

STATE OF NEW YORK
DEPARTMENT OF STATE

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



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 26, 2014.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

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CERTIFICATE OF INCORPORATION
OF
BINGHAMTON AUXILIARY SERVICES CORPORATION

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

FIRST: The name of the Corporation is Binghamton Auxiliary Services Corporation (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are as follows:

The Corporation is organized and shall be operated exclusively for such charitable, educational and scientific purposes as are within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and, to such end and within such restriction, the Corporation is organized as follows:

The mission of the Corporation is to aid, assist, and service the students, faculty, administrative staff, alumni, and others in the college community of Binghamton University through the provision of auxiliary services, such as, by way of example and not limited to, food services, book store operations, vending and game machines, copying services, printing services, computer services and other related enterprises. The Corporation will, through the provision of auxiliary enterprise services and the use and allocation of auxiliary enterprise revenues, assist in developing, improving and increasing the programs, resources and facilities of Binghamton University to enable it to provide more extensive educational opportunities and services to its students, faculty, administrative staff, alumni and others in the university community.

The powers which the Corporation is authorized to exercise include: to accept, hold, invest, and administer any gifts, bequests, and property of any sort, without limitation as to amount or value; and to use, disburse or donate the income or principal thereof for exclusively charitable purposes within the meaning of the Code; and further to do any and all lawful acts, either alone or in cooperation with other persons or organizations, which may be necessary, useful, suitable or proper for the furtherance, accomplishment or attainment of any or all of the purposes or powers of the Corporation; and to have, enjoy and exercise any and all rights, powers, privileges, and exemptions which are now or which may hereinafter be conferred upon non-profit corporations under the laws of the State of New York, as they now exist or may be amended or supplemented.

The foregoing clauses shall be constructed both as objects and powers, in furtherance, and not in limitation, of the general powers conferred by the laws of the State of New York, and it is expressly provided that the enumeration herein of specific objects and powers shall not be held to limit or restrict in any way the general powers of the Corporation.

FOURTH: The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body. No consent or approval is required.

FIFTH: The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

SIXTH: The office of the Corporation is to be located in the County of Broome, State of New York.

SEVENTH: The names and addresses of the initial directors of the Corporation are:

<u>Name</u>	<u>Address</u>
Brian T. Rose	P.O. Box 6000 Binghamton, New York 13902
Terrence M. Kane	P.O. Box 6000 Binghamton, New York 13902
Cornelia D. Mead	P.O. Box 6000 Binghamton, New York 13902

EIGHTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is P.O. Box 6000, Binghamton, New York 13902.

NINTH: The following language relates to the Corporation's tax-exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in paragraph THIRD.

The purposes of the Corporation set forth in paragraph THIRD are intended to be exclusively charitable purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation relating to one or more of its purposes), and no member, trustee, or officer of the Corporation nor any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except to the extent permitted under Section

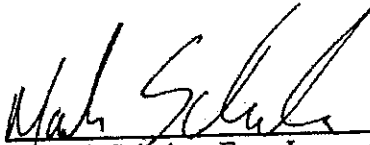
501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, except to the extent such activities may be carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed for one or more purposes as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or to the federal government or to a State or local government for a public purpose, or to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or to another organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was organized.

In any taxable year in which the Corporation is a private foundation, as described in Section 509(a) of the Code, the Corporation shall distribute its income for that year at such time and manner as not to subject it to tax under Section 4942 of the Code, and the Corporation shall not: (i) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (ii) retain any excess business holdings as defined in Section 4943(c) of the Code, (iii) make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code, or (iv) make any taxable expenditures as defined in Section 4945(d) of the Code.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Incorporation
as of this 23rd day of September, 2014.



Mark F. Schuber, Esq., Incorporator
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604

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CERTIFICATE OF INCORPORATION

OF

BINGHAMTON AUXILIARY SERVICES CORPORATION

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

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STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 25 2014

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Mark F. Schuber, Esq.

Harter Secrest & Emery LLP

1600 Bausch & Lomb Place

Rochester, New York 14604

Customer Ref.# 55579

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Adopted as of February 7, 2020

AMENDED AND RESTATED BYLAWS

OF

BINGHAMTON AUXILIARY SERVICES CORPORATION

**A corporation governed by the
Not-for-Profit Corporation Law of
New York**

ARTICLE I

NAME AND PURPOSE

Section 1. **Name.** The name of the corporation is Binghamton Auxiliary Services Corporation (the “Corporation”).

Section 2. **Purpose.** The Corporation shall be a not-for-profit charitable corporation as defined in section 102 of the New York Not-for-Profit Corporation Law (“N-PCL”). The general purposes of the Corporation shall be within the meaning of Section 501(c)(3) of the Internal Revenue Code and its regulations, and Article 2 of the N-PCL and are as further specified in the Corporation’s certificate of incorporation for the benefit of the campus community, including faculty, staff and students in collaboration and coordination with the educational mission and goals of The State University of New York at Binghamton (the “College”).

ARTICLE II

MEMBERSHIP

Section 1. **No Members.** The Corporation, as permitted by Section 601(a) of the N-PCL, has no members.

ARTICLE III

BOARD OF DIRECTORS

Section 1. **Management of Corporate Affairs.** Except as otherwise provided by law, the certificate of incorporation of the Corporation or these by-laws, the activities, property and affairs of the Corporation will be managed by the Board of Directors (the “Board”) in accordance with the State University of New York Guidelines for Auxiliary Service Corporations (the “SUNY Guidelines”), as may be amended from time to time, and any contract or other memorandum of understanding then in force between the Corporation and the College. Except as otherwise provided by law, the certificate of incorporation of the Corporation, these by-laws or the SUNY Guidelines, the Board shall have the power to hold meetings at such times and places it deems advisable to appoint committees, to select and employ an Executive Director responsible to the Board, to manage the operations of the Corporation, to employ other necessary employees, to approve periodic fiscal reports, the audited financial statements, and the annual budget of the Corporation and authorize proper expenditures from same after approval of the budget by the President of the College and the Vice Chancellor, and to take such other measures as may be necessary or proper to carry out the purposes of the Corporation.

Section 2. **Election and Term of Office.** Except as otherwise provided by law or these by-laws, each Director of the Corporation will be elected at an annual meeting of the Board and shall serve for his or her term in accordance with these by-laws and until his or her successor is elected and qualified. Each constituency shall nominate individuals to serve on the Board, subject to approval by the Board.

Section 3. **Number and Qualifications.** All Directors shall be at least eighteen (18) years of age. As used in these by-laws, the term “entire Board” means the total number of Directors entitled to vote which the Corporation would have if there were no vacant Director positions. No decrease in the number of Directors will shorten the term of any incumbent Director. The Board shall be composed of Directors from each of the following constituencies representing the students, faculty and officers of the

administration of the College, the size of the Board and exact number of directors from each constituency to be determined by the Board from time to time, provided that the Student Directors must always comprise not less than one-third ($1/3$) and not more than one-half ($1/2$) of the Board. Until further action by the Board, the size of the Board shall be nine (9) Directors, comprised as follows:

- (a) *Student Directors*: There shall be three (3) Student Directors from or representing the student governing body, nominated as follows: one of the Student Directors will be nominated from and by the Student Association; one will be nominated from and by the Graduate Student Organization; and one will be a student-at-large seat to be rotated among the residential community governments (including Off Campus College). Student Directors must be full-time matriculated students in academic good standing as defined by the College.
- (b) *Administrative Directors*: There shall be three (3) Administrative Directors representing College administration, one of whom shall be the College President. The College President shall serve *ex-officio* with full voting rights, and shall be responsible for nominating the remaining two (2) Administrative Directors. Administrative Directors must be employed full-time at the College.
- (c) *Faculty Directors*: There shall be two (2) teaching Faculty Directors, nominated by the Faculty Senate. Faculty Directors must be employed full-time at the College.
- (d) *Alumnus Director*: There shall be one (1) Alumnus Director, who will be a member of the local business community or an alumnus, such Director being nominated by the College President.

Section 4. **Terms of Directors.** Except for *ex-officio* Directors, the term of each Director shall be one (1) year commencing September 1 of the year of his or her election. Each Director on the Board serving as a result of an *ex-officio* position shall serve for so long as he or she shall continue to

serve in such office. Each Director shall hold office until the expiration of the term for which he/she is elected or appointed until his/her prior death, resignation or removal and until his or her successor has been appointed or elected and qualified. Each Director is eligible for re-election or re-appointment. Student, Administrative and Faculty Directors who are on leave from the College for more than one semester, and who will not participate in Board activities during the period of that leave, shall be replaced on the Board in accordance with Article III, Section 5.

Section 5. **Vacancies.** Vacancies occurring in the Board for any reason will be filled within thirty (30) days by a vote of the majority of the Board upon nomination by the constituency or officer responsible for the nomination of the Director whose position is vacant. Vacancies not filled within that time will be filled with an individual who represents the appropriate constituency as selected by a majority vote of the Board. A Director elected to fill a vacancy will hold office until the next meeting of the Board at which the election of Directors of the Corporation is in the regular order of business and until his or her successor is selected and qualified.

Section 6. **Resignation.** Any Director may resign at any time by giving a written resignation to the President, the Vice President or the Secretary. A resignation will be effective upon delivery unless it specifies an effective date, in which case the resignation is effective at the time specified. Unless the resignation specifies otherwise, Board acceptance of the resignation is not necessary to make it effective.

Section 7. **Removal.** Any Director may be removed with cause by the constituency or officer responsible for the appointment of that Director. Violation of any provision of these by-laws or unexcused absence from two (2) or more meetings of the Board during any academic year will, without limitation, be cause for removal.

Section 8. **Compensation.** No Director will be compensated for serving as a Director, except that the Corporation may reimburse Directors for reasonable expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation, provided that such expenses are approved by

the President or the Board.

Section 9. **Independent Directors.**¹

- (a) “*Independent Director*” means a Director who: (i) is not, and has not been within the last 3 years, an employee or a Key Person of the Corporation or an Affiliate, and does not have a Relative who is, or has been within the last 3 years, a Key Person of the Corporation or an Affiliate; (ii) has not received, and does not have a Relative who has received, in any of the last 3 fiscal years, more than \$10,000 in direct compensation from the Corporation or an Affiliate; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a Relative who is a current officer of or has a substantial financial interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an Affiliate if the amount paid by the Corporation to the entity or received by the Corporation from the entity for such property or services, in any of the last 3 fiscal years, exceeded the lesser of \$10,000 or 2% of such entity’s consolidated gross revenues if the entity’s consolidated gross revenue was less than \$500,000; \$25,000 if the entity’s consolidated gross revenue was \$500,000 or more but less than \$10,000,000; \$100,000 if the entity’s consolidated gross revenue was \$10,000,000 or more; or (iv) is not and does not have a Relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation’s outside auditor or who has worked on the Corporation’s audit at any time during the past 3 years. For purposes of this section, the terms: “compensation” does not include reimbursement for expenses reasonably incurred as a Director or reasonable compensation for service as a Director as permitted by law; and “payment” does not include charitable contributions, dues or fees paid to the Corporation for services which

the Corporation performs as part of its nonprofit purposes, or payments made by the Corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Corporation are available to individual members of the public on the same terms, and such services received by the Corporation are not available from another source. Defined terms used in this section but not otherwise defined have the meanings ascribed to them in Article VIII, Section 2 herein.

- (b) The Audit Committee established under **Error! Reference source not found., Error! Reference source not found.**, the Independent Directors on the Board or a committee of the Board comprised solely of Independent Directors shall oversee the Corporation's conflict of interest policy and whistleblower policy matters and, if the Corporation registers and files an audit report with the New York Charities Bureau under Article 7-A of the Executive Law, also the Corporation's audit matters.

ARTICLE IV

MEETINGS OF THE DIRECTORS

Section 1. **Regular Meetings of the Board.** Regular meetings of the Board will be held at a time and place, within or without the State of New York, as determined by the Board. No notice need be given for regular meetings if an advanced schedule is made available to all Board members.

Section 2. **Special Meetings.** Special meetings of the Board may be called at any time by the President, or in his or her absence or disability, a Vice President, or by the Secretary upon written request from at least one-third (1/3) of the entire Board. Such request will state the purpose or purposes for which the meeting is to be called. Each special meeting of the Board will be held at a time and place determined by the person calling the meeting and specified in the notice of the meeting.

Section 3. **Annual Meeting.** The annual meeting of the Board will be the regular meeting held within three (3) weeks of the College's spring commencement day each year, or such other regular meeting

designated by the Board.

Section 4. **Notice of Meetings.** Notice of each special meeting of the Board stating the time and place of the meeting will be given by the President, a Vice President or the Secretary to each Director at least one (1) day before the meeting, if given orally, in person or by phone, or at least three (3) days before the meeting, if given by fax, e-mail or regular mail. A Director's attendance at a meeting without protesting, before or at the commencement of such meeting, the lack of notice to him or her constitutes waiver of notice. A Director may also waive notice by submitting a waiver of notice before or after a meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the Director signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent 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 5. **Minutes.** Upon his or her request, minutes of all meetings of the Corporation and all corporate books and papers of whatever kind shall be made available to the President of the College. The Directors and officers of the Corporation shall inform the President of the College upon matters of corporate business affecting the interest of the College.

Section 6. **Quorum.** At all meetings of the Board, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum is required for the transaction of business. The quorum will consist of a majority of the entire Board.

Section 7. **Action by the Board.** Each Director shall be entitled to one vote. Except as otherwise provided by law, the certificate of incorporation or these by-laws, the vote of a majority of the Directors present will decide any question that may come before the meeting. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

Directors may not vote by proxy.

Section 8. **Action Without a Meeting.** Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director. The resolution and the written consents will be filed with the minutes of the proceedings of the Board or committee.

Section 9. **Presence at Meeting by Telephone or Similar Communications.** Any one or more members of the Board or any committee thereof who is not physically present at a meeting may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board or committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

Section 10. **Confidentiality.** It is the policy of the Corporation that the directors treat as confidential the proceedings of all Board and committee meetings, and all information concerning the business activities of the Corporation, except as otherwise authorized by the Board or until there has been general public disclosure, or unless the information is a matter of public record or common knowledge.

ARTICLE V

OFFICERS

Section 1. **Qualifications.** At its annual meeting, the Board will elect a President, one or more

Vice Presidents, a Secretary, and a Treasurer. The Board may from time to time elect additional officers having titles, authority and duties determined by the Board. No more than two (2) of the three (3) officers described in this Article V, Sections 3, **Error! Reference source not found.**, 4 and 6 shall be Directors from a single constituency, as defined within Article III, Section 3. All officers must be at least twenty-one (21) years of age.

Section 2. **Term of Office.** Unless otherwise determined by the Board, officers will hold office until the next annual meeting of the Board and until their successors have been elected and qualified.

Section 3. **The President.** The President will be the chief executive and administrative officer of the Corporation and will have the general powers and duties of supervision and management of the Corporation and will perform all such other duties as usually pertain to the office or are properly required by the Board. The President will preside at all meetings of the Board. No employee of the Corporation shall serve as President or hold any other title with similar responsibilities.

Section 4. **The Vice President.** The Vice President will, in the absence or at the request of the President, perform the duties and exercise the powers of the President. A Vice President will also have such powers and perform all such other duties as usually pertain to the office or are properly required by the Board.

Section 5. **The Secretary.** The Secretary, or his or her designee, will ensure that the minutes of the Board are properly kept. He or she will: attend to the giving and serving of all notices of the Corporation; have charge of such books and papers as the Board may direct; attend to such correspondence as may be assigned; and perform all such other duties as usually pertain to the office or are properly required by the Board.

Section 6. **Treasurer.** The Treasurer, or his or her designee, will ensure monitoring of the financial activities of the Corporation by the Board and will serve as liaison between the College President and the Board of Directors for fiscal matters as requested. The Treasurer will perform all such other duties

as usually pertain to the office or are properly required by the Board. The Treasurer will present the annual audited report to the Board setting forth in full the financial resources of the Corporation. The Finance Committee, if any, will be chaired by the Treasurer.

Section 7. **Removal.** Any officer may be removed or have his or her authority suspended by the Board at any time, with or without cause. Removal of any officer under this section shall not prejudice his or her indemnification rights.

Section 8. **Resignation.** Any officer may resign at any time by giving a resignation in writing to the Board, the President or the Secretary. A resignation will be effective upon delivery unless it specifies an effective date, in which case the resignation is effective at the time specified. Unless the resignation specifies otherwise, Board acceptance of the resignation is not necessary to make it effective.

Section 9. **Vacancies.** If any Board office becomes vacant for any reason, the Board has the power to fill that vacancy.

Section 10. **Duties of Officers May Be Delegated.** If an officer is absent or unable to perform his or her duties, or for any other reason that the Board deems sufficient, the Board, except where otherwise provided by law, may delegate the powers or duties of any officer to any other officer or to any Director.

Section 11. **Officers Holding Two (2) or More Offices.** Any two (2) or more Board offices, except those of President and Secretary, may be held by the same person, but no officer will execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two (2) or more officers.

Section 12. **Compensation.** No officers shall receive any compensation from the Corporation for service rendered in an official capacity, but officers shall be reimbursed for reasonable expenses incurred in the performance of official duties.

ARTICLE VI

ASSETS AND FUNDS

Section 1. **Ownership.** No Director, officer or employee of the Corporation shall have any right, title or interest in any of the assets and funds of the Corporation; all assets and funds of the Corporation shall be owned exclusively by the Corporation.

Section 2. **Disposition.** All funds of the Corporation shall be deposited in an account or accounts in the name of the Corporation in a bank or banks and shall be used solely either to earn interest or to pay the proper expenses of the Corporation. Funds shall be withdrawn from such bank account or accounts upon the written authorization and signature of such persons as the Board may designate. Any funds in the Corporation which in the judgment of the Board shall not be immediately required to effect the purposes of the Corporation may be invested in such securities as in the judgment of the Board is sound and proper. Any surplus may be used for the benefit of the College in accordance with the purposes of the Corporation as expressed in its general purpose clause, at the discretion of the Board.

Section 3. **Corporate Books and Papers.** All corporate books and papers of the Corporation shall be made available to the College President and the Vice Chancellor upon his or her request. The Corporation shall keep books of accounts and records of all its operations. It shall maintain systems of bookkeeping and accounting acceptable to the State University of New York and to the State Comptroller and shall permit inspection of said books, records and papers of any kind by the State University of New York and the State Comptroller.

Section 4. **Audit.** All books, records and accounts of the Corporation shall be subject to examination and audit by the State University of New York at any time. The Corporation will have an annual audit conducted by an independent certified public accountant (“CPA”) or CPA firm, within ninety (90) days after the close of the Corporation’s fiscal year. Copies of all audit reports shall be transmitted to the College President and the State University of New York for review and acceptance (in accordance with SUNY Guidelines).

Section 5. **Loans to Directors and Officers.** No loans will be made by the Corporation to its

Directors or officers.

Section 6. **Gifts.** The Board, the Executive Committee or any authorized officer, employee or agent of the Corporation may accept on behalf of the Corporation any contribution, gift, bequest or devise for any general or special purpose or purposes of the Corporation.

Section 7. **Fiscal Year.** The fiscal year of the corporation shall end June 30.

Section 8. **Reports.** At the annual meeting of the Board, the President and Treasurer will present to the Board a report, verified by the President and Treasurer and/or certified by an independent public or CPA or a CPA firm selected by the Board, showing in appropriate detail the following:

- (a) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve (12) month fiscal period of the Corporation terminating not more than six (6) months prior to said meeting;
- (b) the principal changes in assets and liabilities, including trust funds, during said fiscal period;
- (c) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and
- (d) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

Such report will be filed with the minutes of the annual meeting of the Board.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. **Right of Indemnification.** The Corporation will indemnify any person who is made, or is threatened to be made, a party to an action or proceeding by reason of the fact that he or she (or his/her testator or intestate) was a Director or officer of the Corporation. Such indemnification will be in accordance with and to the fullest extent permitted by the N-PCL or other applicable law, as such law

now exists or is subsequently adopted or amended. It will apply to any action or proceeding or related appeal, whether criminal, civil, administrative or investigative, and will apply regardless of whether the Director or officer is in office at the time of the action or proceeding. However, the Corporation will indemnify a Director or officer in connection with an action or proceeding initiated by that director or officer only if the action or proceeding was authorized by the Board.

Section 2. **Advancement of Expenses.** The Corporation may pay expenses incurred by a Director or officer in connection with an action or proceeding described in Section 1 of this Article VII in advance of the final disposition of that action or proceeding. Such advances may be paid only if (a) the Director or officer agrees in a signed writing to repay the advance if he or she is ultimately found not to be entitled to indemnification, and (b) the advance is approved by the Board acting by a quorum consisting of Directors who are not parties to the action or proceeding or, if such a quorum is not obtainable, then by vote of a majority of the entire Board. To the extent permitted by law, the Board may advance expenses under this provision without having to find that the Director or officer met the applicable standard of conduct required for indemnification.

Section 3. **Insurance.** The Corporation may purchase insurance to insure the Corporation for any obligation it incurs as a result of this Article.

Section 4. **Availability and Interpretation.** To the extent permitted under applicable law, the rights provided in Sections 1 and 2 of this Article VII:

- (a) will be available with respect to events occurring prior to the adoption of this Article VII;
- (b) will continue to exist after any rescission or restrictive amendment of this Article VII with respect to events occurring prior to such rescission or amendment;
- (c) will be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Director or officer (or his/her testator or intestate), on the basis of applicable law in effect

at the time the rights are claimed; and

- (d) will be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the Director or officer seeking such rights were parties to a separate written agreement.

Section 5. **Other Rights.** The rights provided in Sections 1 and 2 of this Article VII are not exclusive of any other rights to which a Director or officer of the Corporation or other person may now or subsequently be otherwise entitled, whether contained in the certificate of incorporation, these by-laws, a resolution of the Board or an agreement providing for such indemnification; the creation of such other rights is expressly authorized. Without limiting the generality of this section, the rights provided in Sections 1 and 2 of this Article VII are not exclusive of any rights, pursuant to statute or otherwise, of a Director or officer or other person to have his or her costs and expenses in an action or proceeding assessed or allowed in his or her favor, against the Corporation or otherwise.

Section 6. **Severability.** If this Article VII or any part of it is held unenforceable in any respect by a court of competent jurisdiction, it will be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article VII will remain fully enforceable. Any payments made pursuant to this Article VII will be made only out of funds legally available for such payments.

ARTICLE VIII

AMENDMENTS

Section 1. **Procedure.** These Bylaws may be amended at any meeting of the Board of Directors by a vote of two-thirds or more of the Directors provided the notice of the proposed amendment, containing the specific wording of the proposed amendment, has been stated in the notice of meeting. The amendment process also includes securing the approval of the College President and SUNY as follows: If substantial changes (e.g., impacts the mission; adds, significantly changes, or eliminates services; creation of a single member corporation, etc.) are proposed to these by-laws of the Corporation, sixty (60) days'

prior written notice of such proposed change(s) shall be reported to the campus President and the Vice Chancellor. No such change will take effect without the written approval of the campus President and the Vice Chancellor. Changes to these by-laws of a less significant nature (e.g., term limits, signature authority, creation of subcommittees, etc.) should be reported to the President and the Vice Chancellor within 30 days of approval by the Corporation's board. (SUNY Guidelines, Exhibit B-1; 2011).

Section 2. **Severability.** If a provision of these Bylaws is or becomes illegal, invalid, or unenforceable in any jurisdiction, that shall not affect the validity or enforceability of any other provision of these Bylaws.

Cornelia D. Mead

Cornelia D. Mead
Secretary

2/7/2020

Date

Approved by:

Board of Directors as of 2/7, 2020

University President as of 2/7, 2020

Office of the Chancellor as of 2/7, 2020