

# **BY-LAWS**

## **OF**

### **LITTLE PEAKS, INC.**

**(A New York Not-for-Profit Corporation)**

#### **I. NAME AND OFFICES**

**I.1.** The name of the organization is **LITTLE PEAKS, INC.** (the “**Corporation**”). The principal office of the Corporation shall be located in the County of Essex, State of New York. The Corporation may also have other offices within the State of New York as the Board of Directors (the “**Board**”) may from time to time determine the business of the Corporation may require.

#### **II. PURPOSE**

**II.1.** The purposes of the Corporation shall be those set forth in the Certificate of Incorporation, as may be amended from time to time.

#### **III. NO MEMBERS**

**III.1.** The Corporation shall have no members.

#### **IV. BOARD OF DIRECTORS**

**IV.1. Powers and Number.** The affairs and property of the Corporation shall be managed by or under the direction of the Board subject to applicable law and in accordance with the purposes and limitations set forth in the Certificate of Incorporation and herein. The number of directors which shall constitute the Board of Directors may be changed from time to time by the vote of a majority of the entire Board, but such number shall not be fewer than five (5) natural persons. Any increase in the number of the directors shall be deemed to create vacancies to be filled in the manner provided in these by-laws. As used in these by-laws, the term “**Entire Board**” shall mean the total number of directors entitled to vote which the Corporation would have if there were no vacancies on the Board.

**IV.2. Election and Term of Office.** Directors shall be elected at an annual meeting of the Board of Directors by an affirmative vote of a majority of the Directors then in office. A Director shall hold office for a three (3)-year term and shall continue in office for such term and until such Director's successor shall have been elected and qualified, or until such Director's death, resignation or removal. Directors may serve a maximum of two (2) consecutive terms.

**IV.3. Qualification for Directors.** Each director shall be at least 18 years of age.

**IV.4. Vacancies and Newly Created Directorships.** Newly created directorships resulting from an increase in the authorized number of directors, and vacancies occurring for any reason, including any vacancy occurring by reason of the death, resignation, or removal of a director, may be filled at any meeting of the Board by the vote of the majority of the directors then in office, although less than a quorum, or by a sole remaining director. Each director so elected shall serve until the next annual meeting and until such director's successor is elected or appointed and qualified.

**IV.5. Removal.** Any Director may be removed for cause, at any time, by a vote of Directors then in office, at any regular meeting or special meetings of the Board called for that purpose; provided that there is a quorum of not less than a majority present at such meeting.

**IV.6. Resignation.** Any director may resign from the Board at any time by giving written notice to the Board, the Chair, or the Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date, and unless otherwise specified therein. No resignations shall discharge any accrued obligation or duty of a director.

**IV.7. Meetings.** The annual meeting and regular meetings of the Board shall be held at such times and places as may from time to time be fixed by the Board or may be specified in a notice of meeting. Annual meetings of the Board of Directors shall be held for the purpose of electing directors and officers and transacting such other business as may properly be brought before such meeting. Special meetings of the Board shall be called at any time and may be held at any place by the Chair of the Board or by any Director upon written (including by electronic mail) demand of not less than one-fifth of the Entire Board, and in each case at such time and at such place shall be fixed by the person or persons calling the meeting. Special meetings may also be called if there is a failure to elect a sufficient number of directors to the board.

**IV.8. Notice of Meetings.** Written (including by electronic mail), oral or any other mode of notice of the date, time and place shall be given for the annual meeting, special meetings, and regular meeting not fixed by the Board, in sufficient time for the convenient assembly of the Directors, unless such notice has been waived or unless such notice is otherwise required by law. The notice of any meeting need not specify the purpose of any regular or special meeting. Any requirements of furnishing notice for a meeting shall be waived by the Director who submits a waiver of notice (which may be written or sent by electronic mail) before or after the meeting,

or who attends the meeting without protesting the lack of notice to such Director (either prior to the meeting or at its commencement).

**IV.9. Quorum.** At each meeting of the Board, the presence of a majority of the Entire Board shall constitute a quorum for the transaction of business or any specified item of business. If a quorum is not present at any meeting of the Board, a majority of the directors present may adjourn the meeting to another time without notice other than by announcement at the meeting, until such a quorum is present, except that notice of such adjournment shall be given to any directors who were not present at the time of the adjournment.

**IV.10. Meeting by Remote Communication.** Any one or more members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of a conference telephone, video conference, or similar communications equipment. Participation by such means shall constitute presence in person at a meeting provided that 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, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

**IV.11. Action Without 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 in writing 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 their 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 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. The consent evidencing such action taken without a meeting shall be filed with the Secretary of the Corporation and inserted by the Secretary of the Corporation in the permanent records relating to meetings of members of the Board.

**IV.12. Compensation.** The Corporation shall not pay compensation to directors for services rendered to the Corporation in their capacity as directors, except that directors may be reimbursed for reasonable expenses incurred in the performance of their duties to the Corporation subject to Article X and the Corporation's Conflict of Interest Policy.

## V. COMMITTEES

**V.1. Executive Committee and Other Committees of the Board.** The Board, by resolution adopted by a majority of the Entire Board, may designate from among the directors an Executive Committee and other committees of the Board consisting of three (3) or more directors. Each committee of the Board shall have such authority as the Board shall by resolution

provide; and the Executive Committee shall have all the authority of the Board, except that no such committee shall have authority as to the following matters:

- (a) The filling of vacancies on the Board or in any committee.
- (b) The amendment or repeal of the by-laws, or the adoption of new by-laws.
- (c) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.
- (d) Any other matters prohibited by Section 712 of the N-PCL.

**V.2. Quorum and Action by Committee.** Unless otherwise provided by resolution of the Board, a majority of all of the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the members of a committee shall be the act of the committee. The procedures and manner of acting of the Executive Committee and of the committees of the Board shall be subject at all times to the directions of the Board.

**V.3. Alternate Members.** The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member or members at any meeting of such committee.

## **VI. OFFICERS, EMPLOYEES, AND AGENTS**

**VI.1. Officers.** The officers of the Corporation shall consist at least of a Chair, a Secretary, and a Treasurer. The Board may from time to time appoint such other officers, including one or more Vice Presidents, as it may determine. All officers shall be chosen by the Board from slates of candidates eligible and willing to serve.

**VI.2. Election, Term of Office, and Qualifications.** The officers of the Corporation shall be elected annually by a majority vote of the Board at the annual meeting of the Board, and each officer shall hold office for a three (3)-year term, with a maximum of two (2) consecutive terms, and each shall hold office until such officer's successor is elected and qualified or until such officer's earlier death, resignation, or removal. Except as may otherwise be provided in the resolution of the Board choosing an officer, no officer need be a director. One person may hold, and perform the duties of, more than one office, except that the same person may not hold the offices of Chair and Secretary. All officers shall be subject to the supervision and direction of the Board.

**VI.3. Removal.** Any officer elected or appointed by the Board may be removed at any time, with or without cause, by a vote of a majority of the Entire Board. The election of an officer shall not itself create contract rights.

**VI.4. Resignations.** Any officer may resign at any time by giving written notice to the Board. Unless otherwise specified in the notice, the resignation shall take effect at the time of receipt by the Board. The acceptance of such resignation shall not be necessary to make it effective.

**VI.5. Vacancies.** A vacancy in any office arising from any cause shall be filled for the unexpired portion of the term by the Board.

**VI.6. Chair.** The Chair shall preside at all meetings of the Board. The Chair shall have the general powers and duties of supervision and management of the Corporation which usually pertain to the office of the Chair and shall keep the Board fully informed of the activities of the Corporation. The Chair shall perform all such other duties as are properly required of them by the Board. The Chair has the power to sign and execute alone in the name of the Corporation all contracts authorized either generally or specifically by the Board, unless the Board specifically requires an additional signature.

**VI.7. Vice President.** Each Vice President may be designated by such title as the Board may determine, and each such Vice President in such order of seniority as may be determined by the Board, shall, in the absence or disability of the Chair perform the duties and exercise the powers of the Chair. Each Vice President also shall have such powers and perform such duties as usually pertain to the office of the Vice President or as are assigned by the Board.

**VI.8. Secretary.** The Secretary shall record and keep the minutes of all meetings of the Board in books kept for that purpose and shall see that all notices and reports are given and served as required by law or these by-laws. The Secretary shall affix the corporate seal to and sign such instruments as require the seal and signature of the Secretary and shall perform all duties as usually pertain to the office of the Secretary or as are properly assigned by the Board.

**VI.9. Treasurer.** The Treasurer shall have the care and custody of all the funds and securities of the Corporation and shall keep full and accurate accounts of all money received and paid by the Corporation. The Treasurer shall exhibit at all reasonable times the Corporation's books of account and records to any of the directors of the Corporation upon request at the office of the Corporation. The Treasurer shall render a detailed statement to the Board of the condition of the finances of the Corporation at the annual meeting of the Board and shall perform such other duties as usually pertain to the office of the Treasurer or as are assigned by the Board.

**VI.10. Employees and Other Agents.** The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall have such authority and perform such duties as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities, and duties.

**VI.11. Compensation.** Any officer, employee, or agent of the Corporation is authorized to receive a reasonable salary or other reasonable compensation for services rendered to the

Corporation when authorized by a majority of the Entire Board, and only when so authorized and in accordance with Article X and the Corporation's Conflict of Interest Policy.

## **VII. EXECUTION OF INSTRUMENTS AND POWERS TO PERFORM**

**VII.1. Contracts and Instruments.** The Board of Directors may authorize any officer, agent or representative to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors or by these by-laws, no officer, agent, representative or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose in any amount. No instrument required to be signed by more than one officer may be signed by one person in more than one capacity.

**VII.2. Deposits.** The funds of the Corporation shall be deposited in its name with such banks, trust companies, or other depositories as the Board, or officers to whom such power has been delegated by the Board, may from time to time designate.

## **VIII. INDEMNIFICATION AND INSURANCE**

**VIII.1. Indemnification.** The Corporation shall indemnify its directors and officers, acting on behalf of the Corporation in attaining its corporate purpose and within the bounds of their authority to do so, in the manner and to the full extent provided by the Not-for-Profit Corporation Law of the State of New York, and, except as provided in that law, the Corporation may provide additional indemnification pursuant to agreement, action of the Board of Directors, or provision of these by-laws. No indemnification may be made to or on behalf of any such person if (a) their acts were committed in bad faith or were the result of their active and deliberate dishonesty and were material to such action or proceeding; or (b) they personally gained in fact a financial profit or other advantage to which they were not legally entitled in the transaction or matter in which indemnification is sought.

**VIII.2. Limits on Indemnification.** In connection with the defense of a judicial proceeding under Chapter 42 of the Internal Revenue Code ("the Code"), no person shall under any circumstances be indemnified for taxes, penalties, or expenses of correction, and further, no person shall be indemnified for other expenses in connection with such judicial proceedings unless: (i) such other expenses are reasonably incurred by such person in connection with such proceeding; (ii) they are successful in such defense, or such proceeding is terminated by settlement and they have not acted willfully or without reasonable cause with respect to the act or failure to act which led to liability for tax under said Chapter 42. Notwithstanding the foregoing, the Corporation shall not indemnify any director, officer, employee or agent of the Corporation if such indemnification shall constitute an act of self-dealing under Section 4941 or

an excess benefit transaction under Section 4958 of the Code, or corresponding provisions of any subsequent Federal tax law.

**VIII.3. Insurance.** The Corporation shall have the power to purchase and maintain all insurance policies deemed to be in the best interest of the Corporation including insurance to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of Directors, officers and employees pursuant to Article VIII. Section 1 above, or to indemnify such persons in instances in which they may be indemnified pursuant to Section 1 above.

## **IX. GENERAL PROVISIONS**

**IX.1. Fiscal Year.** The fiscal year of the Corporation shall be **July 1 through June 30** unless otherwise provided by the Board.

**IX.2. Seal.** The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization, and the words "Corporate Seal, Not-for-Profit, New York." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

**IX.3. Books and Records.** The Corporation shall keep at the office of the Corporation correct and complete books and records of the activities and transactions of the Corporation, including the minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these by-laws, all resolutions of the Board, and all minutes of meetings of the Board and committees thereof.

**IX.4. Annual Returns.** There shall be presented to the Board, within six (6) months after the end of the Corporation's fiscal year, a report verified by the Chair and Treasurer or by a majority of the Directors, or certified by an independent public or certified public accountants selected by the Board showing in appropriate detail, including as required by Section 519(c) of the N-PCL, the financial condition and results of operations of the Corporation for its preceding fiscal year. The annual report of the Board shall be filed with the records of the Corporation.

**IX.5. Electronic Signatures.** Wherever a written instrument is required to be executed hereunder, an electronic signature, to the extent permitted by applicable law, shall be deemed to be a written signature.

**IX.6. Capitalized Terms.** Any capitalized terms not defined herein shall have the meaning assigned to them in the New York Not-for-Profit Corporation Law ("N-PCL").

**IX.7. Gender.** As used in these by-laws, the neuter shall include the masculine and feminine, the masculine shall include the feminine and the feminine shall include the masculine, the singular shall include the plural and the plural shall include the singular, as the context may require.

## **X. CONFLICT OF INTEREST POLICY**

**X.1. Purpose.** The Corporation shall adopt a Conflict-of-Interest Policy (the “Policy”) to protect the interests of the Corporation when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer, or key employee of the Corporation. The Corporation will not enter into any such transaction or arrangement unless it is determined by the Board in the manner described in the Policy to be fair, reasonable and in the best interests of the Corporation at the time of such determination. The Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to not-for-profit and charitable organizations.

**X.2. Related Party Transactions and Duty to Disclose.** A Related Party Transaction is not necessarily a prohibited transaction. Under the Policy, if the Corporation contemplates entering into a Related Party Transaction, the Independent Directors of the Board must determine if the transaction is fair, reasonable, and in the best interests of the Corporation at the time of such determination.

If at any time during their term of service a Related Party acquires any Financial Interest or when any matter for decision or approval comes before the Board in which a Related Party has a Financial Interest, that Financial Interest or potential Related Party Transaction must be promptly disclosed in writing to each member of the Board, together with all material facts.

## **XI. AUDIT OVERSIGHT**

**XI.1 Audit Committee.** The Board or a designated audit committee of the Board comprised solely of Independent Directors (the “Audit Committee”) shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation’s financial statements. The Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

**XI.2 Annual Report.** The Audit Committee shall, in any year the Corporation is required to file an independent Certified Public Accountant’s audit report with the Attorney General pursuant to the N-PCL and that in the prior fiscal year had or in the current fiscal year expects to have annual revenue in excess of one million dollars shall, in addition to those duties set forth in Article XI hereof, (a) review with the independent auditor the scope and planning of the audit prior to the audit’s commencement; (b) upon completion of the audit, review and discuss with the independent auditor (1) any material risks and weaknesses in internal controls identified by the auditor; (2) any restrictions on the scope of the auditor’s activities or access to requested information; (3) any significant disagreements between the auditor and management; and (4) the adequacy of the Corporation’s accounting and financial reporting processes; (c) annually consider the performance and independence of the independent auditor; and (d) report on the Audit Committee’s activities to the Board.



**XI.3 Policy Oversight.** The Audit Committee shall oversee the adoption, implementation of, and compliance with any conflict-of-interest policy or whistleblower policy adopted by the Corporation.

**XI.4 Participation.** Only Independent Directors of the Board may participate in any Board or committee deliberations or voting relating to matters set forth in this Section.

## **XII. AMENDMENTS**

**XII.1.** These by-laws may be altered, amended, or repealed by the affirmative vote of the majority of the Board of Directors present at any meeting of the Board at which a quorum is present, except a two-thirds vote of the Board shall be required for any amendment to add or remove a provision of these by-laws requiring a greater proportion of directors to constitute a quorum or a greater proportion of votes necessary for the transaction of business. Such action is authorized only at a duly called and held meeting of the Board for which written notice of such meeting, setting forth the proposed alteration, is given in accordance with the notice provisions for special meetings set forth herein.

## **XIII. NON-DISCRIMINATION**

**XIII.1.** In all of its dealings, neither the Corporation nor its duly authorized agents shall discriminate against any individual or group for reasons of race, color, creed, sex, age, culture, national origin, marital status, sexual preference, mental or physical handicap, or any category protected by state or federal law.

## **XIV. REFERENCE TO CERTIFICATE OF INCORPORATION**

**XIV.1.** References in these by-laws to the Certificate of Incorporation shall include all amendments thereto or changes thereof unless specifically excepted by these by-laws. In the event of a conflict between the Certificate of Incorporation and these by-laws, the Certificate of Incorporation shall govern.