

**AMENDED AND RESTATED BY-LAWS
OF
SMITH PARK OF NEW YORK, INC.**

**Article I
Definitions**

Section 1.01 Name. The “Corporation” shall mean: Smith Park of New York, Inc., its successors and assigns.

Section 1.02 Board. The “Board” shall mean the Board of Directors of the Corporation.

**Article II
Purposes, Objectives and Governing Instruments**

Section 2.01 Charitable, Educational, and Scientific Purposes and Powers. The purposes of the Corporation, as set forth in the Certificate of Incorporation, are exclusively charitable, educational, or religious, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future Federal tax law (“Section 501(c)(3)”). In furtherance of such purposes, the Corporation shall have the same powers as an individual to do all things necessary or convenient to carry out the purposes, as set forth in the Certificate of Incorporation and these By-Laws.

Section 2.02 Governing Instruments. The Corporation shall be governed by its Certificate of Incorporation and its By-Laws.

**Article III
Membership**

Section 3.01 Membership. The Corporation shall have individual members.

Section 3.02 Qualification. The initial members of the corporation shall be the directors and those individuals elected by the current board members at the time these amended and restated bylaws are adopted. Thereafter, individuals qualify as members if they meet the following criteria:

- An individual member is a person eighteen (18) years or older who has made a membership contribution as determined by resolution approved by a majority of the Board of Directors within the previous (12) months prior to the Annual Meeting of the Members and who affirmatively renews such membership at the Annual Meeting of Members (either in person or by proxy).

The Board of Directors may establish additional procedures for qualified parties to register as members.

Section 3.03 Resignation. Any member may resign at any time by giving notice of his or her resignation in writing to any officer or director of the corporation.

Section 3.04 Removal. Members may be removed from membership at any time with or without cause by an affirmative vote of a majority of the Board at a meeting during which a quorum of the entire Board is present.

Section 3.05 Powers and Rights. In addition to the right to elect directors and such other powers and rights as are vested in them by law, the Certificate of Incorporation of the corporation, or these By-Laws, the members shall have such other powers and rights as the directors may designate.

Section 3.06 Annual Meeting of the Members. The Annual Meeting of the Members shall be held at such time and place (including electronically) as shall be designated by the Board.

Section 3.07 Special Meeting of the Members. A special meeting of the Members may be called by: (i) the President; (ii) the directors; or (iii) by the Secretary upon written application of Members representing at least 10% of the total number of votes entitled to be cast at such meeting of the Members. Special meetings shall be held at such time and place (including electronically) as shall be designated by the Board.

Section 3.08 Attendance by Electronic Means. The Board of Directors may, in its sole discretion, determine that meetings of members be held partially or solely by means of electronic communication. The electronic service and/or platform by which the meeting is held shall be the “place” of the meeting held solely by means of electronic communication. Meetings conducted partially or solely by means of electronic communications and any member's electronic participation in such meetings shall be subject to guidelines and procedures adopted by the Board of Directors which includes: (1) verifying that each person participating electronically is a member or a proxy of a member; (2) providing each member participating electronically with a reasonable opportunity to participate in the meeting, including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read or hear the proceedings of the meeting substantially concurrently with those proceedings; and (3) recording and maintaining a record of any votes or other actions taken by electronic communication at the meeting.

Section 3.09 Notice of Meetings. Written notice of the Annual Meeting or special meetings of the Members stating the place, date and hour (and for special meetings, the purpose or purposes for which the meeting is called) shall be given personally, by first class mail, or by electronic communication not less than ten (10) nor more than fifty (50) days before the date of the meeting to each member entitled to vote at such meeting. Notice of any and all meetings may be waived by members in writing or by attendance at the meeting.

Section 3.10 Quorum. At all Annual Meeting of the Members, Members entitled to cast 10% of the total number of votes entitled to be cast thereat, either in person or by proxy, shall constitute a quorum for the transaction of business or any specified item of business. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of any members(s), if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 3.11 Voting. At all Annual Meeting of the Members every member shall be entitled to one vote. When a quorum is present at any meeting, the vote of a majority of the members represented thereat shall, except where a larger vote may be required by law, the Certificate of Incorporation or these By-Laws, decide any question brought before the meeting. The following

acts of the Members require an affirmative two-thirds vote. A 25-day notice of an upcoming vote on any of the following acts is required:

- (a) The sale, lease, exchange, or other disposition of all or substantially all of the Corporation's property and assets;
- (b) The merger or consolidation of the Corporation; and
- (c) An amendment to or restatement of the Certificate of Incorporation of the Corporation.

Section 3.12 Proxies. A Member may authorize another person or persons to act for him or her at a meeting or by consent in lieu of a meeting if so authorized by a written or electronic proxy, a copy of which shall be provided to the corporation. Any such written or electronic proxy shall be executed by the Member signing (including by electronic signature) such written or electronic proxy or causing such Member's signature to be affixed to such written proxy by any reasonable means, including facsimile signature. A Member also may authorize another person or persons to act for the Member as proxy by providing such authorization by electronic mail or other electronic platform to the person who will be the holder of the proxy, provided that any such authorization by electronic mail or other electronic platform shall set forth information from which it can be reasonably determined that the authorization by electronic mail or other electronic platform was authorized by the Member granting the proxy. If it is determined that such authorization by electronic mail or other electronic platform is valid, the inspectors or, if there are no inspectors, such other persons making such determination shall specify the nature of the information upon which they relied. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in such proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except as otherwise provided by the N-PCL.

Article IV **Directors**

Section 4.01 Powers and Duties. The corporation shall have a Board consisting of directors who shall have the powers and duties of a Board of directors under New York law. Except as otherwise provided in the Certificate of Incorporation or these By-Laws, the Board shall have the general power to control and manage the affairs and property of the Corporation and shall have full power to adopt rules and regulations governing the conduct of the Corporation's affairs and actions of the Board. The Board shall have full authority with respect to the governance and management of the Corporation; provided, however, that the Board shall be guided at all times by the fundamental and basic purposes of the Corporation as expressed in the Certificate of Incorporation, and shall not permit any part of the net earnings or capital of the Corporation to inure to the benefit of any private individual except as permitted under the Internal Revenue Code of 1986, as amended, and applicable state law.

Section 4.02 Number. The number of directors constituting the entire Board shall be determined from time to time by a resolution adopted by a majority of the entire Board, but shall not be fewer than 11 nor more than 17. If the Board has not adopted a resolution specifying the number of directors that constitute the entire Board, then the number of directors that were elected or appointed as of the most recently-held election of directors, plus any directors whose terms have not yet expired, shall be the number of directors constituting the entire Board.

Section 4.03 Eligibility of Directors. Only voting members of the Corporation in good standing are eligible to serve as Directors of the Corporation. Prospective board members will be

nominated by the existing board or directors or an authorized committee created by the board of directors. Corporation employees and paid contractors are not eligible to serve as Directors.

Section 4.04 Election and Tenure. The initial directors shall be those persons named as directors in the Certificate of Incorporation. Thereafter, the directors shall be elected at the Annual Meeting of the Members by voting members in good standing and each director so elected shall hold office for a term of three years, beginning at the conclusion of the Annual Meeting of the Members at which they were elected. Each director shall hold office until the conclusion of the Annual Meeting of the Members three years after their election and until their successor has been elected and qualified or until their earlier death, resignation or removal. Directors may be re-elected to successive terms, provided that after serving three full consecutive terms or nine years, a director shall not be eligible for re-election until they have been off the Board for at least one year. At each Annual Meeting of the Members, the Voting Members shall elect directors to fill the seats of directors whose terms are then expiring and/or new board members. All elections shall be by a majority of the votes cast by voting members at the Annual Meeting of the Members. Board members will only be presented for nomination and vote at the Annual Meeting of the Members by a board-designated committee or through a vote of the board of directors.

Section 4.05 Newly Created Directorships and Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board for any reason may be filled by a majority of the directors then in office at any meeting of the board of directors. Each director elected to fill a vacancy shall hold office until the end of the term which the director was elected to fill. Eligible Directors that fill vacancies may be nominated and re-elected.

Section 4.06 Resignation. Any director may resign at any time by giving written notice to the Chair or the Secretary. Such resignation shall take effect at the time specified therein or, if no time be specified, then on delivery.

Section 4.07 Removal of Directors. Any director may be removed from office with or without cause by vote of the members. Any director may be removed for cause by the affirmative vote of a majority of the directors, provided there is a quorum of not less than a majority present at the regular or special meeting of directors at which such action is taken. Written notice of the proposed removal shall be given to all members or directors at least ten days prior to the meeting. The director in question shall be given an opportunity to address the Board before a vote is taken on their removal.

Section 4.08 Meetings. The annual meeting of the Board shall be held at such time and place (including electronically) as shall be designated by the Board. Regular meetings of the Board may be held at such time and place as the Board may from time to time determine. Special meetings of the Board shall be held at the demand of the Chair, officers, or any two directors.

Section 4.09 Attendance by Electronic Means. Any one or more members of the Board or any committee thereof may participate in a meeting of the Board or committee by means of a conference telephone or similar communications equipment, including electronic video screen communication, allowing all persons participating in the meeting to hear each other at the same time and to participate in all matters before the Board including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee. Participation by such means shall constitute presence in person at a meeting.

Section 4.10 Notice of Meetings. Notice of the time and place of each regular, special and annual meeting of the Board shall be provided to each director by regular mail to an address provided by the director for that purpose, by email, by telephone, or in person, no less than 25 days prior to the meeting, provided however that notice of a special meeting to discuss matters requiring prompt attention shall be given to each director by email or telephone no less than forty eight hours prior to the meeting. Although not required, a written agenda stating all matters upon which action is proposed to be taken may also be provided, but matters not on the agenda may be acted upon at the meeting except as otherwise required by these By-Laws or applicable law.

Section 4.11 Waiver of Notice. Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing their signature to be affixed to such waiver by any reasonable means, including but not limited to digital signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director.

Section 4.12 Quorum. At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business or any specified item of business. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of any director(s), if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 4.13 Voting. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may otherwise be specifically provided by statute, the Certificate of Incorporation, or these By-Laws. The following acts of the Board require the affirmative, eighty percent vote of the entire Board. A 25-day notice of an upcoming vote on any of the following acts is required, unless there is unanimous consent to proceed less any Directors who have provided a Waiver of Notice prior to the meeting at which the vote is taken:

- (a) The purchase, sale, mortgage or lease of real property of the Corporation (so long as such transaction does not involve all or substantially all of the assets of the Corporation);
- (b) The addition or removal of any real property and buildings of the Corporation;
- (c) The adoption or modification of any Conservation Restriction, easement, or comparable restriction to the use of the Corporation's real property;
- (d) Any change to the organization's investment or endowment policies, including but not limited to the Investment Policy Statement and Spending Policy;
- (e) Approval of Dissolution of the Corporation (prior to recommending the same to the Members); and
- (f) An alteration to these By-Laws of the Corporation that would increase the quorum requirement or vote requirement for general Board actions to greater than a majority of the Board present at a meeting at which a quorum is present.

Additionally, the approval of contracts or transactions in which a director has a direct or indirect material financial interest require the unanimous approval of the disinterested directors.

Section 4.14 Action Without a Meeting. Whenever any action is required or permitted to be taken by the Board or any committee thereof, such action may be taken without a meeting if all members of the Board or the committee consent in writing or electronically to the adoption of a resolution authorizing the action. If a member has not responded to the request for consent, the Chair or their designee will both call and email the nonresponsive member. Consent may be executed by any reasonable means, including digital signature. If the consent is written, it must be signed by the director. If the consent is electronic (e.g., by email), it must include sufficient information from which it can reasonably be determined that the consent was authorized by the director.

Section 4.15 Compensation. Directors shall not receive any compensation for their service on the Board. The Board may, however, provide by resolution that Directors may be reimbursed upon written request for actual and necessary expenses which they incur in fulfilling their duties as Directors.

Article V **Officers**

Section 5.01 Officers. The officers of the Corporation shall include a Chair, a Secretary and a Treasurer. The Board may also elect or appoint an Executive Director, one or more additional Vice Chairs, one or more assistant Secretaries and assistant Treasurers and such other officers and agents as it shall from time to time deem advisable. Two or more offices may not be held by the same person. No employee or paid contractor of the Corporation may hold any office, except the office of Executive Director. The officers of the Corporation shall be elected by the Board at its annual meeting.

Section 5.02 Election and Tenure. Each officer shall be elected at the first meeting after the annual meeting of the Board. The Chair and Vice Chairs shall hold office for a single term of two years, beginning at the conclusion of the meeting at which they are elected. The Treasurer and Vice Treasurer shall hold office for a term of two years, beginning at the conclusion of the meeting at which they are elected. The Treasurer and Vice Treasurers may be re-elected to successive terms, provided that after serving two full consecutive terms or four years, the Treasurer and Vice Treasurers shall not be eligible for the same officer role for at least one year. The Secretary and Vice Secretaries shall hold office for a term of three years, beginning at the conclusion of the meeting at which they are elected. The Secretary and Vice Secretaries may be re-elected to successive terms, provided that after serving three full consecutive terms or nine years, the Secretary and Vice Secretaries shall not be eligible for the same officer role for at least one year. Each officer shall hold office until the conclusion of the first meeting after the subsequent annual meeting of the Board and until such officer's successor has been elected and qualified or until their earlier death, resignation, or removal from either their role as an officer or their role as a Director of the Corporation. New offices may be created and filled at any meeting of the Board. Only current Directors of the Corporation shall be eligible to serve as officers.

Section 5.03 Resignation; Removal. Any officer may resign by written notice to the Corporation. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract with the resigning officer. Any officer may be removed with or without cause by the affirmative vote of three-fourths of the entire Board. Such removal shall be without

prejudice to the contract rights, if any, of the officer so removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board.

Section 5.04 Compensation. Officers shall not receive any compensation for their service to the Corporation, except for the Executive Director. The Board may, however, provide by resolution that officers may be reimbursed upon written request for actual and necessary expenses which they incur in order to fulfill their duties as officers.

Section 5.05 Authority and Duties. All officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-Laws, or, to the extent not so provided, as may be assigned by the Board.

Section 5.06 Chair. The Chair shall preside at all meetings of the directors and shall exercise general supervision over the affairs of the Corporation. The Chair shall see to it that all resolutions and orders of the Board are carried into effect, and, in connection therewith, shall be authorized to delegate to the other officers of the Corporation such of his or her powers and duties as Chair at such times and in such manner as the Chair may deem to be advisable. The Chair shall be ex officio a member of all Board committees. No employee of the Corporation may serve as the Chair. The Chair shall be the President of the Corporation.

Section 5.07 The Vice Chair. The Vice Chair or, if there be more than one, the Vice Chairs, shall assist the Chair in the management of the business of the Corporation and the implementation of resolutions and orders of the Board at such times and in such manner as the Chair or the Board deem advisable. The Vice Chair (or Vice Chairs) shall, in the absence or disability of the Chair, exercise the powers and perform the duties of Chair, and shall have such other powers and duties as the Board or the Chair may from time to time prescribe. If there is more than one Vice Chair, they shall exercise the powers and perform the duties of the Chair in the Chair's absence based on their titles, seniority, order of election, or as otherwise determined by the Board.

Section 5.08 The Treasurer. The Treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, and shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer may disburse or cause to be disbursed the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chair and the Board, at meetings or whenever they may require it, an account of all their transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall perform such other duties as generally are incident to the office of Treasurer and as may from time to time be prescribed by the Board or by the Chair. The Treasurer may delegate one or more of their duties to Corporation employees, provided that the Treasurer exercises oversight over such employees and retains ultimate authority and responsibility for carrying out the Treasurer's duties.

Section 5.09 The Secretary. The Secretary shall attend all meetings of the Board and shall record or cause to be recorded the minutes of all proceedings taken at such meetings, and shall maintain or cause to be maintained all documents evidencing corporate actions taken by written consent of the Board and shall perform like duties for any committees of the Board when required. The Secretary shall see to it that all notices of special meetings of the Board are duly

given in accordance with these By-Laws or as required by statute; and they shall perform such other duties as generally are incident to the office of Secretary and as from time to time may be prescribed by the Board or by the Chair. The Secretary may delegate one or more of their duties to Corporation employees or another member of the board, provided that the Secretary exercises oversight over such employees and retains ultimate authority and responsibility for carrying out the Secretary's duties.

Section 5.10 Executive Director. The Board may engage one or more individuals to serve as the Corporation's Executive Director and/or to fulfill the duties of an Executive Director, regardless of title (the "Executive Director(s)"). The Executive Director(s) shall be deemed officers of the Corporation. The Executive Director(s) shall, under the direction and supervision of the Board of Directors, oversee the operations of the Corporation and shall be responsible for implementing, on a day-to-day basis, the policies of the Board. Between meetings of the Board, the Executive Director(s) shall be under the oversight of the Chair of the Corporation and shall report to the Chair at a frequency, and based upon circumstances, as shall be determined by the Chair or by mutual agreement of the Chair and the Executive Director(s). The Executive Director(s) shall apprise the Chair as soon as practicable regarding any significant situations which may arise. The Executive Director(s) shall, unless otherwise determined by the Board, attend all meetings of the Board, and report to the Board at each of its meetings.

Article VI **Committees**

Section 6.01 Powers and Duties. The Board shall have the power to create committees, each of which shall have such authority as the Board shall by resolution provide, except that no committee shall have authority as to the following matters:

- (1) The submission to members of any action requiring members' approval.
- (2) The filling of vacancies in the Board of Directors or in any committee.
- (3) The fixing of compensation of the directors for serving on the Board or on any committee.
- (4) The amendment or repeal of the By-laws or the adoption of new By-laws.
- (5) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.
- (6) The election or removal of officers and directors.
- (7) The approval of a merger or plan of dissolution.
- (8) The adoption of a resolution recommending to the members action on the sale, lease, exchange or other disposition of all or substantially all the assets of the Corporation or, if there are no members entitled to vote, the authorization of such transaction.
- (9) The approval of amendments to the Certificate of Incorporation.

Section 6.02 Committees of the Board. Committees of the Board shall consist of a minimum of three directors, as the business of the Corporation may require, and each such committee shall have the authority of the Board to the extent provided in a Board resolution or in the Certificate of Incorporation or these By-Laws. The Board shall appoint the members of such Committees of the Board, except that in the case of the Executive Committee, the appointment shall be made by the affirmative vote of three-fourths of the entire Board. The Chair of each Committee of the Board shall be selected by the Chair of the Board, subject to approval by the Board, unless otherwise chosen by the Board of Directors at the time of the appointment of the committee members.. A majority of the members of each Committee of the Board shall constitute a quorum for the transaction of business, unless otherwise established pursuant to committee rules of procedure approved by the Board. Each Committee of the Board shall keep minutes of its meetings to submit to the Board prior to the next Board meeting and report to the full Board at the next Board meeting regarding any significant action which it takes or decisions that it makes. This report shall be made by a director serving on that committee or the appointed Chair.

The Board shall have the following two Committees of the Board, each of which shall have the responsibilities set forth herein, as follows:

a) **Executive Committee.** The Executive Committee shall consist of the officers of the Corporation and such other members as the Board may elect. Except as otherwise provided by law and in these By-Laws, the Executive Committee may exercise all the powers of the Board between meetings of the Board of Directors if (1) a special meeting is called; and (2) that special meeting is unable to achieve quorum. The Executive Committee shall report its actions to the full Board of Directors for ratification at the next meeting of the Board of Directors.

b) **Audit Committee.** The Audit Committee shall be composed of no fewer than three independent directors and shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements. The Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor, and shall perform such other duties as may be required under New York Not-for-Profit Corporation Law Section 712-a and as may from time to time be prescribed by the Board. The Audit Committee shall regularly report its actions to the full Board of Directors.

Section 6.03 Committees of the Corporation. Committees of the Corporation may be established by the Board, each of which shall consist of such persons, and shall have such authority, as is provided in the Board resolution establishing the Committee. Committees of the Corporation shall act in an advisory capacity or shall conduct events or activities of the Corporation, but shall not have authority to bind the Board. Members of Committees of the Corporation (who do not need to be directors) may be appointed in the same manner as officers of the Corporation.

Article VII **Contracts, Checks, Drafts, and Bank Accounts**

Section 7.01 Execution of Contracts. The Board may by resolution authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and may impose such restrictions or limitations on the authority as it may in its sole discretion determine are necessary or prudent.

Section 7.02 Loans. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board. No loan may be made to any director or officer.

Section 7.03 Checks, Drafts, etc. All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board.

Section 7.04 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

Section 7.05 Investments. The funds of the Corporation may be retained in whole or in part in cash, or may be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities as the Board shall determine, in accordance with a Board-approved investment policy.

Article VIII **Indemnification**

Section 8.01 Indemnification. As authorized by the New York Not-for-Profit Corporation Law, and unless clearly prohibited by law or Section 2 of this Article VIII, the Corporation may indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Corporation, by reason of the fact that such person (or their testator or intestate), whether before or after adoption of this Section, (a) is or was a director or officer of the Corporation, or (b) in addition is serving or served, in any capacity, at the request of the Corporation, as a director or officer of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Corporation shall have consented to such settlement) and reasonable expenses, including attorneys' fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful. Additionally, unless clearly prohibited by law or Section 2 of this Article VIII, the Board of Directors may indemnify and/or advance expenses as set forth in Section 3 of this Article VIII, to a person (or the testator or intestate of a person) who is or was employed by the Corporation or who is or was a volunteer for the Corporation, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken at the request of the Corporation for any other corporation, partnership, joint venture, trust employee benefit plan or other enterprise, if such employee or volunteer acted, in good faith, for a purpose which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful..

Section 8.02 Prohibited Indemnification. The Corporation may not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good

faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled. In determining whether and to what extent indemnification is proper, 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 such determination. If a quorum of disinterested directors is not obtainable, the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-Laws.

Section 8.03 Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest, for any amount advanced in connection with a claim for which it is ultimately determined that such person is not entitled to indemnification.

Section 8.04 Insurance. The Corporation will purchase and maintain Directors and Officers' liability insurance at all times. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VIII or operation of law and it may insure directly the directors, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article VIII as well as for liabilities against which they are entitled to be indemnified by the Corporation.

Section 8.05 Nonexclusive Rights. The provisions of this Article VIII shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Directors is authorized to enter into agreements on behalf of the Corporation with any director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article VIII, subject in all cases to the limitations of Section 3 of this Article VIII.

Article IX **Conflicts of Interest**

Section 9.01 General. The Board shall adopt a conflict of interest policy, which shall define related party transactions and the circumstances that constitute a conflict of interest, as well as appropriate procedures for disclosure. The Board shall evaluate related party transactions and potential conflicts of interest in accordance with the conflict of interest policy on an annual basis.

Article X **Compensation**

Section 10.01 Compensation. It is the policy of the Corporation to pay no more than reasonable compensation that is commensurate with the services rendered to the Corporation.

Section 10.02 Approval of Compensation. The compensation of employees of the Corporation must be approved by the Board, and the employee who may benefit may not participate in any Board or committee deliberation or vote concerning the compensation

(although they may be present before deliberations at the request of the Board in order to provide information).

Before approving any compensation arrangement, the Board shall determine that the total compensation to be provided by the Corporation to the individual is reasonable in amount in light of the position, responsibility and qualification of the individual for the position held, including the result of an evaluation of the individual's prior performance for the Corporation, if applicable. In making the determination, the Board shall consider total compensation to include the salary and the value of all benefits provided by the Corporation to the individual in payment for services.

The Board shall document in writing the date and terms of approved compensation arrangements, the decision made by each individual who decided or voted on compensation arrangements, and the basis for its decisions regarding compensation, including the conclusions of the evaluation and the basis for determining that the individual's compensation was reasonable.

The Board may delegate certain or all compensation decisions to the Executive Committee or Executive Director provided the above requirements are still met within the decision-making body to which the authority has been delegated. Any decisions that would vary from the above, including any decision that would fall outside of the Board-approved operational budget must be approved by the Board.

Article XI **General**

Section 11.01 Fiscal Year. The fiscal year of the Corporation shall be fixed by, and may from time to time be changed by, resolution of the Board.

Section 11.02 Principal Office. The principal office of the Corporation shall be fixed, and may from time to time be changed, by resolution of the Board.

Section 11.03 Other Offices. The Corporation may also have offices at such other places as the Board may from time to time determine or the activities of the Corporation may require.

Section 11.04 Writings. Whenever in these By-Laws there is reference to a "written" communication or a communication "in writing," such terms shall include emailed communications or communications transmitted by other electronic means by which the communication may be recorded and printed or saved.

Article XII **Amendments**

Except as otherwise required under applicable law, the Certificate of Incorporation, or these By-Laws, amendments to these By-Laws may be made: (i) by a three-fourths vote of the entire Board or by unanimous written consent at any regular or special meeting, provided that the written notice of the Board meeting includes a copy of the proposed amendment(s); or (ii) by

three-fourths vote of the Members at any Annual or special meeting, provided that the written notice of the Members meeting includes a copy of the proposed amendment(s).

These By-Laws were adopted at a meeting of the Board of Directors of Smith Park of New York, Inc. on _____.

Thomas Harvey, Chair

Beth Hodos, Treasurer

Kaylana Mittleman, Secretary