public and private sources, together with all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.
8. The corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

9. Notwithstanding any other provision contained herein, the corporation is organized and operates exclusively for charitable, educational and scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization to which contributions are deductible under Section 170(c)(2) of said Code.

10. No part of the net earnings of the corporation shall inure to the benefit of any non-charitable member, trustee, director or officer of the corporation or any other private person (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no non-charitable member, trustee, director or officer of the corporation or any other private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

11. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

12. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more organizations that are organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

13. In any taxable year in which the corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the corporation shall:

- a. not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;
- b. distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942 of said Code;
- c. not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of said Code;
- d. not make any investments in such a manner as to subject the corporation to tax under Section 4944 of said Code; and
- e. not make any expenditures that are subject to tax under Section 4945 of said Code.

14. The principal office of the corporation is to be located in the County of Albany, State of New York.

15. The types or classes of membership in the corporation and the number of members of the corporation shall be described in the corporation's bylaws.

16. The corporation shall be managed by a board of directors consisting of not less than three (3) persons. Subject to such limitation, the number shall be fixed by the bylaws of the corporation pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

<u>Name</u>	<u>Address</u>
Robert J. Ryan	677 Broadway Suite 1101 Albany, NY 12207
Shawn M. Griffin	99 Garnsey Road Pittsford, NY 14534
Julie Marshall	677 Broadway Suite 1101 Albany, NY 12207

17. The directors of the corporation shall not be personally liable to the corporation for monetary damages because of their breach of duty as directors unless such liability is based upon a judgment or other final adjudication adverse to the director which establishes, (i) that the director's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of the law, (ii) that the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) that the director's acts violated Section 719 of the New York Not-for-Profit Corporation Law. If the New York Not-for-Profit Corporation Law is amended to authorize the further elimination or limitation of liability of directors, the liability of a director of the corporation, in addition to the limitation on personal liability established by this certificate, shall be further limited to the fullest extent permitted by the amended New York Not-for-Profit Corporation Law.

18. The duration of the corporation shall be perpetual.

19. The Secretary of State is hereby designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon the Secretary is as follows: Attn. Counsel, 257 Fuller Road, Albany, New York 12203.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Incorporation this  
8th day of May, 2018.

/s/ Carla J. Penazek  
Carla J. Penazek, Incorporator  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534

CERTIFICATE OF RESERVATION

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ENTITY NAME: NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT,  
TECHNOLOGY, ENGINEERING AND SCIENCE CORP.

DOCUMENT TYPE: RESERVATION (NEW) (DOM. NFP)

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FILED:05/01/2018 DURATION:07/02/2018 CASH#:180501000835 FILM #:180501000786

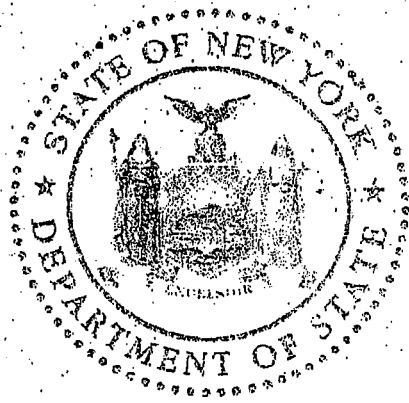
FILER:

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HARRIS BEACH PLLC  
99 GARNSEY ROAD

PITTSFORD, NY 14534

ADDRESS FOR PROCESS:  
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REGISTERED AGENT:  
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\*\* SUBMIT RECEIPT WHEN FILING CERTIFICATE \*\*

APPLICANT NAME : HARRIS BEACH PLLC

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SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL      SERVICE CODE: AL

FEEs	35.00	PAYMENTS	35.00
FILING	10.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	0.00	DRAWDOWN	35.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

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DOS-1025 (04/2007)

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CERTIFICATE OF INCORPORATION  
OF  
NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT, TECHNOLOGY,  
ENGINEERING AND SCIENCE CORP.

Under Section 402 of the Not-for-Profit Corporation Law

*lcc*  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAY 08 2018  
TAX \$ 0  
BY: [Signature]

**LCS  
DRAWDOWN - #AL**

HARRIS BEACH PLLC  
99 Garnsey Road  
Pittsford, New York 14534

Customer Ref.# 77297

RECEIVED  
2018 MAY -8 PM 12:10

FILED  
2018 MAY -8 PM 5:19

899



EXHIBIT B  
NY CREATES BY-LAWS

**BY-LAWS  
OF  
NEW YORK CENTER FOR RESEARCH, ECONOMIC ADVANCEMENT,  
TECHNOLOGY, ENGINEERING AND SCIENCE CORPORATION  
(d/b/a “NY CREATES”)**

**ARTICLE I  
Organization**

Section 1. Type. The New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (hereinafter referred to as the “Corporation”), is a charitable, Not-for-Profit Corporation.

Section 2. Principal Office. The principal office of the Corporation in the State of New York shall be located at 257 Fuller Road, Albany, New York 12203.

Section 3. Other Offices. The Corporation may have such other offices, either within or without the County of Albany, State of New York, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

**ARTICLE II  
Members**

Section 1. Members. The Corporation shall consist of two (2) Members: the SUNY Polytechnic Institute Foundation, Inc. (the “SUNY Poly Foundation”) acting through its Board of Directors or the Executive Committee thereof and the Research Foundation for the State University of New York (the “Research Foundation”). Each Member shall remain a Member until the membership terminates by withdrawal or dissolution of the Corporation.

Section 2. Withdrawal. Any Member may withdraw from the Corporation at any time by giving notice in writing to the other Member with a copy to the Chair of the Board of Directors, President, and/or Secretary of the Corporation. Any such Member withdrawal shall be effective upon receipt of notice by the other Member. The consent of the other Member of the Corporation to the Member withdrawal shall not be necessary. Directors of the Board appointed by the withdrawing Member shall be deemed to have resigned as of the effective date of the withdrawal notice, and the total number of Directors of the Board shall be reduced accordingly.

Section 3. Dues. No dues shall be required of any Member of the Corporation.

Section 4. Power and Duties. The Members shall make possible the orderly and sound existence of the Corporation, and shall establish, and amend as necessary, these By-Laws of the Corporation. The Members shall have all the voting rights provided to members under the New York Not-for-Profit Corporation Law (the “NFPCL”) and common law, including the

appointment of the Directors of the Corporation, who shall direct the management and operation of the Corporation.

### **ARTICLE III**

#### **Meetings of the Members**

Section 1. Annual Meeting. The Members of the Corporation shall meet at least annually in June of each year, or as soon thereafter as practicable, for the appointment of Directors and for the transaction of such other business as may properly come before the meeting. Membership meetings shall be held at the principal office of the Corporation or at such other place and by such other means as the Members may determine.

The President and/or Chief Financial Officer shall present at a meeting within six (6) months after the close of the Fiscal Year, or as soon as practicable thereafter, financial statements in accordance with generally accepted accounting principles that have been certified by a firm of independent public accountants selected by the Audit Committee showing in appropriate detail, at least the following:

- (a) The assets and liabilities, direct or contingent, of the Corporation;
- (b) The principal changes in assets and liabilities since the last report;
- (c) The revenue and/or receipts of the Corporation, restricted and unrestricted;
- (d) The expenses and/or disbursements of the Corporation for both general and restricted purposes; and
- (e) The number of members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number and a statement of the place where the names and addresses of current members may be found.

Section 2. Special Meetings. Special meetings of the Members, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time at the request in writing of either Member directed to the President or the Secretary of the Corporation. Special meetings shall also be called, with the consent of both Members, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors to the President or Secretary of the Corporation. Any such request shall specify the date of the meeting, which shall not be less than two nor more than three months from the date of such written request, and shall detail the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the subjects stated in the call and matters germane thereto.

Section 3. Notice of Meetings. Written notice of the place, date, and hour of each meeting of the Members shall be given, personally, by first class mail or by electronic means, to each Member by the President or Secretary of the Corporation, and, unless it is an annual meeting, indicate that it is being issued by, or at the direction of, the Member(s), Directors, the

Chair of the Board of Directors, or by the President or Secretary of the Corporation calling the special meeting. Notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting directed to the Member at its (physical or electronic) address as appears on the list of Members, or, if any Member shall have filed with the Secretary of the Corporation a written request that notices to it be mailed to some other address, then directed to it at such other address. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the address the Member provides to the Corporation. If sent by fax or e-mail, such notice is given when directed to the Member's fax number or e-mail address the Member provides to the Corporation; provided, that notice shall not be deemed delivered if: (a) the Corporation is unable to deliver two (2) consecutive notices to the individual by e-mail or fax; or (b) the Corporation otherwise becomes aware that notice cannot be delivered to the individual by e-mail or fax.

Notice of any meeting of Members need not be given to any Member which submits a signed waiver of notice whether before or after the meeting. The attendance of any Member at a meeting without protesting the lack of notice prior to or at the start of the meeting shall constitute a waiver of notice by it. Waivers may be provided: (i) in writing signed by a Member or the Member's proxy either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by the individual submitting the waiver.

Section 4. Procedure. The order of business and all other matters of procedure at every meeting of Members will be determined by the Members.

Section 5. Quorum. At every meeting of Members, except as otherwise provided by law or these By-Laws, both Members must be present for the transaction of any business. Each Member shall be represented by its President or his or her designee.

Section 6. Adjournments. The Members shall have the power by a unanimous vote to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which all Members are present, any business may be transacted which might have been transacted on the original date of the meeting.

Section 7. Voting. Except as otherwise provided in the Certificate of Incorporation or these By-Laws, each Member shall be entitled to one vote at every meeting of the Members. All questions that shall come before any meeting of Members shall be decided by unanimous vote, except the appointment of Directors by the SUNY Poly Foundation or the Research Foundation as provided in Article IV, Section 2 of these By-Laws.

Section 8. Meetings by Teleconference. Members may participate in a meeting of the Members by means of a teleconference 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 9. Account and Minutes. Account and minutes shall be taken at every proceeding of Members and a copy shall be kept at the office of the Corporation for inspection by the Members.

Section 10. Action Without a Meeting. Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting, on written consent, setting forth the action so taken, signed by both Members. Consents may be provided: (i) in a writing signed by a duly authorized representative of the Member either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by a duly authorized representative of the Member.

## **ARTICLE IV**

### **Directors**

Section 1. Number. The Board of Directors shall be composed of eleven (11) natural persons appointed by the Members as set forth in Section 2 of this Article IV. At all times, at least three (3) Directors shall be “independent” directors as defined under the NFPCL. As used in these By-Laws, “entire Board of Directors” means eleven (11).

Section 2. Composition of the Board.

(a) The Board of Directors shall be comprised as follows:

- Four (4) Directors appointed by the SUNY Poly Foundation, of which one (1) shall be appointed upon the recommendation of the New York State Urban Development Corporation, doing business as Empire State Development (“ESD”) and one (1) shall be appointed upon the recommendation of the State University of New York (“SUNY”);
- Four (4) Directors appointed by the Research Foundation, of which one (1) shall be appointed upon the recommendation of ESD and one (1) shall be appointed upon the recommendation of SUNY; and
- Three (3) Directors from the public at large who shall be elected by unanimous consent of the Members and with the consent of ESD (“At-Large Directors”).

From the three (3) At-Large Directors, the Members shall designate, by unanimous consent, one (1) Director to serve as Chair and one (1) Director to serve as Vice Chair, each to serve for a term of one year or until his/her successor has been designated. The Chair of the Board of Directors shall preside at all meetings of the Board. In case of a vacancy in the office of Chair or the Chair’s inability to act or absence from the State of New York, the Vice Chair may exercise powers and duties of the Chair until the Chair resumes his/her duties or until a successor is designated for the unexpired term of his/her predecessor. In the case of a vacancy in the office of Vice Chair or the Vice Chair’s inability to preside at a meeting of the Board in the absence of the

Chair, the Board may elect among the Directors present at any such meeting, a Director to preside over the meeting.

(b) Upon appointment to the Board and annually thereafter, each Director shall execute an Acknowledgement of Fiduciary Duty in a form prescribed by the Compliance Officer and shall disclose in writing any conflict of interest as defined in the Corporation's then current Conflict of Interest Policy. Each Director shall participate in a program of Conflicts of Interest training as soon as practicable after appointment to the Board and periodically thereafter, generally at intervals no greater than three (3) years from appointment.

(c) The President and Chief Executive Officer of ESD, or his/her designee, and the Chancellor of SUNY, or his/her designee, shall serve as non-voting, non-fiduciary, advisory representatives to the Board of Directors. The ESD and SUNY representatives each shall receive notice of all meetings of the Board (and any Committee thereof), and shall receive copies of all materials submitted to the Board (and any Committee thereof) at the same time any such notice and/or materials are given to the Directors (or any Committee thereof), and shall have the right to attend and participate in all meetings of the Board of Directors, including any Committee thereof. Neither the ESD nor the SUNY advisory representative shall count toward a quorum nor toward the number of the entire Board of Directors.

Section 3. Powers and Duties. The Board of Directors shall direct the management of the operations, property, affairs and concerns of the Corporation consistent with the provisions of these By-Laws, as written or amended, all policies and procedures adopted by the Board, and the Certificate of Incorporation.

Section 4. Qualifications. Directors must be at least eighteen (18) years of age.

Section 5. Term. Directors shall serve for a term of one (1) year or until their successor shall be appointed in accordance with Article IV of these By-Laws.

Section 6. Resignation.

(a) Any Director of the Corporation may resign at any time by giving written notice of such resignation to the Member on whose behalf such Director serves, with a copy to the President of the Corporation and to the Chair of the Board or the Secretary of the Corporation. Such resignation shall take effect at the time specified in the resignation or, if no time is specified, then upon receipt by the Member. Unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

(b) A Director shall notify the Secretary of any anticipated absence from a meeting of the Board as soon as practicable but in any event at least one (1) business day in advance of such meeting. The Secretary shall provide such notices to the Chair. By an affirmative vote of the Board of Directors, a Director may be deemed to have resigned and may be replaced in accordance with these By-Laws if the Director is absent for three (3) consecutive Board meetings without notice to the Secretary.

Section 7. Removal. A Director appointed by the Research Foundation or by the SUNY Poly Foundation may be removed during his or her term (a) with or without cause by the Member that elected such Director; or (b) for cause by a two-thirds (2/3) vote of the Directors at a duly convened meeting. An At-Large Director may be removed (a) with or without cause by a unanimous vote of both Members; or (b) for cause by a two-thirds (2/3) vote of the Directors at a duly convened meeting.

Section 8. Vacancies. Whenever a vacancy shall occur in the Board of Directors, other than by expiration of term, it shall be filled by the selection of a new Director in the same manner and for the unexpired term of his/her predecessor in office.

Section 9. Compensation. No Director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise. Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

Section 10. Meetings of Directors.

(a) Regular meetings of the Board of Directors shall be held at least quarterly and at such times and at such places as may be determined by action of the Board of Directors, or in the absence of such action, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. The first meeting on or after July 1 of each year shall be the annual meeting.

(b) Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. Such request shall state the purpose or purposes of the proposed meeting. The person or persons authorized to call special meetings of the Board may select any place within the State, as the place for holding any special meeting of the Board called by them. Business transacted at a special meeting shall be confined to the subject(s) stated in the call and matters germane thereto.

(c) Each Director shall have one (1) vote. No Director may vote by proxy.

(d) Except as provided in Section 13(c) of this Article IV and Section 108 of Article 7 of the New York Public Officers Law, every duly convened meeting of the Corporation's Board of Directors at which a quorum is present shall be open to the general public. All reasonable efforts shall be made to ensure that Board meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision 5 of Section 50 of the Public Buildings Law and can adequately accommodate members of the public who wish to attend such meetings.

(e) Directors must participate in meetings of the Board in person or via videoconference. Directors participating via videoconference shall be counted toward the quorum and may vote.

## Section 11. Notice of Meetings of the Board of Directors.

(a) Notice of the time and place of each meeting of the Board of Directors shall be given by the Chair of the Board, or the Secretary, or by the three (3) Directors of the Board calling the same, to each Director on the Board, copies of such notice to each Member of the Corporation and to the ESD and SUNY representatives, not less than seven (7) business days before the meeting by mailing the notice, postage prepaid, addressed to each Director on the Board at the address on file with the Secretary, and to the two (2) Members and the ESD and SUNY representatives at their respective principal offices, or not less than one (1) business day before the meeting by delivering the notice to each Director on the Board, and to the two (2) Members and the ESD and SUNY representatives, personally or electronically.

(b) Notice of a meeting of the Board of Directors or a committee thereof need not be given to any Director who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice by the Director. The meeting shall be duly called and held if notice is given to, or is waived by, all absent Directors. Waivers may be provided: (i) in a writing signed by the Director either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by the individual submitting the waiver.

(c) Public notice of the date, time and place of a Board meeting shall be given to the news media and shall be conspicuously posted on the Corporation's website, along with the meeting's agenda, at least seventy-two (72) hours before such meeting to the extent practicable. To the extent practicable, materials submitted to the Directors for consideration at a meeting shall be made available to the public upon request at the meeting. In addition, to the extent practicable, such materials will be made available in advance of the meeting by means of posting to the Corporation's website.

## Section 12. Quorum and Voting.

(a) At all meetings of the Board of Directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, a quorum shall be required for the transaction of business and shall consist of a majority of Directors then in office but in no event fewer than four (4) Directors. A majority of the Directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

(b) The affirmative vote of a majority of Directors present at any meeting at which a quorum is present shall decide any question that may come before the meeting, except as set forth below.

(c) The following action must be approved first by two-thirds vote of the entire Board of Directors and then submitted to the voting Members for approval.



(i) the purchase of real property that will constitute all, or substantially all, of the assets of the Corporation or its current affiliates Fuller Road Management Corporation (“FRMC”) and Fort Schuyler Management Corporation (“FSMC” and collectively with “FRMC”, the “NY CREATES Affiliates”) once purchased.

(d) The following items must be approved first by majority vote of its Board of Directors at a meeting at which a quorum is present and then submitted to the voting Members for approval:

- (i) Amendment of the Certificate of Incorporation of the Corporation or any affiliate, including, but not limited to, the NY CREATES Affiliates or future affiliates;
- (ii) Approval of a plan of merger or consolidation of the Corporation or any affiliate, including, but not limited to, the NY CREATES Affiliates;
- (iii) Approval of a plan of dissolution of the Corporation or any affiliate, including, but not limited to, the NY CREATES Affiliates; provided, however, if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors, then the remaining directors must approve unanimously;
- (iv) Approval of a recommendation for the sale of all or substantially all of the assets of the Corporation or any affiliate, including, but not limited to, the NY CREATES Affiliates; provided, however, if all or substantially all of the assets of the Corporation or any affiliate, including, but not limited to, the NY CREATES Affiliates consist of real property, approval of such sale by two-thirds vote of the entire Board of Directors is additionally required;
- (v) Admission of additional members into the Corporation or any affiliate, including, but not limited to, NY CREATES Affiliates; and
- (vi) Any change to the mission or purpose of the Corporation or any affiliate, including, but not limited to, NY CREATES Affiliates.

### Section 13. Procedure.

(a) The order of business and all other matters of procedures at every meeting of Directors may be determined by the presiding officer.

(b) Minutes shall be taken at all meetings of the Board and copies thereof shall be distributed to all Directors and posted to the website of the Corporation.

(c) Executive Session. Upon the affirmative vote of a majority of the Directors present at a duly convened meeting, the Directors may conduct an Executive Session, which

shall be closed to the public, for the reasons enumerated in Section 105 of Article 7 of the Public Officers Law. Attendance at any such Executive Session shall be limited to the representatives of either of the Members, the Directors, and such Officers, employees, and other persons relevant to the matters under consideration as determined by the Board.

Section 14. Informing the Directors of Corporate Activity. Reports of all material Corporate activities, as determined by the President, including program development, applications for fiscal support and funds received in support of the purposes of the Corporation, will be presented to the Board of Directors for information either at each regularly scheduled meeting of the Board or by mail. A copy of such information shall also be provided to each Member of the Corporation.

Section 15. Records. The Corporation shall maintain a fair record of all the transactions of the Corporation, including financial statements prepared in accordance with the provisions of the NFPCL. The audited annual financial report shall become a part of the Corporation's permanent records and a copy of the report shall be entered in the minutes of the proceedings of the meeting of the Board of Directors at which such report is presented to the Board and shall be provided to each Member of the Corporation. A report of the financial statements shall be presented to the members of the Finance Committee not less than quarterly.

Section 16. Investment Matters. The Corporation shall comply with the New York Prudent Management of Institutional Funds Act ("NYPMIFA") as applicable.

## **ARTICLE V**

### **Committees of the Board**

#### Section 1. Committees of the Board.

(a) The Board of Directors shall establish an Audit Committee and such other committees as the Board may deem appropriate. Each committee shall consist of at least three (3) Directors including at least one (1) Director nominated by each Member. Directors serving on such committees shall be appointed by resolution adopted by a majority of the entire Board of Directors, which resolution may designate one of the appointees as Chair for each committee. Each committee member shall serve at the pleasure of the Board of Directors for a term of one (1) year and until his or her successor is elected.

(b) Committees shall be subject at all times to the direction of the Board of Directors. Committees shall be governed by a committee charter which shall be adopted by the Board of Directors and shall detail the committee roles and responsibilities. Except as otherwise provided in these By-Laws, no committee shall have any authority without specific authorization by the Board of Directors and no committee shall have authority as to the following matters:

- (i) The submission to members of any action requiring Members' approval under the law;
- (ii) The filling of any vacancies on the Board or any committee;

- (iii) The fixing of compensation of the Directors for serving on the Board or on any committee;
- (iv) The amendment or repeal of the 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;
- (vi) The election or removal of Officers and Directors;
- (vii) The approval of a merger or plan of dissolution;
- (viii) The adoption of a resolution recommending to the Members action on the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; and
- (ix) The approval of amendments to the certificate of incorporation.

(c) Committees shall keep regular minutes of their proceedings and shall make the same available to the Board of Directors upon request.

(d) Unless otherwise provided by resolution of the Board of Directors, a majority of all the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the committee members shall be the act of the committee.

Section 2. Audit Committee. The Audit Committee shall be a committee of the Board and shall consist of at least three (3) members. All members shall be “Independent Directors” as defined under the NFPCL, who shall have the knowledge and experience appropriate and sufficient to competently assist the Board of Directors in fulfilling its responsibility with respect to overseeing: (1) the Corporation’s material legal, audit, and compliance matters; (2) its system of controls, reporting, and accounting systems, including the Corporation’s audited financial reports; (3) the internal audit department, including the retention and management of an external auditor as may be needed; and (4) the implementation of the policies and procedures required by these By-Laws, including, without limitation, policies governing conflicts of interest and related party transactions. The Board of Directors shall adopt an Audit Committee Charter to govern the operations of the Audit Committee.

Section 3. Meetings. Meetings of committees shall be held at such time and place as shall be fixed by the President of the Corporation, the Chair of the Board of Directors, the chair of the committee or by vote of a quorum of the members of the committee. Notice of such meetings may be delivered personally, by mail or electronically at least one day prior to the meeting and shall state the purposes, time and place of the meeting.

## **ARTICLE VI**

### **Officers**

Section 1. Officers. The Officers of the Corporation shall be the President, Chief Financial Officer, Compliance Officer, General Counsel, Secretary and such additional Officers as the Board may deem desirable, all of whom shall be appointed by the Board and shall serve at its pleasure, subject to any contractual rights. Such additional Officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly delegated or assigned to them from time to time by the Board of Directors.

Section 2. The President. The President shall be the Chief Executive Officer of the Corporation and shall be responsible for the general supervision and control of the affairs of the Corporation and shall see to it that all policies, resolutions and other directives of the Board of Directors are carried out. The President, in such capacity, shall be authorized to enter into and execute in the name of and on behalf of the Corporation any agreement, obligation, contract, document or instrument the President deems reasonable or necessary in carrying out the business and affairs of the Corporation and for which execution has been generally or specifically authorized by the Board of Directors. The President shall make recommendations to the Board for the programs and activities of the Corporation. The President shall make reports as the Board may request. The President shall perform other duties for the Board as the Board may direct. The President shall have such powers and perform such other duties as the Board may direct as are reasonably incident to such office. The President will ensure that Corporation activities comply with all legal and regulatory mandates, will consult with legal counsel as needed, and direct all Corporation Officers and employees in carrying out said obligations.

Section 3. The Secretary. The Secretary shall have charge of the books, documents, and papers as the President may determine and shall have the custody of the corporate seal. The Secretary shall issue notices of all meetings of the Members of the Corporation and of Directors of the Board and committees thereof where notices of such meetings are required by law or these By-Laws. The Secretary shall attend all meetings of the Board of Directors, except as otherwise directed by the Board, and shall keep the minutes thereof and shall fix the Corporate seal to and sign such instruments as require the seal or signature and, shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board of Directors.

Section 4. The Chief Financial Officer. Subject to the authority of the President, the Chief Financial Officer (“CFO”) shall serve as the chief financial officer of the Corporation and shall be directly responsible for the management and oversight of the Corporation’s daily financial operations, including accounting, budgeting, financial reporting, investing, debt issuance and contract compliance. The CFO shall be the financial advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or President. The CFO shall provide financial advice and opinions, prepare financial statements and shall represent the Board of Directors and the Corporation in all financial matters.

Section 5. General Counsel. The General Counsel shall serve as the Corporation’s Chief Legal Officer and legal advisor to the Corporation, the Board of Directors and its

committees, except as otherwise directed by the Board or the President. The General Counsel shall provide legal advice and opinions, prepare legal documents and shall represent the Board of Directors and the Corporation in all legal matters.

Section 6. Compliance Officer. Under the direction of the President and the Board of Directors, the Compliance Officer shall be responsible for preparing and enforcing the Corporation's internal policies and procedures designed to prevent and/or detect violations of applicable law, regulations, rules and ethical standards by the Corporation's employees, agents and/or others. The Compliance Officer shall conduct periodic risk assessments and develop response plans to address identified risks and conduct training programs for the Directors, Officers and employees of the Corporation to ensure compliance with the policies and procedures required by these By-Laws. The Compliance Officer shall report annually to the Board on his/her activities and assessments.

Section 7. Board Meetings. The Officers shall attend all meetings of the Board of Directors unless otherwise directed by the Chair of the Board or by the Board; provided, however, that the absence of any Officer at any meeting of the Board shall not affect the validity of any action taken by the Board in accordance with these By-Laws.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any Officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate and assign, for the time being, the powers and duties of any Officer to any other Officer or to any Director.

Section 9. Compensation. Compensation of all Officers shall be fixed by the Board of Directors upon the recommendation of the Audit Committee.

Section 10. Officers Holding Two or More Offices. No Officer holding more than one office shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more Officers.

Section 11. Removal. Any Officer appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment such removal is deemed to be in the best interests of the Corporation, but such removal shall be without prejudice to the contract rights, if any, of the Officer so removed.

Section 12. Officer Vacancies. A vacancy in any office, because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors.

## **ARTICLE VII**

### **Surety Bonds, Insurance and Indemnification**

Section 1. Surety Bonds. The Board of Directors may require all Officers and employees of the Corporation who handle Corporate funds to furnish adequate Surety Bonds approved by the Board of Directors as to form and coverage. The cost of all Surety Bonds so required shall be paid by the Corporation.

Section 2. Indemnification.

(a) Authorized Indemnification. Unless clearly prohibited by law or Section 2(b) of this Article VII, the Corporation shall indemnify any person (each such person, an “Indemnified Person”) made or threatened to be made a party to any action, suit or proceeding by reason of the fact that they, their testator or intestate, whether before or after adoption of this Section is or was a Director, Officer or employee of the Corporation. The indemnification shall be against all judgment, fines, penalties, amounts paid in settlement (provided the Corporation consents to such settlement, such consent not to be unreasonably withheld) and reasonable expenses, including reasonable attorney’s fees and reasonable costs of investigations, actually and necessarily incurred by the Indemnified Person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein. Such right of indemnification shall not be deemed exclusive of any other rights to which such director or Officer may be entitled. Any Director, Officer or employee seeking to become an Indemnified Person in accordance with this paragraph (a) of Section 2, Article VII must obtain the approval of the Board of Directors pursuant to paragraph (d) of this Section 2, Article VII.

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

(c) Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation as determined by the Board of Directors pursuant to paragraphs (a) and (d) of this Section 2, Article VII, pay or promptly reimburse the Indemnified Person’s reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or paragraph (b) of this Section 2, Article VII. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

(d) Determination of Indemnification for Directors, Officers, and Employees. Indemnification mandated by final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board of Directors shall, upon written request of a Director, Officer or employee seeking to become an Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board of Directors must explicitly find that

such indemnification will not violate the provisions of paragraph (b) of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.

(e) Binding Effect. Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

(f) Nonexclusive Rights. The provisions of this Section 2 of Article VII shall not limit or exclude any other rights to which any person may be entitled under law or contract.

### Section 3. Insurance.

(a) The Corporation shall purchase such insurance as the Directors of the Corporation determine to be necessary or appropriate for the protection of the Corporation, its assets and its interests or as may be required by law. Subject to subparagraph (b) of this Article VII, Section 3, such insurance shall include General Liability Insurance.

(b) The Corporation is not required to, but it may, purchase Directors' and Officers' liability insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VII or by operation of law and it may insure directly the Directors, Officers and employees of the Corporation for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

## ARTICLE VIII Finances

Section 1. Fiscal Year. The Corporation's fiscal year shall be from July 1 through June 30.

Section 2. Funds. The Corporation's funds shall be deposited in such bank or banks, in such types of accounts and subject to such deposit and withdrawal procedures as recommended by the CFO and approved by the President or the Board of Directors.

Section 3. Records and Accounts. The Corporation's financial records and accounts shall be maintained consistent with generally accepted accounting principles. All financial records and accounts of the Corporation shall be open to inspection by any Director or by either Member at any reasonable time.

Section 4. Annual Plan. The President, with the recommendation of the CFO, shall present an annual plan, which shall set forth all anticipated revenues and expenditures, to the

Board of Directors for its approval at the regularly scheduled Board meeting each year immediately preceding the commencement of the new fiscal year, or as soon as practicable thereafter. The plan shall include: (a) the approved expenditure levels, including approved changes, and estimated income and expenditures for the current fiscal year; (b) the actual income and expenditures for the prior fiscal year; and (c) the estimated income and expenditures for the forthcoming fiscal year.

Section 5. Audit. The Corporation's financial statements shall be audited annually by a certified public accounting firm approved by the Board of Directors. The Corporation shall also conduct all annual reviews necessary for compliance with all applicable regulations pertaining to not-for-profit and exempt corporations including IRS Form 990. The Board of Directors shall review and approve both the annual audit and the IRS Form 990 prior to submission to the appropriate agency and/or government entity. A copy of such reports shall be provided to the Directors and the Members prior to the meeting at which these will be reviewed.

## **ARTICLE IX**

### **Policies and Procedures**

Section 1. Policies and Procedures. The Board of Directors is authorized and directed to adopt, implement, and enforce policies and procedures for the proper and ethical conduct of the affairs of the Corporation consistent with the Corporation's Certificate of Incorporation, these By-Laws, and all applicable law. At a minimum, these shall include the following:

- (a) Code of Conduct for Directors, Officers, and Employees;
- (b) Policy regarding Conflicts of Interest;
- (c) Fraud and Whistleblower Policy;
- (d) Policy and Procedure for the Procurement and Administration of Contracts;
- (e) Policy regarding the Acquisition and Disposition of Real Estate;
- (f) Records Access Policy, in conformance with Article 6 of the Public Officers Law ("FOIL"), as the same may be amended from time to time; and
- (g) Policy Regarding Debt, Risk Assessment, and Risk Mitigation.

Section 2. Annual Review. At least annually, the Compliance Officer shall prepare and present to the Board a report on the implementation of the Corporation's policies and procedures during the preceding year, including any recommendations with respect thereto. Such report shall include any recommendations regarding such policies and procedures or the adoption of any new policy or procedure in accordance with then current best practices.

## **ARTICLE X**

### **Miscellaneous**



Section 1. Form of Seal. The seal of the Corporation shall be in such form as the Directors shall determine.

Section 2. Books and Records. There shall be kept at the office of the Corporation: (1) correct and complete books and records of accounts; (2) minutes of the proceedings of the Members, the Board of Directors, and any committee of the Board; (3) a current list of the Directors and Officers of the Corporation; (4) a list of all Members or classes of membership, including name and address; (5) a copy of these By-Laws; (6) a copy of the Corporation's application for recognition of exemption with the Internal Revenue Service; and (7) copies of the past three (3) years of information returns and Form 990-Ts (if any) filed with the Internal Revenue Service.

## **ARTICLE XI**

### **Amendment**

These By-Laws and the Certificate of Incorporation may be added to, amended, repealed, or replaced only by the unanimous agreement of the Members of the Corporation.

*Adopted by the Initial Directors on December 13, 2019, approved and accepted by the Members on December 17, 2019, and approved and accepted by the Appointed Directors at the organizational meeting of NY CREATES held on December 18, 2019.*

EXHIBIT C

FULLER ROAD MANAGEMENT CORPORATION  
CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION  
& RESTATED BY-LAWS

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
FULLER ROAD MANAGEMENT CORPORATION**

**Under Section 803 of the Not-for-Profit Corporation Law**

The undersigned, being the President of Fuller Road Management Corporation (the "Corporation"), hereby certifies:

1. The name of the Corporation is Fuller Road Management Corporation.
2. The original Certificate of Incorporation was filed by the Department of State on September 27, 1993. A certificate of amendment of the Certificate of Incorporation was filed by the Department of State on May 19, 2005. A restated Certificate of Incorporation was filed by the Department of State on January 29, 2016. A restated Certificate of Incorporation was filed by the Department of State on April 12, 2017.
3. The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law.
4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
5. The Certificate of Incorporation is amended as follows:
  - A. Paragraph SECOND of the Certificate of Incorporation regarding membership is hereby amended to read in its entirety as follows:

SECOND: The sole member of the Corporation is the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) having an address at 257 Fuller Road, Albany, New York 12203.

**B.** Clause (E) of Paragraph SIXTH of the Certificate of Incorporation regarding dissolution is hereby amended to read in its entirety as follows:

(E) In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations that are organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as amended, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

**6.** The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: c/o General Counsel, Fuller Road Management Corporation, 257 Fuller Road, Albany, New York 12203.

**7.** This Amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the members entitled to vote thereon.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 18th day of December, 2019.

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By: Douglas A. Grose

Title: President

CERTIFICATE OF AMEDNMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
FULLER ROAD MANAGEMENT CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

Filed By:

Robert J. Ryan, Esq.  
Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207

**RESTATED BY-LAWS  
OF  
FULLER ROAD MANAGEMENT CORPORATION**

**(Adopted December 18, 2019)**

**ARTICLE I  
Organization**

Section 1. Type. Fuller Road Management Corporation (hereinafter referred to as the “Corporation”), is a charitable, Not-for-Profit Corporation.

Section 2. Principal Office. The principal office of the Corporation in the State of New York shall be located at 257 Fuller Road, Albany, New York 12203.

Section 3. Other Offices. The Corporation may have such other offices, either within or without the County of Albany, State of New York, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

**ARTICLE II  
Membership**

Section 1. Member. The sole Member of the Corporation shall be the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES).

Section 2. Dues. No dues shall be required from the Member of the Corporation.

Section 3. Power and Duties. The Member shall make possible the orderly and sound existence of the Corporation, and shall establish, and amend as necessary, these By-Laws of the Corporation. The Member shall have all the voting rights provided to members under the New York Not-for-Profit Corporation Law (the “NFPCL”) and common law.

**ARTICLE III  
Meetings of the Member**

Section 1. Annual Meeting. The Member of the Corporation shall hold a meeting at least annually in June of each year, or as soon thereafter as practicable, for the transaction of such other business as may properly come before the meeting. Membership meetings shall be held at the principal office of the Corporation or at such other place and by such other means as the Member may determine.

The President and/or Chief Financial Officer shall present at a meeting within six (6) months after the close of the Fiscal Year, or as soon as practicable thereafter, financial statements in accordance with generally accepted accounting principles that have been certified by a firm of

independent public accountants selected by the Audit Committee showing in appropriate detail, at least the following:

- (a) The assets and liabilities, direct or contingent, of the Corporation;
- (b) The principal changes in assets and liabilities since the last report;
- (c) The revenue and/or receipts of the Corporation, restricted and unrestricted; and
- (d) The expenses and/or disbursements of the Corporation for both general and restricted purposes.

Section 2. Special Meetings. Special meetings of the Member, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time at the request in writing of the Member directed to the President or the Secretary of the Corporation. Special meetings shall also be called, with the consent of the Member, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors to the President or Secretary of the Corporation. Any such request shall specify the date of the meeting, which shall not be less than two nor more than three months from the date of such written request, and shall detail the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the subjects stated in the call and matters germane thereto.

Section 3. Notice of Meetings. Written notice of the place, date, and hour of each meeting of the Member shall be given, personally, by first class mail or by electronic means, to the Member by the President or Secretary of the Corporation, and, unless it is an annual meeting, indicate that it is being issued by, or at the direction of, the Member, Directors, the Chair of the Board of Directors, or by the President or Secretary of the Corporation calling the special meeting. Notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting directed to the Member at its (physical or electronic) address as appears on the list of Members, or, if the Member shall have filed with the Secretary of the Corporation a written request that notices to it be mailed to some other address, then directed to it at such other address. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the address the Member provides to the Corporation. If sent by fax or e-mail, such notice is given when directed to the Member's fax number or e-mail address the Member provides to the Corporation; provided, that notice shall not be deemed delivered if: (a) the Corporation is unable to deliver two (2) consecutive notices to the individual by e-mail or fax; or (b) the Corporation otherwise becomes aware that notice cannot be delivered to the individual by e-mail or fax.

Notice of any meeting of the Member need not be given to the Member provided the Member submits a signed waiver of notice whether before or after the meeting. The attendance by the Member at a meeting without protesting the lack of notice prior to or at the start of the meeting shall constitute a waiver of notice by it. Waivers may be provided: (i) in writing signed by a Member or the Members' proxy either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient

can reasonably determine that the transmission was authorized by the individual submitting the waiver.

Section 4. Procedure. The order of business and all other matters of procedure at every meeting of the Member will be determined by the Member.

Section 5. Quorum. At every meeting of the Member, except as otherwise provided by law or these By-Laws, the Member must be present for the transaction of any business. The Member shall be represented by its President or his or her designee.

Section 6. Adjournments. The Member shall have the power to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which the Member is present, any business may be transacted which might have been transacted on the original date of the meeting.

Section 7. Voting. Any action required or permitted to be taken by the Member in its capacity as the member of the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be taken by the Member through resolution.

Section 8. Account and Minutes. Account and minutes shall be taken at every proceeding of Members and a copy shall be kept at the office of the Corporation for inspection by the Members.

Section 9. Action Without a Meeting. Whenever the Member is required or permitted to take any action by vote, such action may be taken without a meeting, on written consent, setting forth the action so taken, signed by the Member. Consent may be provided: (i) in a writing signed by a duly authorized representative of the Member either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by a duly authorized representative of the Member.

#### **ARTICLE IV Directors**

Section 1. Number. The size of the Board of Directors shall equal in number to the size of the board of the Member.

Section 2. Composition of the Board. Each director of the Member, including all ex-officio non-voting advisory representatives, shall be deemed to have been appointed a Director of the Corporation by virtue of being a director of the Member.

Section 3. Powers and Duties. The Board of Directors shall direct the management of the operations, property, affairs and concerns of the Corporation consistent with the provisions of these By-Laws, as written or amended, all policies and procedures adopted by the Board, and the Certificate of Incorporation.



Section 4. Term. Each director of the Member shall serve as a Director of the Corporation for the term co-terminus with his/her term as a director of the Member.

Section 6. Resignation. A Director shall be deemed to have resigned from the Board at the same time he/she resigns from the board of directors of the Member and such resignation shall take effect at the same time his/her resignation from the board of directors of the Member takes effect.

Section 7. Removal. A Director shall be automatically removed from the Board simultaneous with the Director's removal from the board of directors of the Member.

Section 8. Vacancies. Whenever a vacancy shall occur in the Board of Directors it shall be filled by the individual(s) appointed to fill the corresponding vacancy on the board of directors of the Member.

Section 9. Compensation. No Director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise. Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

Section 10. Meetings of Directors.

(a) Regular meetings of the Board of Directors shall be held at least quarterly and at such times and at such places as may be determined by action of the Board of Directors, or in the absence of such action, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. The first meeting on or after July 1 of each year shall be the annual meeting.

(b) Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. Such request shall state the purpose or purposes of the proposed meeting. The person or persons authorized to call special meetings of the Board may select any place within the State, as the place for holding any special meeting of the Board called by them. Business transacted at a special meeting shall be confined to the subject(s) stated in the call and matters germane thereto.

(c) Each Director shall have one (1) vote. No Director may vote by proxy.

(d) Except as provided in Section 13(c) of this Article IV and Section 108 of Article 7 of the New York Public Officers Law, every duly convened meeting of the Corporation's Board of Directors at which a quorum is present shall be open to the general public. All reasonable efforts shall be made to ensure that Board meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision 5 of Section 50 of the Public Buildings Law and can adequately accommodate members of the public who wish to attend such meetings.

(e) Directors must participate in meetings of the Board in person or via videoconference. Directors participating via videoconference shall be counted toward the quorum and may vote.

Section 11. Notice of Meetings of the Board of Directors.

(a) Notice of the time and place of each meeting of the Board of Directors shall be given by the Chair of the Board, or the Secretary, or by the three (3) Directors of the Board calling the same, to each Director on the Board, copies of such notice to each Member of the Corporation and to the ESD and SUNY representatives, not less than seven (7) business days before the meeting by mailing the notice, postage prepaid, addressed to each Director on the Board at the address on file with the Secretary, and to the two (2) Members and the ESD and SUNY representatives at their respective principal offices, or not less than one (1) business day before the meeting by delivering the notice to each Director on the Board, and to the two (2) Members and the ESD and SUNY representatives, personally or electronically.

(b) Notice of a meeting of the Board of Directors or a committee thereof need not be given to any Director who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice by the Director. The meeting shall be duly called and held if notice is given to, or is waived by, all absent Directors. Waivers may be provided: (i) in a writing signed by the Director either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by the individual submitting the waiver.

(c) Public notice of the date, time and place of a Board meeting shall be given to the news media and shall be conspicuously posted on the Corporation's website, along with the meeting's agenda, at least seventy-two (72) hours before such meeting to the extent practicable. To the extent practicable, materials submitted to the Directors for consideration at a meeting shall be made available to the public upon request at the meeting. In addition, to the extent practicable, such materials will be made available in advance of the meeting by means of posting to the Corporation's website.

Section 12. Quorum and Voting.

(a) At all meetings of the Board of Directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, a quorum shall be required for the transaction of business and shall consist of a majority of Directors then in office but in no event fewer than four (4) Directors. A majority of the Directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

(b) The affirmative vote of a majority of Directors present at any meeting at which a quorum is present shall decide any question that may come before the meeting, except as set forth below.

(c) The following action requires approval by two thirds vote of the entire Board of Directors:

(i) the purchase of real property that will constitute all, or substantially all, of the assets of the Corporation once purchased.

(d) The following items must be approved first by majority vote of its Board of Directors at a meeting at which a quorum is present and then submitted to the voting Members for approval:

(i) Amendment of the Corporation's Certificate of Incorporation;

(ii) Approval of a plan of merger or consolidation of the Corporation;

(iii) Approval of a plan of dissolution of the Corporation; provided, however, if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors, then the remaining directors must approve unanimously; and

(iv) Approval of a recommendation for the sale of all or substantially all of the Corporation's assets; provided, however, if all or substantially all of the assets of the Corporation consist of real property, approval of such sale by two thirds vote of the entire Board of Directors is additionally required.

### Section 13. Procedure.

(a) The order of business and all other matters of procedures at every meeting of Directors may be determined by the presiding officer.

(b) Minutes shall be taken at all meetings of the Board and copies thereof shall be distributed to all Directors and posted to the website of the Corporation.

(c) Executive Session. Upon the affirmative vote of a majority of the Directors present at a duly convened meeting, the Directors may conduct an Executive Session, which shall be closed to the public, for the reasons enumerated in Section 105 of Article 7 of the Public Officers Law. Attendance at any such Executive Session shall be limited to the representatives of either of the Members, the Directors, and such Officers, employees, and other persons relevant to the matters under consideration as determined by the Board.

Section 14. Informing the Directors of Corporate Activity. Reports of all material Corporate activities as determined by the President, including program development, applications for fiscal support and funds received in support of the purposes of the Corporation,

will be presented to the Board of Directors for information either at each regularly scheduled meeting of the Board or by mail. A copy of such information shall also be provided to each Member of the Corporation.

Section 15. Records. The Corporation shall maintain a fair record of all the transactions of the Corporation including financial statements prepared in accordance with the provisions of the NFPCL. The audited financial report shall become a part of the Corporation's permanent records and a copy of the report shall be entered in the minutes of the proceedings of the meeting of the Board of Directors at which such a report is presented to the Board and shall be provided to each Member of the Corporation. A report of the financial statements shall be presented to the members of the Finance Committee not less than quarterly.

Section 16. Investment Matters. The Corporation shall comply with the New York Prudent Management of Institutional Funds Act ("NYPMIFA") as applicable.

## **ARTICLE V**

### **Committees of the Board**

#### Section 1. Committees of the Board.

(a) The Board of Directors shall establish an Audit Committee and such other committees as the Board may deem appropriate. Each committee shall consist of at least three (3) Directors. The committees of the Corporation and the size of each shall be equal to the committees of the Member. Each director of the Member serving on a committee of the Member shall be deemed to have been appointed as a member of the corresponding committee of the Corporation.

(b) Committees shall be subject at all times to the direction of the Board of Directors. Committees shall be governed by a committee charter which shall be adopted by the Board of Directors and shall detail the committee roles and responsibilities. Except as otherwise provided in these By-Laws, no committee shall have any authority without specific authorization by the Board of Directors and no committee shall have authority as to the following matters:

- (i) The submission to members of any action requiring Members' approval under the law;
- (ii) The filling of any vacancies on the Board or any committee;
- (iii) The fixing of compensation of the Directors for serving on the Board or on any committee;
- (iv) The amendment or repeal of the 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;
- (vi) The election or removal of Officers and Directors;
- (vii) The approval of a merger or plan of dissolution;
- (viii) The adoption of a resolution recommending to the Members action on the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; and
- (ix) The approval of amendments to the certificate of incorporation.

(c) Committees shall keep regular minutes of their proceedings and shall make the same available to the Board of Directors upon request.

(d) Unless otherwise provided by resolution of the Board of Directors, a majority of all the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the committee members shall be the act of the committee.

Section 2. Audit Committee. The Audit Committee shall be a committee of the Board and shall consist of at least three (3) members. All members shall be “Independent Directors” as defined under the NFPCL, who shall have the knowledge and experience appropriate and sufficient to competently assist the Board of Directors in fulfilling its responsibility with respect to: overseeing the Corporation’s material legal, audit, and compliance matters; its system of controls, reporting, and accounting systems, including the Corporation’s audited financial reports; the internal audit department, including the retention and management of an external auditor as may be needed; and the implementation of the policies and procedures required by these By-Laws, including, without limitation, policies governing conflicts of interest and related-party transactions. The Board of Directors shall adopt an Audit Committee Charter to govern the operations of the Audit Committee.

Section 3. Meetings. Meetings of committees shall be held at such time and place as shall be fixed by the President of the Corporation, the Chair of the Board of Directors, the chair of the committee or by vote of a quorum of the members of the committee. Notice of such meetings may be delivered personally, by mail or electronically at least one day prior to the meeting and shall state the purposes, time and place of the meeting.

## **ARTICLE VI**

### **Officers**

Section 1. Officers. The Officers of the Corporation shall be the President, Chief Financial Officer, Compliance Officer, General Counsel, Secretary and such additional Officers as the Board may deem desirable, all of whom shall be appointed by the Board and shall serve at its pleasure, subject to any contractual rights. Such additional Officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly

delegated or assigned to them from time to time by the Board of Directors. The Officers of the Member shall serve ex-officio as the Officers of this Corporation in the same office that such individual holds with the Member.

Section 2. The President. The President shall be the Chief Executive Officer of the Corporation and shall be responsible for the general supervision and control of the affairs of the Corporation and shall see to it that all policies, resolutions and other directives of the Board of Directors are carried out. The President, in such capacity, shall be authorized to enter into and execute in the name of and on behalf of the Corporation any agreement, obligation, contract, document or instrument the President deems reasonable or necessary in carrying out the business and affairs of the Corporation and for which execution has been generally or specifically authorized by the Board of Directors. The President shall make recommendations to the Board for the programs and activities of the Corporation. The President shall make reports as the Board may request. The President shall perform other duties for the Board as the Board may direct. The President shall have such powers and perform such other duties as the Board may direct as are reasonably incident to such office. The President will ensure that Corporation activities comply with all legal and regulatory mandates, will consult with legal counsel as needed, and direct all Corporation Officers and employees in carrying out said obligations.

Section 3. The Secretary. The Secretary shall have charge of the books, documents, and papers as the President may determine and shall have the custody of the corporate seal. The Secretary shall issue notices of all meetings of the Members of the Corporation and of Directors of the Board and committees thereof where notices of such meetings are required by law or these By-Laws. The Secretary shall attend all meetings of the Board of Directors, except as otherwise directed by the Board, and shall keep the minutes thereof and shall fix the Corporate seal to and sign such instruments as require the seal or signature and, shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board of Directors.

Section 4. The Chief Financial Officer. Subject to the authority of the President, the Chief Financial Officer (“CFO”) shall serve as the chief financial officer of the Corporation and shall be directly responsible for the management and oversight of the Corporation’s daily financial operations, including accounting, budgeting, financial reporting, investing, debt issuances and contract compliance. The CFO shall be the financial advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or President. The CFO shall provide financial advice and opinions, prepare financial statements and shall represent the Board of Directors and the Corporation in all financial matters.

Section 5. General Counsel. The General Counsel shall serve as the Corporation’s Chief Legal Officer and legal advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or the President. The General Counsel shall provide legal advice and opinions, prepare legal documents and shall represent the Board of Directors and the Corporation in all legal matters.

Section 6. Compliance Officer. Under the direction of the President and the Board of Directors, the Compliance Officer shall be responsible for preparing and enforcing the

Corporation's internal policies and procedures designed to prevent and/or detect violations of applicable law, regulation, rules and ethical standards by the Corporation's employees, agents and/or others. The Compliance Officer shall conduct periodic risk assessments and develop response plans to address identified risks and conduct training programs for the Directors, Officers and employees of the Corporation to ensure compliance with the policies and procedures required by these By-Laws. The Compliance Officer shall report annually to the Board on his/her activities and assessments.

Section 7. Board Meetings. The Officers shall attend all meetings of the Board of Directors unless otherwise directed by the Chair of the Board or by the Board; provided, however, that the absence of any officer at any meeting of the Board shall not affect the validity of any action taken by the Board in accordance with these By-Laws.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate and assign, for the time being, the powers and duties of any officer to any other officer or to any Director.

Section 9. Compensation. Compensation of all Officers shall be fixed by the Board of Directors upon the recommendation of the Audit Committee.

Section 10. Officers Holding Two or More Offices. No officer holding more than one office shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 11. Removal. Any officer of the Corporation shall be removed at such time as he/she is removed as an officer of the Member.

Section 12. Vacancies. A vacancy in any office shall be filled by the individual appointed to fill the corresponding vacancy of the Member.

## **ARTICLE VII**

### **Surety Bonds, Insurance and Indemnification**

Section 1. Surety Bonds. The Board of Directors may require all Officers and employees of the Corporation who handle Corporate funds to furnish adequate Surety Bonds approved by the Board of Directors as to form and coverage. The cost of all Surety Bonds so required shall be paid by the Corporation.

Section 2. Indemnification.

(a) Authorized Indemnification. Unless clearly prohibited by law or Section 2(b) of this Article VII, the Corporation shall indemnify any person (each such person, an "Indemnified Person") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that they, their testator or intestate, whether before or after adoption of this Section is or was

a Director, Officer or employee of the Corporation. The indemnification shall be against all judgment, fines, penalties, amounts paid in settlement (provided the Corporation consents to such settlement, such consent not to be unreasonably withheld) and reasonable expenses, including reasonable attorney's fees and reasonable costs of investigations, actually and necessarily incurred by the Indemnified Person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein. Such right of indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled. Any Director, Officer or employee seeking to become an Indemnified Person in accordance with this paragraph (a) of Section 2, Article VII must obtain the approval of the Board of Directors pursuant to paragraph (d) of this Section 2, Article VII.

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

(c) Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation as determined by the Board of Directors pursuant to paragraphs (a) and (d) of this Section 2, Article VII, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or paragraph (b) of this Section 2, Article VII. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

(d) Determination of Indemnification for Directors, Officers, and Employees. Indemnification mandated by final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board of Directors shall, upon written request of a Director, Officer or employee seeking to become an Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board of Directors must explicitly find that such indemnification will not violate the provisions of paragraph (b) of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.



(e) Binding Effect. Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

(f) Nonexclusive Rights. The provisions of this Section 2 of Article VII shall not limit or exclude any other rights to which any person may be entitled under law or contract.

### Section 3. Insurance.

(a) The Corporation shall purchase such insurance as the Directors of the Corporation determine to be necessary or appropriate for the protection of the Corporation, its assets and its interests or as may be required by law. Subject to subparagraph (b) of this Article VII, Section 3, such insurance shall include General Liability Insurance.

(b) The Corporation is not required to, but it may, purchase Directors' and Officers' liability insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VII or by operation of law and it may insure directly the Directors, Officers and employees of the Corporation for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

## **ARTICLE VIII**

### **Finances**

Section 1. Fiscal Year. The Corporation's fiscal year shall be from July 1 through June 30.

Section 2. Funds. The Corporation's funds shall be deposited in such bank or banks, in such types of accounts and subject to such deposit and withdrawal procedures as recommended by the CFO and approved by the President or the Board of Directors.

Section 3. Records and Accounts. The Corporation's financial records and accounts shall be maintained consistent with generally accepted accounting principles. All financial records and accounts of the Corporation shall be open to inspection by any Director or by either Member at any reasonable time.

Section 4. Annual Plan. The President, with the recommendation of the CFO, shall present an annual plan, which shall set forth all anticipated revenues and expenditures, to the Board of Directors for its approval at the regularly scheduled Board meeting each year immediately preceding the commencement of the new fiscal year, or as soon as practicable thereafter. The plan shall include: (a) the approved expenditure levels, including approved changes, and estimated income and expenditures for the current fiscal year; (b) the actual income and expenditures for the prior fiscal year; and (c) the estimated income and expenditures for the forthcoming fiscal year.

Section 5. Audit. The Corporation's financial statements shall be audited annually by a certified public accounting firm approved by the Board of Directors. The Corporation shall also conduct all annual reviews necessary for compliance with all applicable regulations pertaining to not-for-profit and exempt corporations including IRS Form 990. The Board of Directors shall review and approve both the annual audit and the IRS Form 990 prior to submission to the appropriate agency and/or government entity. A copy of such reports shall be provided to the Directors and the Members prior to the meeting at which these will be reviewed.

## **ARTICLE IX Policies and Procedures**

Section 1. Policies and Procedures. The Board of Directors is authorized and directed to adopt, implement, and enforce policies and procedures for the proper and ethical conduct of the affairs of the Corporation consistent with the Corporation's Certificate of Incorporation, these By-Laws, and all applicable law. At a minimum, these shall include the following:

- (a) Code of Conduct for Directors, Officers, and Employees;
- (b) Policy regarding Conflicts of Interest;
- (c) Fraud and Whistleblower Policy;
- (d) Policy and Procedure for the Procurement and Administration of Contracts;
- (e) Policy regarding the Acquisition and Disposition of Real Estate;
- (f) Records Access Policy, in conformance with Article 6 of the Public Officers Law ("FOIL"), as the same may be amended from time to time;
- (g) Policy Regarding Debt, Risk Assessment, and Risk Mitigation.

Section 2. Annual Review. At least annually, the Compliance Officer shall prepare and present to the Board a report on the implementation of the Corporation's policies and procedures during the preceding year, including any recommendations with respect thereto. Such report shall include any recommendations regarding such policies and procedures or the adoption of any new policy or procedure in accordance with then current best practices.

## **ARTICLE X Miscellaneous**

Section 1. Form of Seal. The seal of the Corporation shall be in such form as the Directors shall determine.

Section 2. Books and Records. There shall be kept at the office of the Corporation: (1) correct and complete books and records of accounts; (2) minutes of the proceedings of the Members, the Board of Directors, and any committee of the Board; (3) a current list of the Directors and Officers of the Corporation; (4) a list of all Members or classes of membership,

including name and address; (5) a copy of these By-Laws; (6) a copy of the Corporation's application for recognition of exemption with the Internal Revenue Service; and (7) copies of the past three (3) years of information returns and Form 990-Ts (if any) filed with the Internal Revenue Service.

**ARTICLE XI**  
**Amendment**

These By-Laws and the Certificate of Incorporation may be added to, amended, repealed, or replaced only by the unanimous agreement of the Members of the Corporation.

Dated: December 18, 2019

EXHIBIT D

FORT SCHUYLER MANAGEMENT CORPORATION  
CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION  
& RESTATED BY-LAWS

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
FORT SCHUYLER MANAGEMENT CORPORATION**

**Under Section 803 of the Not-for-Profit Corporation Law**

The undersigned, being the President of Fort Schuyler Management Corporation (the "Corporation"), hereby certifies:

- 1.** The name of the Corporation is Fort Schuyler Management Corporation.
- 2.** The original Certificate of Incorporation was filed by the Department of State on October 20, 2009. A Restated Certificate of Incorporation was filed by the Department of State on April 12, 2017.
- 3.** The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law.
- 4.** The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
- 5.** The Certificate of Incorporation is amended as follows:
  - A.** Paragraph 2 of the Certificate of Incorporation regarding membership is hereby amended to read in its entirety as follows:
    - 2.** The sole member of the Corporation is the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES) having an address at 257 Fuller Road, Albany, New York 12203.
  - B.** Paragraph 7 of the Certificate of Incorporation regarding dissolution is hereby amended to read in its entirety as follows:

7. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations that are organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as amended, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

C. Paragraph 9 of the Certificate of Incorporation regarding the location of the office of the Corporation is hereby amended to read in its entirety as follows:

9. The office of the Corporation shall be located in the County of Albany, State of New York.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: c/o General Counsel, Fort Schuyler Management Corporation, 257 Fuller Road, Albany, New York 12203.

7. This Amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the members entitled to vote thereon.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 18th day of December, 2019.

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By: Douglas A. Grose

Title: President

CERTIFICATE OF AMEDNMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
FORT SCHUYLER MANAGEMENT CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

Filed By:

Robert J. Ryan, Esq.  
Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207

**RESTATED BY-LAWS  
OF  
FORT SCHUYLER MANAGEMENT CORPORATION**

**(Adopted December 18, 2019)**

**ARTICLE I  
Organization**

Section 1. Type. Fort Schuyler Management Corporation (hereinafter referred to as the “Corporation”), is a charitable, Not-for-Profit Corporation.

Section 2. Principal Office. The principal office of the Corporation in the State of New York shall be located at 257 Fuller Road, Albany, New York 12203.

Section 3. Other Offices. The Corporation may have such other offices, either within or without the County of Albany, State of New York, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

**ARTICLE II  
Membership**

Section 1. Member. The sole Member of the Corporation shall be the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES).

Section 2. Dues. No dues shall be required from the Member of the Corporation.

Section 3. Power and Duties. The Member shall make possible the orderly and sound existence of the Corporation, and shall establish, and amend as necessary, these By-Laws of the Corporation. The Member shall have all the voting rights provided to members under the New York Not-for-Profit Corporation Law (the “NFPCL”) and common law.

**ARTICLE III  
Meetings of the Member**

Section 1. Annual Meeting. The Member of the Corporation shall hold a meeting at least annually in June of each year, or as soon thereafter as practicable, for the transaction of such other business as may properly come before the meeting. Membership meetings shall be held at the principal office of the Corporation or at such other place and by such other means as the Member may determine.

The President and/or Chief Financial Officer shall present at a meeting within six (6) months after the close of the Fiscal Year, or as soon as practicable thereafter, financial statements in accordance with generally accepted accounting principles that have been certified by a firm of



independent public accountants selected by the Audit Committee showing in appropriate detail, at least the following:

- (a) The assets and liabilities, direct or contingent, of the Corporation;
- (b) The principal changes in assets and liabilities since the last report;
- (c) The revenue and/or receipts of the Corporation, restricted and unrestricted; and
- (d) The expenses and/or disbursements of the Corporation for both general and restricted purposes.

Section 2. Special Meetings. Special meetings of the Member, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time at the request in writing of the Member directed to the President or the Secretary of the Corporation. Special meetings shall also be called, with the consent of the Member, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors to the President or Secretary of the Corporation. Any such request shall specify the date of the meeting, which shall not be less than two nor more than three months from the date of such written request, and shall detail the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the subjects stated in the call and matters germane thereto.

Section 3. Notice of Meetings. Written notice of the place, date, and hour of each meeting of the Member shall be given, personally, by first class mail or by electronic means, to the Member by the President or Secretary of the Corporation, and, unless it is an annual meeting, indicate that it is being issued by, or at the direction of, the Member, Directors, the Chair of the Board of Directors, or by the President or Secretary of the Corporation calling the special meeting. Notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting directed to the Member at its (physical or electronic) address as appears on the list of Members, or, if the Member shall have filed with the Secretary of the Corporation a written request that notices to it be mailed to some other address, then directed to it at such other address. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the address the Member provides to the Corporation. If sent by fax or e-mail, such notice is given when directed to the Member's fax number or e-mail address the Member provides to the Corporation; provided, that notice shall not be deemed delivered if: (a) the Corporation is unable to deliver two (2) consecutive notices to the individual by e-mail or fax; or (b) the Corporation otherwise becomes aware that notice cannot be delivered to the individual by e-mail or fax.

Notice of any meeting of the Member need not be given to the Member provided the Member submits a signed waiver of notice whether before or after the meeting. The attendance by the Member at a meeting without protesting the lack of notice prior to or at the start of the meeting shall constitute a waiver of notice by it. Waivers may be provided: (i) in writing signed by a Member or the Members' proxy either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient

can reasonably determine that the transmission was authorized by the individual submitting the waiver.

Section 4. Procedure. The order of business and all other matters of procedure at every meeting of the Member will be determined by the Member.

Section 5. Quorum. At every meeting of the Member, except as otherwise provided by law or these By-Laws, the Member must be present for the transaction of any business. The Member shall be represented by its President or his or her designee.

Section 6. Adjournments. The Member shall have the power to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which the Member is present, any business may be transacted which might have been transacted on the original date of the meeting.

Section 7. Voting. Any action required or permitted to be taken by the Member in its capacity as the member of the Corporation under applicable law, the Certificate of Incorporation or these Bylaws shall be taken by the Member through resolution.

Section 8. Account and Minutes. Account and minutes shall be taken at every proceeding of Members and a copy shall be kept at the office of the Corporation for inspection by the Members.

Section 9. Action Without a Meeting. Whenever the Member is required or permitted to take any action by vote, such action may be taken without a meeting, on written consent, setting forth the action so taken, signed by the Member. Consent may be provided: (i) in a writing signed by a duly authorized representative of the Member either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by a duly authorized representative of the Member.

#### **ARTICLE IV** **Directors**

Section 1. Number. The size of the Board of Directors shall equal in number to the size of the board of the Member.

Section 2. Composition of the Board. Each director of the Member, including all ex-officio non-voting advisory representatives, shall be deemed to have been appointed a Director of the Corporation by virtue of being a director of the Member.

Section 3. Powers and Duties. The Board of Directors shall direct the management of the operations, property, affairs and concerns of the Corporation consistent with the provisions of these By-Laws, as written or amended, all policies and procedures adopted by the Board, and the Certificate of Incorporation.

Section 4. Term. Each director of the Member shall serve as a Director of the Corporation for the term co-terminus with his/her term as a director of the Member.

Section 6. Resignation. A Director shall be deemed to have resigned from the Board at the same time he/she resigns from the board of directors of the Member and such resignation shall take effect at the same time his/her resignation from the board of directors of the Member takes effect.

Section 7. Removal. A Director shall be automatically removed from the Board simultaneous with the Director's removal from the board of directors of the Member.

Section 8. Vacancies. Whenever a vacancy shall occur in the Board of Directors it shall be filled by the individual(s) appointed to fill the corresponding vacancy on the board of directors of the Member.

Section 9. Compensation. No Director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise. Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

Section 10. Meetings of Directors.

(a) Regular meetings of the Board of Directors shall be held at least quarterly and at such times and at such places as may be determined by action of the Board of Directors, or in the absence of such action, by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. The first meeting on or after July 1 of each year shall be the annual meeting.

(b) Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, or by the President or Secretary of the Corporation, or at the request in writing of three (3) Directors directed to the President or Secretary of the Corporation. Such request shall state the purpose or purposes of the proposed meeting. The person or persons authorized to call special meetings of the Board may select any place within the State, as the place for holding any special meeting of the Board called by them. Business transacted at a special meeting shall be confined to the subject(s) stated in the call and matters germane thereto.

(c) Each Director shall have one (1) vote. No Director may vote by proxy.

(d) Except as provided in Section 13(c) of this Article IV and Section 108 of Article 7 of the New York Public Officers Law, every duly convened meeting of the Corporation's Board of Directors at which a quorum is present shall be open to the general public. All reasonable efforts shall be made to ensure that Board meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision 5 of Section 50 of the Public Buildings Law and can adequately accommodate members of the public who wish to attend such meetings.

(e) Directors must participate in meetings of the Board in person or via videoconference. Directors participating via videoconference shall be counted toward the quorum and may vote.

Section 11. Notice of Meetings of the Board of Directors.

(a) Notice of the time and place of each meeting of the Board of Directors shall be given by the Chair of the Board, or the Secretary, or by the three (3) Directors of the Board calling the same, to each Director on the Board, copies of such notice to each Member of the Corporation and to the ESD and SUNY representatives, not less than seven (7) business days before the meeting by mailing the notice, postage prepaid, addressed to each Director on the Board at the address on file with the Secretary, and to the two (2) Members and the ESD and SUNY representatives at their respective principal offices, or not less than one (1) business day before the meeting by delivering the notice to each Director on the Board, and to the two (2) Members and the ESD and SUNY representatives, personally or electronically.

(b) Notice of a meeting of the Board of Directors or a committee thereof need not be given to any Director who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice by the Director. The meeting shall be duly called and held if notice is given to, or is waived by, all absent Directors. Waivers may be provided: (i) in a writing signed by the Director either in hard copy or by affixing a signature by any reasonable means (e.g., fax signature); or (ii) by e-mail that includes information from which the recipient can reasonably determine that the transmission was authorized by the individual submitting the waiver.

(c) Public notice of the date, time and place of a Board meeting shall be given to the news media and shall be conspicuously posted on the Corporation's website, along with the meeting's agenda, at least seventy-two (72) hours before such meeting to the extent practicable. To the extent practicable, materials submitted to the Directors for consideration at a meeting shall be made available to the public upon request at the meeting. In addition, to the extent practicable, such materials will be made available in advance of the meeting by means of posting to the Corporation's website.

Section 12. Quorum and Voting.

(a) At all meetings of the Board of Directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, a quorum shall be required for the transaction of business and shall consist of a majority of Directors then in office but in no event fewer than four (4) Directors. A majority of the Directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

(b) The affirmative vote of a majority of Directors present at any meeting at which a quorum is present shall decide any question that may come before the meeting, except as set forth below.

(c) The following action requires approval by two thirds vote of the entire Board of Directors:

(i) the purchase of real property that will constitute all, or substantially all, of the assets of the Corporation once purchased.

(d) The following items must be approved first by majority vote of its Board of Directors at a meeting at which a quorum is present and then submitted to the voting Members for approval:

(i) Amendment of the Corporation's Certificate of Incorporation;

(ii) Approval of a plan of merger or consolidation of the Corporation;

(iii) Approval of a plan of dissolution of the Corporation; provided, however, if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors, then the remaining directors must approve unanimously; and

(iv) Approval of a recommendation for the sale of all or substantially all of the Corporation's assets; provided, however, if all or substantially all of the assets of the Corporation consist of real property, approval of such sale by two thirds vote of the entire Board of Directors is additionally required.

### Section 13. Procedure.

(a) The order of business and all other matters of procedures at every meeting of Directors may be determined by the presiding officer.

(b) Minutes shall be taken at all meetings of the Board and copies thereof shall be distributed to all Directors and posted to the website of the Corporation.

(c) Executive Session. Upon the affirmative vote of a majority of the Directors present at a duly convened meeting, the Directors may conduct an Executive Session, which shall be closed to the public, for the reasons enumerated in Section 105 of Article 7 of the Public Officers Law. Attendance at any such Executive Session shall be limited to the representatives of either of the Members, the Directors, and such Officers, employees, and other persons relevant to the matters under consideration as determined by the Board.

Section 14. Informing the Directors of Corporate Activity. Reports of all material Corporate activities as determined by the President, including program development, applications for fiscal support and funds received in support of the purposes of the Corporation,

will be presented to the Board of Directors for information either at each regularly scheduled meeting of the Board or by mail. A copy of such information shall also be provided to each Member of the Corporation.

Section 15. Records. The Corporation shall maintain a fair record of all the transactions of the Corporation including financial statements prepared in accordance with the provisions of the NFPCL. The audited financial report shall become a part of the Corporation's permanent records and a copy of the report shall be entered in the minutes of the proceedings of the meeting of the Board of Directors at which such a report is presented to the Board and shall be provided to each Member of the Corporation. A report of the financial statements shall be presented to the members of the Finance Committee not less than quarterly.

Section 16. Investment Matters. The Corporation shall comply with the New York Prudent Management of Institutional Funds Act ("NYPMIFA") as applicable.

## **ARTICLE V**

### **Committees of the Board**

#### Section 1. Committees of the Board.

(a) The Board of Directors shall establish an Audit Committee and such other committees as the Board may deem appropriate. Each committee shall consist of at least three (3) Directors. The committees of the Corporation and the size of each shall be equal to the committees of the Member. Each director of the Member serving on a committee of the Member shall be deemed to have been appointed as a member of the corresponding committee of the Corporation.

(b) Committees shall be subject at all times to the direction of the Board of Directors. Committees shall be governed by a committee charter which shall be adopted by the Board of Directors and shall detail the committee roles and responsibilities. Except as otherwise provided in these By-Laws, no committee shall have any authority without specific authorization by the Board of Directors and no committee shall have authority as to the following matters:

- (i) The submission to members of any action requiring Members' approval under the law;
- (ii) The filling of any vacancies on the Board or any committee;
- (iii) The fixing of compensation of the Directors for serving on the Board or on any committee;
- (iv) The amendment or repeal of the 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;

- (vi) The election or removal of Officers and Directors;
- (vii) The approval of a merger or plan of dissolution;
- (viii) The adoption of a resolution recommending to the Members action on the sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; and
- (ix) The approval of amendments to the certificate of incorporation.

(c) Committees shall keep regular minutes of their proceedings and shall make the same available to the Board of Directors upon request.

(d) Unless otherwise provided by resolution of the Board of Directors, a majority of all the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the committee members shall be the act of the committee.

Section 2. Audit Committee. The Audit Committee shall be a committee of the Board and shall consist of at least three (3) members. All members shall be “Independent Directors” as defined under the NFPCL, who shall have the knowledge and experience appropriate and sufficient to competently assist the Board of Directors in fulfilling its responsibility with respect to: overseeing the Corporation’s material legal, audit, and compliance matters; its system of controls, reporting, and accounting systems, including the Corporation’s audited financial reports; the internal audit department, including the retention and management of an external auditor as may be needed; and the implementation of the policies and procedures required by these By-Laws, including, without limitation, policies governing conflicts of interest and related-party transactions. The Board of Directors shall adopt an Audit Committee Charter to govern the operations of the Audit Committee.

Section 3. Meetings.

Meetings of committees shall be held at such time and place as shall be fixed by the President of the Corporation, the Chair of the Board of Directors, the chair of the committee or by vote of a quorum of the members of the committee. Notice of such meetings may be delivered personally, by mail or electronically at least one day prior to the meeting and shall state the purposes, time and place of the meeting.

## **ARTICLE VI**

### **Officers**

Section 1. Officers. The Officers of the Corporation shall be the President, Chief Financial Officer, Compliance Officer, General Counsel, Secretary and such additional Officers as the Board may deem desirable, all of whom shall be appointed by the Board and shall serve at its pleasure, subject to any contractual rights. Such additional Officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly

delegated or assigned to them from time to time by the Board of Directors. The Officers of the Member shall serve ex-officio as the Officers of this Corporation in the same office that such individual holds with the Member.

Section 2. The President. The President shall be the Chief Executive Officer of the Corporation and shall be responsible for the general supervision and control of the affairs of the Corporation and shall see to it that all policies, resolutions and other directives of the Board of Directors are carried out. The President, in such capacity, shall be authorized to enter into and execute in the name of and on behalf of the Corporation any agreement, obligation, contract, document or instrument the President deems reasonable or necessary in carrying out the business and affairs of the Corporation and for which execution has been generally or specifically authorized by the Board of Directors. The President shall make recommendations to the Board for the programs and activities of the Corporation. The President shall make reports as the Board may request. The President shall perform other duties for the Board as the Board may direct. The President shall have such powers and perform such other duties as the Board may direct as are reasonably incident to such office. The President will ensure that Corporation activities comply with all legal and regulatory mandates, will consult with legal counsel as needed, and direct all Corporation Officers and employees in carrying out said obligations.

Section 3. The Secretary. The Secretary shall have charge of the books, documents, and papers as the President may determine and shall have the custody of the corporate seal. The Secretary shall issue notices of all meetings of the Members of the Corporation and of Directors of the Board and committees thereof where notices of such meetings are required by law or these By-Laws. The Secretary shall attend all meetings of the Board of Directors, except as otherwise directed by the Board, and shall keep the minutes thereof and shall fix the Corporate seal to and sign such instruments as require the seal or signature and, shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board of Directors.

Section 4. The Chief Financial Officer. Subject to the authority of the President, the Chief Financial Officer (“CFO”) shall serve as the chief financial officer of the Corporation and shall be directly responsible for the management and oversight of the Corporation’s daily financial operations, including accounting, budgeting, financial reporting, investing, debt issuances and contract compliance. The CFO shall be the financial advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or President. The CFO shall provide financial advice and opinions, prepare financial statements and shall represent the Board of Directors and the Corporation in all financial matters.

Section 5. General Counsel. The General Counsel shall serve as the Corporation’s Chief Legal Officer and legal advisor to the Corporation, the Board of Directors and its committees, except as otherwise directed by the Board or the President. The General Counsel shall provide legal advice and opinions, prepare legal documents and shall represent the Board of Directors and the Corporation in all legal matters.

Section 6. Compliance Officer. Under the direction of the President and the Board of Directors, the Compliance Officer shall be responsible for preparing and enforcing the



Corporation's internal policies and procedures designed to prevent and/or detect violations of applicable law, regulation, rules and ethical standards by the Corporation's employees, agents and/or others. The Compliance Officer shall conduct periodic risk assessments and develop response plans to address identified risks and conduct training programs for the Directors, Officers and employees of the Corporation ensure compliance with the policies and procedures required by these By-Laws. The Compliance Officer shall report annually to the Board on his/her activities and assessments.

Section 7. Board Meetings. The Officers shall attend all meetings of the Board of Directors unless otherwise directed by the Chair of the Board or by the Board; provided, however, that the absence of any officer at any meeting of the Board shall not affect the validity of any action taken by the Board in accordance with these By-Laws.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate and assign, for the time being, the powers and duties of any officer to any other officer or to any Director.

Section 9. Compensation. Compensation of all Officers shall be fixed by the Board of Directors upon the recommendation of the Audit Committee.

Section 10. Officers Holding Two or More Offices. No officer holding more than one office shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 11. Removal. Any officer of the Corporation shall be removed at such time as he/she is removed as an officer of the Member.

Section 12. Vacancies. A vacancy in any office shall be filled by the individual appointed to fill the corresponding vacancy of the Member.

## **ARTICLE VII**

### **Surety Bonds, Insurance and Indemnification**

Section 1. Surety Bonds. The Board of Directors may require all Officers and employees of the Corporation who handle Corporate funds to furnish adequate Surety Bonds approved by the Board of Directors as to form and coverage. The cost of all Surety Bonds so required shall be paid by the Corporation.

Section 2. Indemnification.

(a) Authorized Indemnification. Unless clearly prohibited by law or Section 2(b) of this Article VII, the Corporation shall indemnify any person (each such person, an "Indemnified Person") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that they, their testator or intestate, whether before or after adoption of this Section is or was

a Director, Officer or employee of the Corporation. The indemnification shall be against all judgment, fines, penalties, amounts paid in settlement (provided the Corporation consents to such settlement, such consent not to be unreasonably withheld) and reasonable expenses, including reasonable attorney's fees and reasonable costs of investigations, actually and necessarily incurred by the Indemnified Person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein. Such right of indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled. Any Director, Officer or employee seeking to become an Indemnified Person in accordance with this paragraph (a) of Section 2, Article VII must obtain the approval of the Board of Directors pursuant to paragraph (d) of this Section 2, Article VII.

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

(c) Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation as determined by the Board of Directors pursuant to paragraphs (a) and (d) of this Section 2, Article VII, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or paragraph (b) of this Section 2, Article VII. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

(d) Determination of Indemnification for Directors, Officers, and Employees. Indemnification mandated by final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court, the Board of Directors shall, upon written request of a Director, Officer or employee seeking to become an Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board of Directors must explicitly find that such indemnification will not violate the provisions of paragraph (b) of Section 2 of this Article VII. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.

(e) Binding Effect. Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

(f) Nonexclusive Rights. The provisions of this Section 2 of Article VII shall not limit or exclude any other rights to which any person may be entitled under law or contract.

Section 3. Insurance.

(a) The Corporation shall purchase such insurance as the Directors of the Corporation determine to be necessary or appropriate for the protection of the Corporation, its assets and its interests or as may be required by law. Subject to subparagraph (b) of this Article VII, Section 3, such insurance shall include General Liability Insurance.

(b) The Corporation is not required to, but it may, purchase Directors' and Officers' liability insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VII or by operation of law and it may insure directly the Directors, Officers and employees of the Corporation for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

**ARTICLE VIII**  
**Finances**

Section 1. Fiscal Year. The Corporation's fiscal year shall be from July 1 through June 30.

Section 2. Funds. The Corporation's funds shall be deposited in such bank or banks, in such types of accounts and subject to such deposit and withdrawal procedures as recommended by the CFO and approved by the President or the Board of Directors.

Section 3. Records and Accounts. The Corporation's financial records and accounts shall be maintained consistent with generally accepted accounting principles. All financial records and accounts of the Corporation shall be open to inspection by any Director or by either Member at any reasonable time.

Section 4. Annual Plan. The President, with recommendations of the CFO, shall present an annual plan, which shall set forth all anticipated revenues and expenditures, to the Board of Directors for its approval at the regularly scheduled Board meeting each year immediately preceding the commencement of the new fiscal year, or as soon as practicable thereafter. The plan shall include: (a) the approved expenditure levels, including approved changes, and estimated income and expenditures for the current fiscal year; (b) the actual income and expenditures for the prior fiscal year; and (c) the estimated income and expenditures for the forthcoming fiscal year.

Section 5. Audit. The Corporation's financial statements shall be audited annually by a certified public accounting firm approved by the Board of Directors. The Corporation shall also conduct all annual reviews necessary for compliance with all applicable regulations pertaining to not-for-profit and exempt corporations including IRS Form 990. The Board of Directors shall review and approve both the annual audit and the IRS Form 990 prior to submission to the appropriate agency and/or government entity. A copy of such reports shall be provided to the Directors and the Members prior to the meeting at which these will be reviewed.

## **ARTICLE IX Policies and Procedures**

Section 1. Policies and Procedures. The Board of Directors is authorized and directed to adopt, implement, and enforce policies and procedures for the proper and ethical conduct of the affairs of the Corporation consistent with the Corporation's Certificate of Incorporation, these By-Laws, and all applicable law. At a minimum, these shall include the following:

- (a) Code of Conduct for Directors, Officers, and Employees;
- (b) Policy regarding Conflicts of Interest;
- (c) Fraud and Whistleblower Policy;
- (d) Policy and Procedure for the Procurement and Administration of Contracts;
- (e) Policy regarding the Acquisition and Disposition of Real Estate;
- (f) Records Access Policy, in conformance with Article 6 of the Public Officers Law ("FOIL"), as the same may be amended from time to time;
- (g) Policy Regarding Debt, Risk Assessment, and Risk Mitigation.

Section 2. Annual Review. At least annually, the Compliance Officer shall prepare and present to the Board a report on the implementation of the Corporation's policies and procedures during the preceding year, including any recommendations with respect thereto. Such report shall include any recommendations regarding such policies and procedures or the adoption of any new policy or procedure in accordance with then current best practices.

## **ARTICLE X Miscellaneous**

Section 1. Form of Seal. The seal of the Corporation shall be in such form as the Directors shall determine.

Section 2. Books and Records. There shall be kept at the office of the Corporation: (1) correct and complete books and records of accounts; (2) minutes of the proceedings of the Members, the Board of Directors, and any committee of the Board; (3) a current list of the Directors and Officers of the Corporation; (4) a list of all Members or classes of membership,

including name and address; (5) a copy of these By-Laws; (6) a copy of the Corporation's application for recognition of exemption with the Internal Revenue Service; and (7) copies of the past three (3) years of information returns and Form 990-Ts (if any) filed with the Internal Revenue Service.

**ARTICLE XI**  
**Amendment**

These By-Laws and the Certificate of Incorporation may be added to, amended, repealed, or replaced only by the unanimous agreement of the Members of the Corporation.

Dated: December 18, 2019