



CREATE
Council for Resources to Enrich the Arts, Technology & Education
- By-Laws -

ARTICLE I: NAME

The name of this organization shall be **CREATE** Council for Resources to Enrich the Arts, Technology and Education (herein after referred to as **CREATE**). **CREATE** shall be incorporated in the State of New York.

ARTICLE II: PURPOSE

It shall be the purpose of **CREATE** to support and advance the arts and cultural community by broadening and enriching creative resources and economic growth in the region, serving Greene, Columbia and Schoharie Counties. We envision a community that celebrates artistic and cultural diversity and inspires creative engagement. This shall be accomplished through:

1. The coordination and support of the activities of existing cultural and arts organizations;
2. The promotion of cultural and art-related activities, education and technology in conjunction with or independent of individuals or existing cultural organizations;
3. Service to the public in regard to awareness and appreciation of the arts and advancement of public knowledge of the arts;
4. Promotion of and aid to individual artists through use of their talents in **CREATE**-related projects.

ARTICLE III: CREATE ORGANIZATIONAL STRUCTURE

Under the **CREATE** Organization, there will be a governing Board identified as **CREATE** Board of Directors and a local identification from each county with the formation of an Advisory Committee.

The naming taxonomy for the advisory committees will be **CREATE** (county name) Advisory Committee. Each Advisory Committee shall have membership on the Board of Directors and responsibilities as defined in Article XV herein.

ARTICLE IV: MEMBERSHIP

1. General Membership

- A. There will be a general membership. Any person may become a general member upon payment of yearly dues. The Board of Directors may establish criteria for membership, including a schedule of dues, and any waivers thereof, as well as procedural requirements for prospective members, unless otherwise prescribed by law, the Certificate of Incorporation and/or these By-Laws.
- B. Membership will confer the right to vote for Directors as provided for in this Article, as well as the right to serve on committees and juries. Membership shall also include with it all privileges,

subscriptions, discounts, invitations, and other benefits that the Board of Directors are able to secure.

- C. Each member shall be issued a membership card indicating the appropriate level of membership. Membership cards are not transferable.

2. Organizational Membership

- A. There will also be a membership category known as Organizational Membership, obtainable by an organization upon payment of yearly dues. All problems regarding eligibility of a group for organizational membership shall be resolved by the Executive Committee.
- B. Each member organization shall have the right to designate an individual of its own choosing to be an individual member of **CREATE**. Such designation shall be tantamount to approval by the Board of Directors. The payment of the dues by such member organizations shall be deemed to be payment of the dues of the individual so designated. Such designation shall be in writing and shall be effective until a new designation is made. Dues shall be fixed by the Board of Directors.
- C. Organizational membership carries with it the right to recommend individuals for election to the Board of Directors and to vote for Directors, as provided for in Article IV.1.B.

3. Family Membership

Family membership is entitled to one vote at annual meetings and is entitled to all benefits of the general membership.

4. Other Memberships

The Board of Directors may also devise such other categories of membership as may seem appropriate, but no category of membership shall entitle any member to any more privileges than those conferred in these by-laws.

ARTICLE V: MEETINGS OF THE MEMBERSHIP

- 1. **The Annual Meeting** shall be held each year as prescribed by the Board of Directors. At the Annual Meeting a report by an Independent Auditor/Accountant shall be presented. In addition, members shall receive detailed balance sheets and profit and loss statements for the fiscal year reported.
- 2. **A General Meeting** other than the Annual Meeting may be called at any time if ten (10) percent of the general membership shall address a petition for such a meeting to the President or Chairperson of the Board, who may then call a meeting within sixty days of receiving the petition.
- 3. **Special Meetings** of the Members, current in their dues, may be called at any time by the President, or a majority vote of the Board of Directors, provided there is a quorum at the meeting of the Board of Directors at which the vote for a Special Meeting is taken, or upon the written request of at least ten (10) percent of the qualified voting Members of The Corporation.
- 4. **The Board of Directors** may also call for additional general membership meetings during the year if it should decide by vote that they are necessary.
- 5. **Notice of Meetings** shall be given to members via postal mail or email, website, and social media within 30 days of the meeting and shall state date, place, time and purpose of meeting.

6. **The Board of Directors** will hold at least one Board Meeting in Columbia and Schoharie Counties each year immediately followed by a General Membership Meeting.

ARTICLE VI: MEMBERSHIP QUORUMS

1. **At the Annual Meeting**, and at all general meetings, a quorum shall consist of those members attending, provided sufficient notice of the meeting has been given in local media, email, and **CREATE** publications, when these latter exist.
2. **For Annual Meetings** and other general meetings, notice of cancellation must be given via email or radio and all other media that can be practically used at the time of cancellation.

ARTICLE VII: BOARD OF DIRECTORS

1. Duties

- A. The general management of the affairs of this Corporation shall be vested in a Board of Directors. The Board of Directors shall have control of the property of the Corporation and shall determine its policies with the advice of its various committees. It shall have power to employ necessary staff and other help, authorize expenditures and take all necessary and proper steps to carry out the purposes of the Corporation and to promote its best interest.
- B. All Directors will serve on one or more committees of the Board.

2. Structure

- A. The Board of Directors will be composed of no less than five (5) and no more than twenty-one (21) people.
- B. The Board shall be made up of representation from Greene, Columbia and Schoharie Counties. The Board shall be made up of up to 5 members from each of the three Counties for a total of 15 members as determined by the Board annually. The Chairperson of each Advisory Committee shall be a sitting member of the Board of Directors and a sitting member of their respective county advisory committee. Members serving should be acquainted with the cultural needs of their respective county and have knowledge and interest in the arts.
- C. In addition to the regional representation an effort shall be made to ensure there will be a minimum of 20% artist membership on the Board of Directors representing as many of the different art forms as possible.

ARTICLE VIII: ELECTIONS AND RETURNS OF DIRECTOR OF THE BOARD

1. The election of the Board of Directors will take place at the Annual Meeting of the Membership.
2. Directors shall be elected to serve three year terms. The term of office for a Board member shall be three (3) years unless otherwise provided in these By-Laws. The terms of office for all Directors shall begin on the day of their election by the membership. A Director shall be eligible to serve two consecutive three (3) year terms subject to the requirements as stipulated herein. After a period of one(1) year after the end of the Director's second term the Director shall be eligible to serve an additional three (3) year term. The term of a past president may be extended up to two years to provide for his/her membership in the Executive Committee as Immediate Past President. For the purpose of establishing status of current Directors they are assumed to be new Directors if they were appointed after 1/2018; they will be considered to be beginning their second term if they were appointed between 1/2007 and 1/2015; and they will be considered to be in their third term if they were appointed prior to 1/2007.

3. In the event of the resignation, removal, illness, death or lapse of membership of a Director, the Board of Directors may appoint someone to fill out such a term. The Board shall have the right to appoint new Board members during the current year subject to the Membership approving the appointment at the next annual meeting. At the next annual meeting following the vacancy, the Membership shall elect a permanent successor for the vacated position. In the event that the interim successor is subsequently elected to serve as a permanent successor, the first year of their term shall be deemed to have commenced upon their election, without regard to the duration of interim service.

ARTICLE IX: MEETINGS AND QUORUMS OF THE BOARD OF DIRECTORS

The Board of Directors will meet quarterly and must meet in June to approve activities and budgets presented by the Executive Director.

1. A member of the Board of Directors who has missed three (3) consecutive meetings without reasonable cause, which determination shall be made by the Executive Committee, shall be asked to resign. After the second meeting, the Secretary shall mail a letter to the subject Board member informing them that if they do not attend the third meeting, a motion to this effect will be made at the fourth meeting. They may attend this fourth meeting to argue in their defense.
2. Special Meetings of the Board of Directors may be called by the President or Vice President or any two Directors. They must be given in writing a notice of place, date and hour of the meeting and indicate the purpose or purposes of the meeting. Each Director must receive this written notice not less than five not more than thirty days prior to the meeting. The notice must indicate who it is being issued by or what person or persons are calling the special meeting.
3. All meetings shall be held at such place in the State of New York or elsewhere as the Board of Directors shall from time to time direct. In the absence of such direction, meetings shall be held at the office of The Corporation. Meeting may also be convened via tele/video conference and on written consent, 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.
4. For all meetings of the Board of Directors, a quorum shall consist of a simple majority, one more than half. Board Members who are absolutely unable to attend a meeting may submit a written proxy (which may be submitted electronically) designating another board member to vote on their behalf. A proxy will count toward the quorum. Once a quorum is present to organize a meeting, it is not broken by the subsequent withdrawal of any Board Members.
5. If any meeting of the Board is cancelled because of inclement weather or any other legitimate reason, all Directors shall be given sufficient notification.
6. At least one Board meeting will be held in each of Columbia and Schoharie Counties each year at a time and location to be determined. These Board meetings will be followed by a general membership meeting.

ARTICLE X: EXECUTIVE COMMITTEE

1. The Executive Committee shall consist of the selected number of elected officers together with the Executive Director, who is a member of the Executive Committee ex officio in a non-voting capacity. The Executive Committee shall strive to have at least one officer from each County.
2. The Executive Committee shall meet at a minimum of four times a year or as often as necessary so as to keep up with the needs and concerns of the organization. They shall serve as an arm of the Board in seeing that policy is implemented and as an extension of the office staff in seeing that the Board is kept abreast of current activities.

3. The Executive Committee will include at a minimum, President, Vice President, Secretary, Treasurer and Immediate Past President. The President will serve one 2 year term.
4. Between meetings of the Board, the Executive Committee shall have all the powers and duties of the Board, except that the Executive Committee shall have no authority as to the following matters:
 - A. The submitting to members of any action requiring members' approval;
 - B. The amendment or repeal of the by-laws or the adoption of new by-laws, or dispersing of funds;
 - C. The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or revocable;
 - D. The Executive Committee shall make a report of all actions taken by it to the Board at the next regular meeting of the Board following such action;
 - E. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business. The Committee shall establish such procedures as it may deem proper for the transaction of its business.

ARTICLE XI: JURYING PROCESS FOR GRANTS OR AWARDS TO ARTS GROUPS

In the event that **CREATE** should possess sufficient funds so as to forward grants to arts groups, a jury or panel of five persons in each of the art fields for which funds are available shall be set up as prescribed by the funder or as follows:

1. Four of the jury/panel members shall be chosen from a list of people with experience in the art field. The names of people on the list shall be selected according to the results of a **CREATE** survey, resumes and other knowledge available to the Executive Committee, the Executive Director, and staff. In general, a person should have had at least three years' experience in their art field or have made a significant contribution to it during a shorter time. All questions concerning eligibility for the list shall be resolved by the Board of Directors in consultation with the Executive Director;
 - A. The fifth member of the jury/panel shall be an art academic or other acknowledged expert in each field, also chosen from a list of such academics and experts to be compiled by the Executive Director in consultation with the Executive Committee on the basis of a **CREATE** survey, resumes and other available information;
 - B. Each juror/panelists may serve for three (3) years;
 - C. No member of the Board of Directors or other party may serve on the jury/panel if they have a conflict of interest such as an affiliation with an organization applying for funds.

ARTICLE XII: JURYING PROCESS FOR GRANTS OR AWARDS TO INDIVIDUALS

In the event that **CREATE** should possess sufficient funds so as to forward grants to individual artists, the procedure shall be similar to that detailed in Article XI for the arts groups, except that all juror/panelists may be professional artists representing disciplines of the applicant(s).

ARTICLE XIII: ANNUAL REPORT

At each Annual Meeting of the Board of Directors the Executive Director and the Treasurer shall present a report, verified by them, and certified or reviewed by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail: (1) the assets and liabilities, including trust funds, of the Corporation as of the end of the preceding fiscal year; (2) the principal changes in assets and liabilities, including trust funds, during said year; (3) the revenues

or receipts of the Corporation both unrestricted and restricted to particular purposes, for said year; (4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said year; (5) the balance sheet and profit & loss statement during said fiscal year; and (6) the number of members of the Corporation as of the end of the preceding fiscal year, together with a statement of the increase or decrease in the names and places of residence of the current members of the Board of Directors. The report shall be filed with the minutes of the Annual Meeting of the Board.

ARTICLE XIV: OTHER COMMITTEES

The Board of Directors may appoint from time to time such other committees as may be deemed desirable in forwarding the program of the Corporation, and each of such committees shall exercise such powers and perform such duties as may be prescribed by the Board. Members of such other committees need not be members of the Board of Directors if the committee in question is not vested with a power or duty normally considered a primary duty of the Board of Directors. Each Advisory Committee shall have a minimum of one of its members in addition to its Chairperson on the **CREATE** Board of Directors. Each Advisory Committee shall have the first right of refusal for any additional members from their respective County.

1. **Committees of the Board.** The President shall, subject to approval of the Board, appoint the following Committees of the Board – Executive Committee, Governance Committee, and Audit & Finance Committee, all of which have the power to bind the Board within statutory limitations, and through the Board, the Corporation and all of which are comprised solely of at least three (3) Directors. Each may have such sub-committees as they from time-to-time require to maintain their charges and responsibilities.
2. **Committees of the Corporation.** The President shall, subject to approval of the Board, appoint the following Committees of the Corporation and members thereof – Advisory Committees for Greene County, Schoharie County and Columbia County, Development Committee, Membership, Fundraising/Events Committee, Marketing/Outreach Committee and any Ad Hoc committee created and appointed by the President with the consent of the Board of Directors as needed for special purposes, all of which cannot bind the Board or, the Corporation, making recommendations for action by the entire Board of Directors from-time-to-time and all of which are comprised solely of a minimum of two Directors or non-Directors. Each may have such sub-committees as they from time-to-time require to maintain their charges and responsibilities.

ARTICLE XV: ADVISORY COMMITTEES

1. Each County will have its own Advisory Committee to advise the Board of Directors and Executive Director as well as assist in carrying out the programs and tasks of the organization in each county. The Advisory Committee can make recommendations to the Board of Directors but has no authority to act on its own without consent of the Executive Director.
2. Each Advisory Committee will determine its membership and work with the Board of Directors in support of its vision and mission to advance the arts across the organization. Advisory Committee membership should represent individuals who:
 - A. support the organization’s vision and mission;
 - B. can provide their professional expertise and knowledge of local perspectives;
 - C. are knowledgeable and connected to local resources, colleagues and peers;
 - D. can provide philanthropic support or other forms of assistance;
 - E. able to attend and participate in events;

- F. can commit to attend regular Advisory Committee meetings.
3. Therefore, and in accordance with the By-Laws, the roles and responsibilities of each Advisory Committee is the following:
 - A. Determine and select the membership of the Advisory Committee;
 - B. Elect the Advisory Committee officers to assist the Chairperson;
 - C. Meet a minimum of Four times annually;
 - D. Recommend up to four representatives, in addition to the Chairperson, to serve on the Board of Directors, subject to approval as defined by these By-Laws;
 - E. Identify programs that will support the arts within the County;
 - F. Develop annual budgets to support the Advisory Committee recommended activities and programs to be submitted to the Executive Director on the first Monday of each May;
 - G. Identify and conduct fundraising initiatives that will support the budget and other financial needs;
 - H. Develop, with assistance of **CREATE**'s staff, a membership campaign;
 - I. Propose a communication plan to be targeted to the community;
 - J. Ensure the effectiveness of the Advisory Committee's operational needs in accordance with the Board of Directors.
 4. NYSCA-DEC program will not be a function of the Advisory Committee, however, members of the Advisory Committee who are not members of the **CREATE** Board of Directors may serve on the DEC Grant review Committees.

ARTICLE XVI: FISCAL YEAR

The fiscal year of the Corporation shall begin on July 1 of each year and shall end on June 30 of the following year.

ARTICLE XVII: OFFICE

The principal office of the corporation shall be located in Greene County, New York. Relocation of the principal office would be subject to approval by the **CREATE** Board of Directors by a two-thirds margin of the full Board.

ARTICLE XVIII: WAIVER OF NOTICE

Whenever, under the New York Not-For-Profit Corporation Law or the Certificate or By-Laws of the Corporation or by the terms of any agreement or instrument, the Board or any committee thereof is authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken submit a signed waiver of notice of such requirements.

ARTICLE XIX: OFFICERS, AGENTS, AND EMPLOYEES

1. The officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer and the immediate Past President. There may be one or more additional Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. Such officers shall constitute the Executive Committee. Officers shall be appointed by the Board of Directors at the Annual Meeting of the Board for a two year term and may be appointed by the Board at any time. The Board may appoint other

agents and employees, who shall have such authority and perform such duties as may be prescribed by the Board. Board Members who want to be considered for an officer position must notify the Executive Committee in writing sixty (60) days prior to the Board Annual Meeting of their interest.

2. The President shall be limited to a two year term. Any officer, agent, or employee may be removed from the Board with cause. The removal of an officer, agent, or employee without cause shall be without prejudice to their contract rights, if any, but the appointment of any person as an officer, agent, or employee of the Corporation shall not of itself create contract rights. Compensation of other agents and employees may be fixed by the Board.
3. The President shall preside at all meetings at which he/she is present and shall perform such other duties as the Board may designate. The President shall be a member ex-officio of all committees, and shall be entitled to notice of all meetings thereof and to attend and vote at such meetings.
4. Each Vice President shall have such powers and perform such duties as the Board of Directors may prescribe. In the absence or inability to act of the President, unless the Board shall otherwise provide, the Vice President who has served in that capacity for the longest time and who shall be present and able to act, shall perform all the duties and may exercise any of the powers of the President. The performance of any such duty by a Vice President shall, in respect of any other person dealing with the Corporation, be conclusive evidence of his power to act.
5. The Secretary shall have charge of the minutes of all proceedings of the Board of Directors and of such other books and papers as the Board may direct. The Secretary shall attend to the giving of all notices to Directors. The Secretary shall have charge of the seal of the Corporation and shall attest the same by their signature whenever required. The Secretary shall have all such powers and duties as generally are incident to the position of Secretary or as may be assigned by the President.
6. The Treasurer shall have charge of all funds and securities of the Corporation, shall endorse the same for deposit or collection when necessary and deposit the same to the credit of the Corporation in such banks or depositories as the Board of Directors may authorize. The Treasurer may endorse all commercial documents requiring endorsements for or on behalf of the Corporation and may sign all receipts and vouchers for payments made to the Corporation. The Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as may be assigned by the President.
7. In the absence or inability of the Secretary to act, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. The performance of any such duty shall, in respect of any other person dealing with the Corporation, be conclusive evidence of their power to act. An Assistant Secretary shall also perform such other duties as the Secretary or the Board of Directors may assign.
8. In the absence or inability of the Treasurer to act, an Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. The performance of any such duty shall, in respect of any other person dealing with the Corporation, be conclusive evidence of their power to act. An Assistant Treasurer shall also perform such other duties as the Treasurer or the Board of Directors may assign.
9. The Executive Director, when approved by the Board, shall be a Board ex-liaison and ex-officio member of the Board, and serve as ex-officio member of the Executive Committee. The Executive Director shall have general charge, subject to the overall control and direction of the Board, oversight and direction of the affairs and business of the Corporation, and sole responsibility for the employment and discharge of staff in accordance with Board established policies. The Executive Director shall be the principal administrative officer the Corporation, charged with the duties of effectuating the purposes of the Corporation, carrying out the directives of the Board of Directors in performing any and all functions necessary and proper to ensure that the policies, objectives and aims of the Corporation are carried out and shall sit an ex officio non-voting Member of the Board of Directors.

10. The checks made out by the Corporation shall be endorsed by either the Treasurer, President or any other officer and Executive Director.
11. Honorary Titles: At the discretion of the Board of Directors, a title may be conferred on a President or other Board member whose exemplary service has benefited the organization through distinguished service. Distinguished service is defined by a former Board member's active participation over multiple terms, consistent philanthropic support, and demonstrated interest in the institution. In this case, a title such as Chairman of the Board, trustee emeritus, or similar may be created. This position shall be honorary and confers no voting rights. However, the honoree shall be welcome to attend Board and committee meetings and act in an advisory capacity. The President will keep the Chairman of the Board informed of developments in the corporation on a regular basis and also whenever there is a meeting of the Board of Directors.

ARTICLE XX: FUNDAMENTAL CORPORATE CHANGES

1. By-Law Amendment.

These By-Laws may be amended, repealed or altered in whole, or in part, at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose by a two-thirds (2/3s) majority vote of the Board of Directors, and those entitled to cast ballots for a resolution of the Membership, where a Membership in-fact exists responsible for the election of the Board of Directors, if any, provided there is a quorum for all corporate meetings at which such actions are taken.

2. Certificate of Incorporation.

- A. Amendment. An amendment, repeal or alteration, in whole or in part, of the Corporation Certificate of Incorporation shall be authorized, by a two-thirds (2/3rds) majority vote of each the Board of Directors and those entitled to cast ballots for a resolution of the Membership, if applicable, at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose, provided there is a quorum for all corporate meetings at which such actions are taken, and shall become effective once all statutory approvals are subsequently secured and the applicable Certificate of Amendment or Restated Certificate of Incorporation is accepted for filing by the New York State Department of State.
- B. Construction/Governing Effect. If there is any conflict between the provisions of the Certificate of Incorporation, as may be amended, and these By-Laws, the provisions of the Certificate of Incorporation and the tenets of the Not-for-Profit Corporation Law of the State of New York shall govern.

3. Merger or Consolidation.

The Merger or Consolidation the Corporation shall be authorized, by a two-thirds (2/3rds) majority vote of each the Board of Directors and those entitled to cast ballots for a resolution of the Membership, if applicable, at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose, provided there is a quorum for all corporate meetings at which such actions are taken, and shall become effective once all statutory approvals are subsequently secured and the applicable Certificate of Merger or Consolidation is accepted for filing by the New York State Department of State.

4. Dissolution.

- A. Procedure. The Dissolution of the Corporation shall be authorized, by a two-thirds (2/3rds) majority vote of each the Board of Directors and those entitled to cast ballots for a resolution of the Membership, if applicable, at any Annual Meeting, Regular Meeting or Special Meeting called for that purpose, provided there is a quorum for all corporate meetings at which such actions are

taken, and shall become effective once all statutory approvals are subsequently secured and the applicable Certificate of Dissolution is accepted for filing by the New York State Department of State.

- B. Residual Assets.** As part of the process of obtaining a corporate Dissolution, the Corporation shall endeavor to ensure that any residual corporate assets shall be donated to another tax-exempt, not-for-profit organization with purposes similar to those of the Corporation and use its best efforts to have same authorized by all regulatory agencies and the Courts.

5. Lease and Sale of Real Property.

In any transaction where the organization endeavors to purchase, mortgage, sell or lease real property of the organization, it will first determine if such transaction constitutes a disposition of “all or substantially all” of its assets and if so shall obtain the consents and permissions required by Not-for-Profit Corporation Law of the State of New York Section 509, 510 or these By-Laws by way of either Not-for-Profit Corporation Law of the State of New York Section 511 or 511-a. In any event where real property is disposed of, same shall not occur except with the consent of a 2/3 majority vote of the entire Board at a regular meeting or special meeting called for that purpose.

ARTICLE XXI: INDEMNIFICATION

The Corporation shall indemnify its Officers and Directors to the full extent permitted by law for any claim or action made against any such Director or Officer arising out of any corporate activity including reasonable attorney fees.

1. Authorized Indemnification.

Unless clearly prohibited by law or these By-Laws, the Corporation shall indemnify any person (an “Indemnified Person”), including any Director, Officer or Key Employee as that term is defined by the Not-for-Profit Corporation Law of New York State, made or threatened to be made a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by the Corporation, by reason of the fact that s/he (or her/his Testator or Administrator, if then deceased), whether before or after adoption of this Article: (a) is or was a Director, Officer or Key Employee of the Corporation as that term is defined by the Not-for-Profit Corporation Law of New York State, or; (b) is serving or served, in any capacity, including Committees of the Board and Committees of the Corporation, at the request of the Corporation, as a Director, Officer or Key Employee as that term is defined by the Not-for-Profit Corporation Law of New York State 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.

2. Prohibited Indemnification.

The Corporation shall not indemnify any person if a judgment, or other final adjudication, adverse to any Indemnified Person, including any Director, Officer or Key Employee as that term is defined by the Not-for-Profit Corporation Law of New York State, establishes, or the Board of Directors in good faith, or a Committee of the Board thereof, determines, that such person’s acts were committed in bad faith or were the result of willful or intentional conduct, active and deliberate dishonesty and were material

to the cause of action so adjudicated or that they personally garnered any financial profit or other advantage to which they were not legally entitled.

3. Advancement of Expenses.

The Corporation shall, on request of any Indemnified Person, including any Director, Officer or Key Employee as these terms are defined by the Not-for-Profit Corporation Law of New York State, who is or may be entitled to be indemnified by the Corporation, pay or promptly reimburse an 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, including any Director, Officer or Key Employee as these terms are defined by the Not-for-Profit Corporation Law of New York State, makes a binding, written commitment to repay the Corporation, with interest, for any amount advanced for which it is ultimately determined that they are not entitled to be indemnified under the law or these By-Laws. An Indemnified Person, including any Director, Officer or Key Employee as these terms are defined by the Not-for-Profit Corporation Law of New York State, 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.

4. Indemnification of Others.

Unless clearly prohibited by law or these By-Laws, the Board of Directors may approve indemnification by the Corporation as set forth in Section 1 of this Article, or advancement of expenses as set forth in Section 3 of this Article, to a person (or their Testator or Administrator, if then deceased) who is or was employed by the Corporation or who is or was a volunteer for the Corporation, especially Key Employees as that term is defined by the Not-for-Profit Corporation Law of New York State, 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 in connection with service at the request of the Corporation in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

5. Determination of Indemnification.

Indemnification mandated by a 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, or a Committee of the Board thereof, shall, upon written request by an Indemnified Person, including any Director, Officer or Key Employee as these terms are defined by the Not-for-Profit Corporation Law of New York State, determine whether and to what extent indemnification is permitted pursuant to these By-Laws. Before indemnification can occur, the Board of Directors, or a Committee of the Board thereof, must expressly find that such indemnification will not violate the provisions of Section 2 of this Article. Only Independent Directors, as that term is defined by the Not-for-Profit Corporation Law of New York State, without 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 such Independent Directors, as that term is defined by the Not-for-Profit Corporation Law of New York State, is not obtainable, the Board of Directors, or a Committee of the Board thereof, shall act only after receiving the opinion in writing of independent legal counsel or CREATE'S General

Counsel, that indemnification is proper in the circumstances under then applicable law and these By-Laws.

6. 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.

7. Insurance.

The Corporation is required to purchase adequate Directors and Officers (“D & O”) liability insurance. To the extent permitted by law, such insurance shall insure the Corporation for any obligation it incurs as a result of this Article, or operation of law, and it may insure directly the Directors, Officers, Key Employees, as these terms are defined by the Not-for-Profit Corporation Law of New York State or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article, as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

8. Nonexclusive Rights.

The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Directors, or a Committee of the Board thereof, is authorized to enter into agreements on behalf of the Corporation with any Director, Officer, Key Employee, as these terms are defined by the Not-for-Profit Corporation Law of New York State, or volunteer to provide them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article, subject in all cases to the limitations of Section 2 of this Article.

ARTICLE XXII. INDEMNIFICATION OF EMPLOYEES

1. Actions.

The Corporation shall indemnify any and all Key Employees, as that term is defined by the Not-for-Profit Corporation Law of New York State, and such other employees of the Corporation as the Board of Directors, or a Committee of the Board thereof, determines against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney’s fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, in connection with any claim asserted against the employee, or Key Employee as that term is defined by the Not-for-Profit Corporation Law of New York State, by court action, or otherwise, by reason of the fact that such employee, or Key Employee as that term is defined by the Not-for-Profit Corporation Law of New York State, acted in good faith for a purpose which they reasonably believed to be in the best interest of the Corporation and, in criminal actions of proceedings, in addition, had no reasonable cause to believe that their conduct was unlawful.

2. Non-exclusivity.

Section 1 of this article shall not be exclusive but shall include, by implication, any and all rights and remedies available to the Corporation and its employees, or Key Employee as that term is defined by the Not-for-Profit Corporation Law of New York State, by statute or otherwise, including but not limited to the purchase and maintenance of insurance to fund the aforementioned indemnification pursuant to the Not-for-Profit Corporation Law.