

BY-LAWS As amended 11/30/99

THE GENESEE VALLEY BREEDERS ASSOCIATION, INC.

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ARTICLE I

NAME, TERRITORY & OFFICES

1. Name: The name of the Corporation is The Genesee Valley Breeders Association, Inc. (the “Association”).
2. Territory: The territory in which the Association is to operate is the western part of the State of New York comprising counties of: Niagara, Erie, Chataqua, Cattaraugus, Orleans, Genesee, Wyoming, Allegany, Monroe, Livingston, Ontario, Yates, Steuben, Schuyler, Chemung, Wayne, Seneca, Cayuga, Tompkins, Tioga, Oswego, Onondaga, Cortland, Broome, Jefferson, Lewis, Oneida, Chenango, Madison, Otsego, and Herkimer.
3. Principal Office: The principal office of the Association shall be located within the territory outlined above.

ARTICLE II

PURPOSES

1. Breeding: The purposes of the Association are to promote and encourage the breeding of horses of the thoroughbred type and to lend its support to all activities which may aid in the development and improvement of the Thoroughbred breeding industry.
2. No Financial Gain: The Association is not formed for pecuniary or financial gain, and no part of its assets, income, or profits, is distributable to, or shall inure to the benefit of its Members, Directors or Officers except to the extent expressly permitted under the New York Not-For-Profit Corporation Law and the Internal Revenue Code, or any successor statutes.

3. Use of Names: The name of the Association or names of any Directors or Officers in their official capacities shall not be used in any partisan interest or for any purpose not appropriately related to the promotion of the purposes of the Association.

ARTICLE III

MEMBERS

1. Classes of Members: The Association shall have two class of members: (a) Members, and (b) Life Members.
2. Membership Rights: Members shall have all the rights of membership set forth herein. Life Members shall have only those rights set forth in Section 6 of this Article III.
3. Eligibility for Membership: Any person (individual, partnership, corporation, trust or other entity) is eligible for membership in the Association if such person: (a) resides in or has an office in any one or more of the counties of New York State, listed in Section 2 of Article I, or (b) is a non-resident of New York State who: (i) boards horses in any of the counties listed in Section 2 or Article I, or (ii) owns shares in a horse domiciled in such territory, or (iii) is otherwise interested in the development of the Thoroughbred industry in such a territory.
4. Membership: An eligible person may become a Member of the Association if such person: (a) satisfies the eligibility requirements of Section 3 of this Article III; and (b) pays the prescribed dues for the current year.
5. Duties of Members: It shall be the duty of the Members to foster the purposes of the Association, to accept committee appointments and to fulfill their duties and obligations to the same.
6. Life Members and Honorary Board Members: The Board of Directors may designate persons as Life Members who have been long time Members and have rendered extraordinary service to the Association. Life Members shall be exempt from the payment of dues and shall have all the rights of membership; except no Life Member may be elected or appointed to the Board of Directors. A Life Member may be designated by the Board as an Honorary (non-voting) Director of the Association.
7. Voting Rights: Each Member in good standing shall be entitled shall be entitled to one vote on each matter properly submitted to a vote of the Members. Membership in the Association may be held in the name of an individual, or individuals, corporation, partnership, trust or other entity, however, for voting purposes, there will be only one vote from each dues paying person or entity.
8. Termination of Membership: The Board of Directors (a) by affirmative vote of two-thirds of all the members of the Board, may suspend or expel a Member or Life

Member for cause, and (b) by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any Member or Life Member who becomes ineligible for membership, or suspend or expel any Member who shall be in default in the payment of dues.

9. Resignation: Any Member or Life Member may resign by filing a written resignation with the Secretary, but such resignation shall not relieve the Member so resigning of the obligation to pay any dues, assessments, or other charges therefore accrued and unpaid.

10. Reinstatement: On written request signed by a former Member and filed with the Secretary, the Board of Directors by the affirmative vote of a majority of the members of the Board may reinstate such former Member to membership on such terms as the Board of Directors deems appropriate.

11. Transfer of Membership: Membership shall not be transferable or assignable.

12. Annual Meeting: An annual meeting of the Members shall be held at a place and on a date determined by the Board of Directors no later than the 15th day of December each calendar year. The annual meeting will be held for the purpose of announcing the Directors elected, receiving the annual report and for the transaction of such other business as may come before the meeting. If the election of Directors shall not be held prior to the day designated for an annual meeting or any adjournment of such meeting, the Board of Directors shall cause the election to be held at a special meeting of the Members as soon thereafter as practical.

13. Special Meeting: Special meetings of the Members may be called by the President, or by the Board of Directors at their discretion. Upon the written request of ten (10) Members, the Board of Directors shall call a special meeting to consider a specific subject.

14. Place of Meeting: The Board of Directors may designate any place, either within or without the State of New York, as a place of meeting for any annual meeting of the membership or for any special meeting called by the Board of Directors. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Association in the State of New York; but if all of the Members shall meet at any time and place, either within or without the state of New York, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at any such meeting any corporate action may be taken.

15. Notice of Meeting: Written notice stating the place, day, and hour of any meeting of Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) no more than fifty (50) days before the date of such meeting. In case of a special meeting or when required by statute or by these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of meeting shall be deemed to be

delivered when deposited in the United States mail addressed to the Member at such Member's address as it appears on the records of the Association, with postage thereon prepaid.

16. Action by Members Without Meeting: Any action required by law to be taken at a meeting of the Members, or any action that may be taken at a meeting of Members, may be taken without a meeting if a consent in writing, setting forth the action to be taken is signed by all the Members entitled to vote with respect to the subject matter thereof.

17. Quorum: The Members present at a duly called meeting shall constitute a quorum for the conduct of business.

18. Proxies: At any meeting of Members, a Member entitled to vote may vote by proxy executed in writing by the Member or by such Members duly authorized attorney-in-fact. Except as provided in such proxy and as may be permitted by law, no proxy shall be valid after eleven (11) months from the date of its execution.

19. Voting by Mail: Where Directors are to be elected by Members, such election shall be conducted by mail in accordance with the provisions of Article IV.

ARTICLE IV

DIRECTORS

1. Number: A number constituting the entire Board shall not be less than five (5) no more than seventeen (17) and subject to such minimum may be increased or decreased from time to time by a vote of Members or the Board of Directors. Until so changed, the number shall be seventeen (17). When the number of Directors is decreased each Director in office shall serve until the expiration of such Director's term.

2. Qualifications of Directors: All Members of the Board of Directors must possess the following qualifications:

- (a) Be a Member in good standing prior to the election;
- (b) Be actively engaged in the horse industry;
- (c) Be a resident of the territory delineated in Article I.

3. Powers: The property, business and affairs of the Association shall be managed and controlled by the Board of Directors.

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4. Nominating Committee: The Nominating Committee appointed by the

President pursuant to Article XVIII shall hold one or more meeting for the purpose of selecting a slate of candidates to fill the vacancies on the Board of Directors. This slate is to be approved by the Board of Directors prior to notification of the nominees. Before the nominating Committee's first meeting, Directors whose terms are expiring shall notify the Secretary of their desire to run for re-election. Nominations by the Nominating Committee shall not require seconds.

The Chairman of the Nominating Committee or the Secretary of the Association shall notify each candidate on the Nominating Committee's slate by mail of his or her nomination as soon as practical. Within ten (10) days of such mailing date, each candidate shall, by written notice to the Chairman of the Nominating Committee or Secretary of the Association, indicate whether or not he or she will run for office, serve if elected and remain eligible for any office to which elected. Failure of any candidate to provide such notice shall be treated as such person's refusal to run.

In addition, nominations may be made by the general membership in the following manner:

(a) The Secretary shall send out request forms for nominations of potential Directors to the entire membership. The request forms shall have general instructions, space for the nominee's name, and a space for the nominee to sign accepting the nomination.

(b) There shall be spaces for two members to sign the form as seconds to the nomination. Two seconds by members are required for each nomination from the general membership.

(c) There shall also be space on the form for the nominee's biography which may be used on the ballot.

(d) The completed nomination forms are to be mailed back to the Secretary within ten (10) days of the date that the requests for nominations were mailed to the general membership in order for the nominee to be eligible to be placed on the ballot.

In addition, the Nominating Committee shall appoint one person from Cornell University to the Board of Directors for a three (3) year term every three years, or whenever a vacancy occurs in that appointed position. This appointment shall be approved by the Board of Directors. The Director shall then be notified of his/her appointment by the Chairperson of the Nominating Committee or the secretary of the Association.

5. Election: The Directors shall be divided into three (3) classes with an equal (or as equal as mathematically possible) number of directors in each class. The term of office of each class shall express at the third succeeding annual meeting after

election. Each year Directors shall be elected for a term of three (3) years to replace those whose terms shall expire. Not less than ten (10) no more than fifty (50) days prior to an election, the Secretary shall mail to the last known address of each Member qualified to vote, an envelope bearing the Association's return address and containing the following enclosures:

- (a) One ballot;
- (b) An unmarked envelope capable of being sealed;

(c) A postage prepaid return envelope addressed to the office of the Association which shall have a space in the upper left hand corner for the signature and name of the Member and shall have the word "Ballot" and the name of the Association appearing on its face.

6. Voting: A Member shall vote by marking the ballot, enclosing and sealing it in the unmarked envelope, enclosing and sealing that envelope in the return envelope to the Association office, making certain that the Member's name is printed or typed in the upper left hand corner, signing in the upper left-hand corner and posting it in the envelope and ballot. No inner envelope shall contain more than one ballot and if more than one ballot is contained therein, the entire contents of the inner envelope shall be voided. Failure to enclose the ballot in the inner envelope shall not, in and of itself, constitute a ground for voiding such ballot.

7. Ballots: All ballots received by the Association prior to the close of business on the day named for the election shall be marked with the date and the time of receipt. Ballots shall be checked against the list of eligible voters and shall be counted by the Secretary and the Chairman of the Nominating Committee.

8. Resignations: Any Director may resign at any time by giving written notice of such resignation to the Secretary or the Board of Directors.

9. Removal: Any Director may be removed with cause, at any time, by a two-thirds (2/3) vote of the entire Board of Directors.

10. Absences: Any director absent for three successive meetings without legitimate reason shall be deemed to have resigned, and the vacancy filled in accordance with the provisions of this Article IV.

11. Vacancies: Any vacancy in the Board of Directors, including a vacancy by an increase in the number of Directors made by the Board of Directors, may be filled for the unexpired portion of the term by the Directors then serving, although less than a quorum, by affirmative vote of the majority thereof.

12. Regular Meetings: Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined by the Board, any

business may be transacted at any Director's meeting.

13. Special Meeting: Special meetings of the Board of Directors may be called by the President or Vice President and must be called by either of them on the written request of any two (2) members of the Board.

14. Notice of Meeting: ; Notice of all Directors' meetings, except as herein otherwise provided, shall be given by mailing the same at least five (5) days, or by personal delivery, telegraph, telex, overnight courier or facsimile transmission at least three (3) days before the meeting to the usual business or residence address of the Director, but such notice may be waived by a Director, at any meeting at which every Director shall be present, even though without any notice or waiver thereof, any business may be transacted.

15. President to Preside at Meetings: At the meetings of the Board of Directors, the President, or in the President's absence, a chairman chosen by the Directors present, shall preside.

16. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the Directors present at any meetings at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by these By-laws. Any one or more members of the Board may participate in a meeting by conference telephone or similar communications equipment allowing all participants in the meeting to hear each other at the same time. Participation by such means shall constitute presence at a meeting. If at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting from time to time without further notice to any absent Director, and may take such other and further action as is provided in these By-laws.

17. Consents: Any action required or permitted to be taken by the Board, or any committee thereof, may be taken without a meeting if prior or subsequent to the taking of such action, all members of the Board or of such committee consent thereto in writing and such written consent is filed with the minutes of the proceedings of the Board or of such committee. Such written consent shall have the same effect as a unanimous vote at a meeting of the Board or committee, as the case may be, at which all members were present and voted.

18. Compensation: Directors shall not receive any stated salary for their services as such, but by resolution of the Board, a fixed reasonable sum of expenses of attendance, if any, or both, may be allowed for attendance at each regular or special meeting of the Board. The Board of Directors shall have power in its discretion to contract for and to Pay to Directors rendering unusual or exceptional services to the Association special compensation appropriate to the value of such services. Provided however, that any such payments found to be excessive or unreasonable or if the tax-

exempt status of the Association is jeopardized, then, in such event, the excessive and/or unreasonable portion thereof shall be repayable to the Association by the Director or person involved.

19. Special Committee: The Board of Directors may by general resolution, delegate to committees of their own number, or to Officers of the Association, such powers as they may deem appropriate.

20. Reports: The Board of Directors shall direct the President and Treasurer to present at the Annual Meeting a report, verified by the President and Treasurer by a majority of the Directors, showing in appropriate detail the following: (a) the assets and liabilities, including the trust funds, of the Associations of the end of the fiscal year immediately preceding the annual meeting, which should be not more than six (6) months prior to the meeting; (b) the principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report; (c) the revenue or receipts of the Association, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report; and (d) the expenses or disbursements of the Association, for both general and restricted purposes, during the year immediately preceding the date of the report.. This annual report shall be filed with the records of the Association and an abstract thereof entered in the minutes of the proceeding of the Annual Meeting.

ARTICLE V

OFFICERS

1. Number, Election and Term of Office

(a) The Officers of the Association shall consist of a President, Vice President, Secretary, Treasurer, and other such Officers, with such powers and duties not inconsistent with these By-laws as may be appointed and determined by the Board of Directors. Any two or more offices may be held by the same person, except those of President and Secretary.

(b) Officers shall be elected by a ballot by a majority vote of the total number of Directors then in office at the Board meeting next following the annual meeting of Members. However, if there is but one nominee for any office, it shall be in order to move that the Secretary cast the elective ballot of the Association for each nominee.

(c) Each Officer shall hold office until a successor is elected or appointed, or until earlier displacement from office by resignation, removal or otherwise.

2. Vacancies: In the case any office of the Association becomes vacant by death, resignation, retirement, disqualification, or any other cause, and vacancy shall be filed

by a Member appointed by the President with the approval of the majority of the Board. The Officer so appointed shall hold office and serve until the annual meeting of the Board of Directors next succeeding and until the election or appointment of a successor.

3. Compensation: There shall be no compensation allowed to Officers for their services but expenses contracted on account of, and properly chargeable to, the Association shall be paid from the general funds of the Association.

4. Removal of Officers: Any Officer may be removed from office, with or without cause, by the affirmative vote of two-thirds (2/3) of all the Directors at any regular or special meeting called for that purpose. Any Officer proposed to be removed is to be voted upon and shall be entitled to appear before and be heard by Board of Directors at such meeting.

5. Sureties and Bonds: If the Board so requires, any Officer or agent of the Association shall execute and deliver to the Association a bond in such sum and with such surety as the Board may direct.

ARTICLE VI

DUTIES OF OFFICERS

1. President: The President shall preside at all meetings of the Association and of the Board of Directors, The President shall perform such other duties as may be prescribed in these By-laws or assigned by the Board of Directors and shall coordinate the work of the Officers and Committees of the Association in order that the Association's purposes may be promoted.

2. Vice President: The Vice President shall act as aide to the President and at the request of the President or in the event of the President's absence or disability, the Vice President shall perform the duties and possess and exercise the powers of the President. To the extent authorized by law, the Vice President shall have such other powers and shall perform such other duties as may be assigned by the Board of Directors,

3. Secretary: The Secretary shall record or cause to be recorded the minutes of all meetings of the Association and the Board of Directors. The Secretary shall cause notice to be given of meetings of Members and the Board of Directors, shall have general charge of the records, documents, and papers of the Association, and shall perform such other duties as may be assigned by the Board of Directors.

4. Treasurer: The Treasurer shall have custody of all the funds of the Association, shall keep a full and accurate account of receipts and expenditures, and shall make disbursements in accordance with the approved budget, as authorized by the

Association, the Board of Directors, or a special committee. The Treasurer shall present a financial statement at every meeting of the Board of Directors and at other times when requested by the Board of Directors and shall make a full report at the Annual Meeting of Members, as required by Section 20 of Article IV of these By-Laws. The Treasurer shall be responsible for the maintenance of such books of account and records and, at all reasonable times, exhibit the same to any Director of the Association. The Treasurer shall perform such other duties as may be prescribed from time to time by the Board of Directors or by the By-Laws.

ARTICLE VII

AGENTS AND REPRESENTATIVES

The Board of Directors may appoint such agents and representatives of the Association, with such powers and to perform such acts or duties on behalf of the Association as the Board of Directors may see fit, so far as may be consistent with these By-laws. to the extent authorized or permitted by law.

ARTICLE VIII

CONTRACTS

The Board of Directors, except as these By-laws otherwise provided, may authorize any Officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no Officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose or to any amount. The Directors and the Officers of the Association may be interested directly or indirectly in any contract or transaction, provided, however, that any such contract or transaction on behalf of the Association shall be at arm's length and not violative of the Association's Certificate of Incorporation or of the provisions of the Internal Revenue Code with respect to the activities of exempt organizations.

ARTICLE IX

ADVISORY COMMITTEE

The Board of Directors may appoint from its number, or from among such persons as the Board may see fit, one or more advisory committees, and at any time may appoint additional members thereto. The members of any such committee shall serve during the pleasure of the Board of Directors. Such advisory committees shall advise with and aid the Officers of the Corporation in all matters designated by the Board of Directors. Each such committee may, subject to the approval of the Board of

Directors, prescribe rules and regulations for the call and conduct of meetings of the committee and other matters relating to its procedure.

The members of any advisory committee shall not receive any stated salary for their services as such, but by resolution of the Board of Directors a fixed reasonable sum or expenses of attendance, if any, or both, may be allowed for attendance at each regular or special meeting of such committee. The Board of Directors shall have power in its discretion to contract for and to pay to any member of an advisory committee, rendering unusual or exceptional services to the Association, special compensation appropriate to the value of such services.

ARTICLE X

EXECUTIVE COMMITTEE

The Officers shall constitute an Executive Committee with authority to transact all the business of the Association which cannot be delayed until the next meeting of the Board, provided that this authority does not extend to the setting of the date of the Annual Fair nor the expenditure of funds from the Development Fund. A majority of the Committee will constitute a quorum.

ARTICLE XI

EXEMPT ACTIVITIES

Notwithstanding any other provision of these By-Laws, no Director, Officer, employee, member of any committee, agent, or representative of the Association shall take any action or carry on any activity by or on behalf of the Association which would or may jeopardize the Association's tax exempt status under the Internal Revenue Code or other similar statute in effect from time to time.

ARTICLE XII

VOTING UPON SHARES OF OTHER CORPORATIONS

Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Association to vote either in person or by proxy at any meeting of shareholders of any corporation in which the Association may hold shares, and at any such meeting may possess and exercises all of the rights and powers incident to the ownership of such shares which, as the owner thereof, the Association might have possessed and exercised if present. The Board of Directors may confer like powers upon any other person and may revoke any such powers as granted at its discretion.

ARTICLE XIII

FISCAL YEAR

The fiscal year of the Association shall commence on the first day of January of each year and end on the 31st day of December of each year.

ARTICLE XIV

INVESTMENTS

The Association shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, without being restricted to the class of investments which a Director is or may hereafter be permitted by law to make or any similar restriction; provided, however, that no action shall be taken by or on behalf of the Association if such action is a prohibited transaction or would result in the denial or revocation of tax exempt status under the Internal Revenue Code or other similar statute in effect from time to time.

ARTICLE XV

AMMENDMENTS

These By-Laws may be amended, repealed, or altered in whole or in part by a majority vote at any duly convened meeting of Members of the Association. The proposed change shall be mailed to the last recorded address of each Member at least ten (10) days before the time of the meeting which is to consider the change. These By-Laws may also be amended, repealed, or altered in whole or in part by the Board of Directors, but any such amendment, repeal, or alteration may be amended by the Members entitled to vote thereon.

ARTICLE XVI

DUES

1. **Annual Dues:** At the Annual Meeting, the Board of Directors may recommend the amount of initiation fee, if any, and annual dues, if any, payable by Members. A majority of the Members present shall vote on such recommendations. A change in any initiation fee or annual dues will be effective upon the affirmative vote of a majority of the Members present.
2. **Default and Termination of Membership:** When any Member shall be in default of any payment of any initiation fee or dues for a period of thirty (30) days from the time the same become payable, such person's membership may thereupon be

terminated by the Board of Directors.

ARTICLE XVII

CERTIFICATES OF MEMBERSHIP

1. **Certificate of Membership:** The Board of Directors may provide for the issuance of certificates evidencing membership in the Association, which shall be in such form as may be determined by the Board. Such certificates shall be signed by the President or a Vice president and by the secretary or an Assistant Secretary and shall be sealed with the seal of the Association. the name and address of each Member and date of issuance of the certificate shall be entered on the records of the Association. If any certificate shall become lost, mutilated, or destroyed, a new certificate may be issued therefore, on such terms and conditions as the Board of Directors may determine.

2. **Issuance of Certificates:** When a Member has been elected to membership and has paid any initiation fee and dues that may be required, a Certificate of Membership shall be issued in such person's name and delivered to that person by the secretary, if the Board of Directors shall have provided for the issuance of Certificates of Membership.

ARTICLE XVIII

NOMINATING COMMITTEE

The President shall appoint a Nominating Committee of three persons, at least one of which shall be Director. The duty of the Committee will be to nominate persons to succeed members of the Board whose terms have expired. In addition to candidates nominated by the Committee, any member in good standing, who qualifies under Section 2 of Article IV, may be placed in nomination as provided in section 4 of Article IV.

ARTICLE XIX

DEVELOPMENT FUND

All monies or property acquired by the Association which are not required to meet the necessary expenses incidental to the proper conduct of the Association's activities shall constitute the Development Fund, and this fund representing the assets and surplus of the Association shall never be apportioned or distributed to the Members. In the event of the dissolution of the Association the Development Fund shall be distributed to an organization with purposes similar to that of the Association and which has received a determination letter that it is exempt from federal income tax.

ARTICLE XX

INDEMNIFICATION

The Association shall, to the full extent permitted by applicable law, as amended from time to time, indemnify each person made, or threatened to be made, a party to any action or proceeding, whether civil, criminal, administrative, or investigative ("Proceeding") by reason of the fact that such person, such person's testator or intestate, is or was a Director or Officer of the Association, or while a Director or Officer, serves or served, at the request of the Association, 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 attorney's fees, costs and charges) incurred in connection with such threatened or pending Proceeding, or any appeal therein; provided that no such indemnification shall be made if a judgment or other final adjudicated, or (ii) such person personally gained in fact a financial profit or other advantage to which there was no legal entitlement, and provided further that no such indemnification shall be required with respect to any settlement or other no adjudicated disposition of any threatened or pending Proceeding unless the Association, by way of a majority vote or unanimous written consent of its Board of Directors, has given its prior consent to such settlement or other disposition.

The Association shall, from time to time, advance or promptly reimburse upon request any Director or Officer seeking indemnification hereunder the funds necessary for payment of expenses (including attorney's fees, costs, and charges) reasonably incurred in connection with any threatened or pending Proceeding in advance of the final disposition thereof upon receipt of a written 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 exceed the amount to which such person is entitled.

Nothing herein shall limit or affect any right of any person otherwise than hereunder to indemnification or to advancement of expenses (including attorney's fees, costs, and charges) under any statute, rule, regulation, certificate of incorporation, by-law, resolution, of Directors or Members, insurance policy, contract or otherwise.

The Association is authorized to enter into agreements with any of its Directors or Officers to reflect or confirm the rights and benefits contained in this Article and to extend other additional rights to indemnification and to advancement of expenses to any such person to the full extent permitted by applicable law, and to set forth procedures for any such person to obtain advancement of expenses and indemnification, but the existence of any such agreement or the failure to enter into any such agreement shall not be adversely affect or limit the rights of any such person pursuant to this Article or otherwise.

If a request to be indemnified or for the advancement of expenses pursuant to this Article is not paid in full by the Association within the forty-five (45) days after a written claim has been received by the Association, the person seeking indemnification or advancement of expenses may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim and, if successful in whole or in part, the person seeking indemnification or advancement of expenses shall be entitled also to be paid the expenses of prosecuting such a claim. In any such judicial proceeding, the Association shall have the burden of proving by the preponderance of the evidence that the person seeking indemnification or advancement of expenses is not entitled to indemnification or advances hereunder. Neither the failure of the Association (including its Board of Directors, independent legal counsel or Members) to have made a determination that the person seeking indemnification or advancement of expenses is entitled to indemnification or advancement of expenses in the circumstances, nor an actual determination by the Association (including its Board of Directors, independent legal counsel or Members) that the person seeking indemnification or advancement of expenses is not so entitled, shall be a defense to an action or create a presumption that the person seeking indemnification or advancement of expenses is not so entitled.

Nothing in this Article shall restrict the power and the authority of the Association to indemnify or advance expenses to, make indemnification agreements and arrangements with, or maintain insurance on behalf of, any employee or agent of the Association or any person (whether or not a Director, Officer, employee or agent of the Association) who serves at the request of the Association in any capacity with any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

If this Article or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable and the remainder of this Article shall remain fully enforceable.

This Article shall be given retroactive effect and the full benefits hereof shall be available in respect of any alleged or actual occurrences, acts or failures to act prior to the date of the adoption of this Article. The right to indemnification or advancement of expenses under this Article shall be a contract right.

ARTICLE XXI

CORPORATE SEAL

The Seal of the Association shall have inscribed thereon the name of the Association, the year of its organization and the words "Corporate Seal New York". The Seal may be used by causing it or a facsimile thereof to be affixed, impressed or otherwise reproduced.

