

**BY-LAWS  
OF  
FRIENDS OF DOWNTOWN PARKS NYC, INC.**

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

**ARTICLE I – Offices**

**Section 1.1. Location.** The principal office of Friends of Downtown Parks NYC, Inc. (the “*Corporation*”) within the State of New York shall be located at 93 Mercer St. Apt. 2W, New York, New York 10012. The Corporation may also maintain additional offices at such other places within or outside the State of New York as the Board of Directors of the Corporation (the “*Board*”) may from time to time determine.

**ARTICLE II – Board of Directors**

**Section 2.1. Power of Board and Qualifications of Directors.** The Corporation shall be managed by its Board. The Corporation shall have no members and all corporate powers shall vest in the Board. Each director shall be at least eighteen (18) years of age.

**Section 2.2. Number of Directors.** The number of directors constituting the entire Board shall be not less than three. Subject to such limitation, the entire Board shall consist of such number as shall be determined from time to time by a majority of the entire Board. The number of directors may also be increased or decreased at any time and from time to time by amendment of these By-Laws, by a majority vote of the entire Board, except that in no case may any decrease in the number of directors shorten the term of any incumbent director.

**Section 2.3. Election and Term of Directors.** At each annual meeting of the Board, the Board shall elect directors. Each director shall hold office for a term of one (1) year until the next annual meeting of the Board and until his or her successor has been elected and qualified.

**Section 2.4. Quorum of Directors and Action by the Board.** Unless a greater proportion is required by law, by the Certificate of Incorporation, or by these By-Laws, a majority of the entire Board shall constitute a quorum for the transaction of business or of any specified item of business, and, except as otherwise provided by law or by the Certificate of Incorporation or these By-Laws, the vote of a majority of the directors present at the meeting at the time of such vote, if a quorum is then present, shall be the act of the Board.

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

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

Regular meetings of the Board shall be held at such times as may be fixed by the Board. Special meetings of the Board may be held at any time whenever called by the President or other corporate officer.

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

No notice need be given of regular meetings of the Board. Notice of each special meeting of the Board shall be given to each director either by mail not later than noon, New York time, on the fifth (5<sup>th</sup>) business day prior to the meeting, or by electronic transmission or written message hand-delivered to the director not later than noon, New York time, on the second (2<sup>nd</sup>) business day prior to the meeting. Notices shall be deemed to have been given by mail when deposited in the United States mail, by electronic transmission at the time the electronic message is sent to the inbox of the director at the electronic mail address on file with the Corporation and by messenger at the time of delivery by the messenger. Notices by mail or messenger shall be sent to each director at the address designated by him or her for that purpose, or, if none has been so designated, at his or her last known residence or business address. Notice by electronic transmission shall be sent to each director to the electronic mail address designated by him or her for that purpose.

Notice by electronic transmission shall be deemed effective only if such notice is given by a form of electronic transmission consented to by the director to whom the notice is given. Any such consent shall be revocable by the director by written notice to the Corporation. Any such consent shall be considered revoked if (1) the Corporation attempts to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and is unable to do so and (2) the Secretary or an Assistant Secretary of the Corporation or other person responsible for the giving of notice becomes aware of such inability to deliver notice; however, the inadvertent failure to treat such inability to deliver notice as a revocation of consent shall not invalidate any meeting or other action.

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

Notice of a meeting of the Board need not be given to any director who submits a signed waiver of notice whether before or after the meeting or who attends the meeting without protesting, either prior to or at the commencement of such meeting, the lack of notice to him or her.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting to another time or place shall be given in the manner described above to the directors who were not

present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

**Section 2.6. Informal Action by Directors; Meetings by Conference Telephone.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by the Board may be taken without a meeting if all directors consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the directors shall be filed with the Minutes of other proceedings of the Board.

Any one or more of the directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Such participation shall constitute presence in person at a meeting.

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

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

**Section 2.9. Newly Created Directorships and Vacancies.** Newly created directorships resulting from an increase in the number of directors, and vacancies occurring in the Board for any reason, may be filled by vote of a majority of the directors then in office provided there shall be three or more directors in office. If there shall be fewer than three directors serving at any time, the directors then in office shall promptly by unanimous vote name at least such number of directors as shall be necessary to have three directors in office. A director elected to fill a vacancy shall hold office until the next annual meeting of the Board and until his or her successor is elected and qualified.

**Section 2.10. Purchase, Sale, Mortgage or Lease of Real Property.** No purchase of real property shall be made by the Corporation, and the Corporation shall not sell, mortgage or lease real property, unless authorized by the vote of two-thirds of the entire Board.

**Section 2.11. Annual Report.** The Board shall direct the President and Treasurer of the Corporation to present at the annual meeting of the Board a report, verified by the President and Treasurer, or certified by an independent or certified public accountant or a firm of such accountants selected by the Board, showing in detail the following:

(1) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve-month fiscal period terminating not more than six months prior to said meeting;

(2) the principal changes in assets and liabilities, including trust funds, during said fiscal period;

(3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and

(4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

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

### **ARTICLE III – Committees**

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

(1) filling vacancies in the Board or in any committee;

(2) fixing compensation of the directors for serving on the Board or on any committee;

(3) amending or repealing the By-Laws or adopting new By-Laws;

(4) amending or repealing any resolution of the Board which by its terms cannot be amended or repealed; or

(5) removing directors.

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

**Section 3.2. Special Committees.** The Board may create such special committees as it deems desirable, the members thereof to be members of the Board and appointed by the Chairman of the Board or the President of the Corporation if there is no Chairman of the Board, with the consent of the Board. Special committees shall have only the

powers specifically delegated to them by the Board and in no case shall have powers which are not authorized for standing committees.

**Section 3.3. Committees Other Than Standing or Special.** Committees other than standing or special committees of the Board shall be committees of the Corporation. Such committees may be elected or appointed in the same manner as officers of the Corporation. Provisions of these By-Laws and the Not-for-Profit Corporation Law applicable to officers generally shall apply to members of such committees.

**Section 3.4. Committee Rules.** Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business.

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

**Section 3.5. Informal Action by Committees.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by a committee may be taken without a meeting if all members of such committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of the proceedings of such committee.

Any one or more members of any committee may participate in a meeting of such committee by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Such participation shall constitute presence in person at a meeting.

**Section 3.6. Service of Committees.** Each committee of the Board shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his or her duty under the law to the Corporation.

#### **ARTICLE IV – Officers**

**Section 4.1. Officers.** The Board shall elect or appoint a President, a Secretary and a Treasurer, and it may, if it so decides, choose a Chairman of the Board and a Vice-Chairman of the Board from among its members. The Board may also elect or appoint one or more Vice-Presidents, Assistant Vice-Presidents, Assistant Secretaries, Assistant Treasurers and other officers and may give any of them such further designation or alternate titles as it considers desirable. Any two or more offices may be held by the same person, except the offices of President and Secretary, or the offices corresponding thereto.

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

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

**Section 4.3. Powers and Duties of Officers.** The duties and powers of the officers shall be as follows:

Chairman of the Board

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

President

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

Vice-President

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

Secretary

The Secretary shall: (a) keep the minutes of the meetings of the Board and committees of directors in one or more books provided for that purpose; (b) see that all notices

are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation (if any) and see that the seal of the Corporation is affixed to all documents, if necessary, the execution of which on behalf of the Corporation under its seal, if necessary, is duly authorized in accordance with the provisions of these By-Laws; and (d) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board.

#### Treasurer

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

#### Assistant Secretaries and Assistant Treasurers

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

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

**Section 4.5. Compensation of Officers, Agents and Employees.** The Corporation shall not pay any compensation to officers for services rendered to the Corporation, except that officers may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by a majority of the entire Board.

The compensation of agents and employees appointed by the Board shall be fixed by the Board, but this power may be delegated to any officer, agent or employee as to persons

under that person's direction or control. The Board may require officers, agents or employees to give security for the faithful performance of their duties.

## **ARTICLE V – Indemnification and Insurance**

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

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

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



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

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

A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in the first two paragraphs of this Article shall be entitled to indemnification as authorized in such paragraphs. Except as provided in the preceding sentence and unless ordered by a court, any indemnification under this Article shall be made by the Corporation if, and only if, authorized in the specific case:

(1) By the Board acting by a quorum consisting of directors who are not parties to such action or proceeding ("disinterested directors") upon a finding that the director or officer has met the standard of conduct set forth in the first, and pursuant to the second, paragraph of this Article, or,

(2) If a quorum under subparagraph (1) of this Section 5.1 is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by the Board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the standard of conduct set forth in this Article has been met by such director or officer.

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

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

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

## **ARTICLE VI – Provisions Affecting Directors and Officers**

**Section 6.1. Interested Directors and Officers.** No contract or other transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone, irrespective of whether such interested director or directors or officer or officers are present at a meeting of the Board, or of a committee thereof, which authorizes such contract or transaction and irrespective of whether his or their votes are counted for such purpose. In the absence of fraud any such contract or transaction may be conclusively authorized or approved as fair and reasonable by the Board or a duly empowered committee thereof by vote sufficient for such purpose without counting the vote or votes of such interested director or officer (although he or they may be counted in determining the presence of a quorum at the meeting which authorizes or approves such contract or transaction), if the material facts as to such director’s or officer’s interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the Board or committee as the case may be.

If there was no such disclosure or knowledge, or if the vote of such interested director or officer was necessary for the authorization of such contract or transaction at a meeting of the Board or committee at which it was authorized, the Corporation may void the contract or transaction unless the party or parties thereto establish affirmatively that the contract or transaction was fair and reasonable as to the Corporation at the time it was authorized by the Board or committee.

**Section 6.2. Loans to Directors and Officers.** No loans, other than through the purchase of bonds, debentures or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest, except that the Corporation may make a loan to any corporation which is a Type B corporation under the Not-for-Profit Corporation Law of the State of New York. A loan made in violation of

this paragraph shall be a violation of the duty to the Corporation or of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

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

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

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

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

## **ARTICLE VII – Miscellaneous**

**Section 7.1. Fiscal Year.** The fiscal year of the Corporation shall be the calendar year or such other period as may be fixed by the Board.

**Section 7.2. Corporate Seal.** The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board.

**Section 7.3. Books and Records to be Kept.** The Corporation shall keep at its principal office in the State of New York: (a) correct and complete books and records of account, (b) minutes of the proceedings of the Board and any committee of the Corporation, and (c) a current list of the directors and officers of the Corporation and their residence addresses. Any of the books, minutes and records of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

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

**Section 7.4. Amendment to the Certificate of Incorporation and By-Laws.**

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