

BY-LAWS
OF
EMPIRE STATE PASSENGERS FOUNDATION, INC.

ARTICLE I

NAME; OFFICE; MEMBERSHIP

Section 1. Name. The name of this corporation shall be Empire State Passengers Foundation, Inc., a New York not-for-profit corporation (the "**Corporation**").

Section 2. Office. The principal office of the Corporation shall be in the County of Onondaga, and State of New York. The Corporation may also have offices at such other place or places as the Board of Directors may determine from time to time.

Section 3. Membership. There will be no members of the Corporation.

ARTICLE II

PURPOSES AND ORGANIZATION

Section 1. Purposes. The purposes for which the Corporation is formed are:

(a) To fundraise for and engage in charitable and educational activities in order to improve intercity passenger rail service and other public transportation options in New York State and adjoining states and provinces for the improvement of communities, environmental health and economic development; provided, however, that the Corporation shall not provide professional services; provided, further, that the corporation shall not have the purposes or powers set forth in Subsections (a) through (v) of Section 404 of the New York Not-For-Profit Corporation Law (the "**N-PCL**").

(b) To receive and administer funds for charitable purposes and to that end (i) to take and hold by bequest, device, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons or corporations, any property, whether real, personal, tangible or intangible, and any undivided interest therein, without limitation as to the amount to the value; (ii) to sell, convey or otherwise dispose of any such property, and (iii) to invest, reinvest, or deal with the principal or income thereof, all in such manner, as in the judgment of the directors, will promote the purposes of the Corporation without limitation, except such limitation, if any, as may be contained in the instrument under which such property is received,

the Certificate of Incorporation or any of these By-laws of the Corporation or any laws which are applicable to the Corporation.

(c) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

Section 2. Organization. The Corporation shall be formed as a charitable New York not-for-profit corporation and will maintain Section 501(c)(3) tax status under the Internal Revenue Code of 1986, as amended (the "**Code**").

ARTICLE III

BOARD OF DIRECTORS

Section 1. Management. The management and control of the business, affairs and property of the Corporation shall be vested in the Board of Directors. The Board of Directors of the Corporation shall have the general management of the affairs, property and business of the Corporation and subject to these By-laws may adopt such rules and regulations for that purpose and for the conduct of its meetings as the Board of Directors may deem proper. It shall ensure that the Corporation adheres to the fundamental and basic purposes of the Corporation as expressed in the Certificate of Incorporation and these By-laws. It shall have the power to elect and remove officers, appoint and discharge agents and employees.

Section 2. Number and Qualification. The initial directors of the Corporation shall be those individuals named in the Certificate of Incorporation and shall serve until their successors are elected and qualified. Thereafter, the number of directors of the Corporation shall be not less than three (3). Any individual over the age of eighteen (18) may qualify as a director.

Section 3. Election and Term. The directors shall be elected by the then-current directors at the annual meeting of the Board of Directors. Directors shall serve for a term of three (3) years or until their successors are duly elected and qualified.

Section 4. Resignation. Any director may resign at any time by giving written notice of such resignation to the President or Secretary of the Corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Such resignation may be given by mail or electronically.

Section 5. Removal. Any director may be removed for any reason, or without reason, as a director by the affirmative vote of a majority of the Entire Board of Directors at any regular or special meeting called for that purpose.

Section 6. Vacancy. A vacancy on the Board of Directors occurring for any reason shall be filled by the Board of Directors at the next annual meeting of the Board of Directors.

Section 7. Compensation. Each director shall serve without compensation for the benefit of the Corporation.

ARTICLE IV

MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Annual Meeting. The annual meeting of the Board of Directors shall be held during the month of January for the purpose of appointing directors, electing officers and for the transaction of such other business as may properly come before the meeting.

Section 2. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as may be determined by resolution of the Board of Directors. Any business may be transacted at any regular meeting.

Section 3. Special Meetings. Special meetings of the Board of Directors may, unless otherwise prescribed by law, be called at any time by President. On the written request of any two (2) directors, the Secretary shall call a special meeting of the Board of Directors. Special meetings shall be held at such other place as may from time to time be designated by resolution of the Board of Directors.

Section 4. Notice of Meetings; Waiver. Written notice of each directors' meeting shall be given by the President to each director at least five (5) days prior to the date of the meeting. Such notice shall specify the place, day, and time of the meeting, and may be given personally, by mail, or by electronic mail to the address appearing on the books of the Corporation. Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him. Such waiver of notice may be given by mail or electronically.

Section 5. Quorum. At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business but less than a quorum may adjourn such meeting from time to time without further notice until a quorum is present. Directors who are present at a meeting but not present at the time of a vote, due to a conflict of interest or Related Party Transaction (as such term is defined in the Corporation's Conflict of Interest Policy) shall be determined to be present at the time of the vote.

Section 6. Action; Unanimous Written Consent. The vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board. 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 the committee consent to the adoption of a resolution authorizing the action. Such consent may be given by mail or electronically.

Section 7. Presence at Meetings. Any one or more members of the Board or of any committee thereof who is not physically present at a meeting of the Board or a committee 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, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board or committee.

Section 8. Action Requiring Majority Vote and Super Majority Vote.

(a) **Majority Vote.** Notwithstanding anything to the contrary herein, or limiting in any way any other provisions set forth in these By-laws, a vote of a majority of the Entire Board shall be required for the following actions: (i) to change the number of directors; (ii) to amend or change the Certificate of Incorporation; or (iii) to create a Committee of the Board.

(b) **Super-Majority Vote.** Notwithstanding anything to contrary herein, or limiting in any way any other provisions set forth in these By-laws, a vote of two-thirds of the Entire Board shall be required for (i) the purchase, sale, lease exchange or other disposition of all, or substantially all, the assets of the Corporation; or (ii) a purchase sale, mortgage or lease of real property.

(c) **Entire Board.** "Entire Board" means (i) if there are a fixed number of directors, the total number of directors entitled to vote which the Corporation would have if there were no vacancies; or (ii) if there is a range and the number of directors is not fixed, the number of directors that were elected or appointed as of the most recently held election of directors, as well as any director whose term has not yet expired.

ARTICLE V

OFFICERS

Section 1. Generally. No employee of the corporation shall serve as Chair of the Board or hold any other title with similar responsibilities.

Section 2. Officers. The officers of the Corporation may consist of a President, Vice President, Secretary and Treasurer and such other officers as the Board of Directors may from time to time appoint. Any two (2) offices, except those of President and Secretary, may be held by the same person.

Section 3. Election and Term. All officers may be elected by the Board of Directors and shall be elected at the organization meeting of the Board of Directors and thereafter at each annual meeting of the Board of Directors. The officers so elected shall hold office for three (3) years or until their successors are elected. If a vacancy occurs among the officers, such vacancy shall be filled for the unexpired term by the Board of Directors.

Section 4. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors, or to the Chairman of the Board or to the Secretary. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified

therein, and unless otherwise specified therein. Such resignation may be given by mail or electronically.

Section 5. Removal of Officers. Any officer may be removed for any reason, or without reason, from office by the affirmative vote of a majority of all of the entire Board of Directors at any regular or special meeting called for that purpose.

Section 6. Compensation. The officers of the Corporation shall serve without compensation; provided, however, that any officer who is also an employee of the Corporation may receive compensation as determined by the Board of Directors for services rendered as an employee. No person who may benefit from such compensation may be present at or otherwise participate in any Board or committee deliberation or vote concerning such person's compensation; provided that nothing in this Article V, Section 6 shall prohibit the Board or authorized committee from requesting that a person who may benefit from such compensation present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto; and provided further that nothing in the Article V, Section 6 shall prohibit a director from deliberating or voting on matters concerning compensation for service on the Board that is to be made available or provided to all directors of the Corporation on the same or substantially similar terms.

ARTICLE VI

DUTIES OF OFFICERS

Section 1. President. The President shall be the Chief Executive Officer of the Corporation and shall preside at all meetings of the Board of Directors and appoint such committees as he or she or the Board of Directors shall consider expedient or necessary. The President shall have general management of the affairs of the Corporation subject to the approval of the Board of Directors and shall perform all other duties incidental to the office of President. The President shall be an ex officio member of all Committees of the Board.

Section 2. Vice President. In the absence of the President, the Vice President shall perform the duties of President, and when so acting, shall have all the powers and be subject to all of the responsibilities of the office of President, and shall have such powers and perform such duties and functions as usually pertain to the office or as the Board of Directors may prescribe. In the absence of both the President and the Vice President, the Secretary shall preside and perform the duties of the President.

Section 3. Secretary. The Secretary shall have charge of such books, documents and papers as the Board of Directors may determine and shall have the custody of the corporate seal. The Secretary shall attend and keep the minutes of all the meetings of the Board of Directors and shall attend to the giving and waiving of all notices of the Corporation. The Secretary shall, in general, perform all the duties incident to the office of Secretary, subject to the control of the Board of Directors, and shall do and perform such other duties as the Board of Directors may determine from time to time.

Section 4. Treasurer. The Treasurer shall have care and custody of all receipts, monies and securities of the Corporation and shall deposit the same in the name of the Corporation in such banking institution or institutions as the Board of Directors may designate, and shall disburse funds of the Corporation as ordered and authorized by the Board of Directors. The Treasurer shall keep regular accounts of the receipts and disbursements and shall deliver a report of the same at regular meetings of the Board of Directors. The President or an assistant treasurer, if any, shall in the absence or incapacity of the Treasurer, perform the duties of that office. The Board of Directors shall determine whether a bond for the faithful performance of the duties of the Treasurer shall be required and the amount thereof and also whether an annual audit of the affairs of the Corporation shall be made by independent accountants; provided that such determination is in accordance with Section 712-a of the Not-For-Profit Corporation Law.

ARTICLE VII

COMMITTEES

Section 1. Committees of the Board. The President may, subject to approval of the Board, appoint Committees of the Board. Committees of the Board must have at least three (3) members of the Board of Directors, shall have no other members, and shall have the authority to bind the Board of Directors if authorized by the Board.

Section 2. Committees of the Corporation. Additional committees may be created and appointed by the President with the consent of the Board of Directors as needed for special purposes. These committees must include at least one member of the Board but may include more members of the Board, and may include other members of the community that have related expertise. Committees of the Corporation shall have no authority to bind the Board.

Section 3. Audit Committee. In the event the Corporation elects to form an Audit Committee, such Audit Committee shall perform the duties described in Article VIII hereof. The Audit Committee must include at least three Directors, each of whom must qualify as an Independent Directors, described in Article VIII, Section 2.

Article VIII

Audit Functions

Section 1. Audit Functions. For any year in which the Corporation is required to file an accountant's audit report with the attorney general pursuant to Section 172-b of the NYS Executive Law, the Corporation shall have the duty of: (i) overseeing the accounting and financial reporting process of the Corporation; (ii) overseeing the audit of the Corporation; (iii) annually retaining or renewing the retention of an Independent Auditor; (iv) reviewing and approving the results of the audit; and (v) in the event the Corporation shall reach certain revenue thresholds, performing other acts as prescribed by the N-PCL, specifically, to: (1) review with the Independent Auditor the scope and planning of the audit prior to the audit's commencement; (2) upon completion of the audit, review and discuss with the Independent Auditor: (A) any material risks and weaknesses in internal controls identified by the auditor, (B) any restrictions on the scope of

the auditor's activities or access to requested information, (C) any significant disagreements between the auditor and management, and (D) the adequacy of the Corporation's accounting and financial reporting processes; (3) annually consider the performance and independence of the Independent Auditor; and (4) report on the committee's activities to the Board. Only Independent Directors, as defined below in Article VIII, Section 2, are permitted to perform the above described duties.

Section 2. Definitions.

A. "Independent Director" means a director who:

- (i) is not, and has not been within the last three years, an employee of the Corporation or an affiliate of the Corporation, and does not have a relative who is, or has been within the last three years, a key employee of the Corporation or an affiliate of the Corporation;
- (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the Corporation or an affiliate of the Corporation (other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers); and
- (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 made payments to, or received payments from, the Corporation or an affiliate of the Corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of twenty-five thousand dollars or two percent of such entity's consolidated gross revenues.
- (iv) For purposes of this subparagraph, "payment" does not include charitable contributions.

B. Other Definitions:

- (i) An "**affiliate**" of a corporation means any entity controlled by, in control of, or under common control with such corporation.
- (ii) "**Independent Auditor**" means any certified public accountant performing the audit of the financial statements of a corporation required by subdivision one of section one hundred seventy-two-b of the executive law.
- (iii) "**Relative**" of an individual means his or her (i) spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law.

ARTICLE IX

PROHIBITION AGAINST SHARING IN

CORPORATE EARNINGS AND DISSOLUTION

Section 1. No Private Inurement. No director, officer or employee of or member of a committee of or person connected with the Corporation, or any other private individual shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent the payment to any such person such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board of Directors.

Section 2. Distribution Upon Dissolution.

(a) No director, officer or employee of or member of a committee of or person connected with the Corporation, or any other private individual shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All members of the Board of Directors of the Corporation shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board of Directors shall be distributed, transferred, conveyed, delivered and paid over, to one or more of the not-for-profit Affiliates of the Corporation, provided, that such distributee(s) then qualifies under Section 501(c)(3) of the Code, pursuant to a plan of dissolution adopted by the board of directors of the Corporation, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations.

(b) If none of the not-for-profit Affiliates of the Corporation shall so qualify at the time of dissolution, or there shall be no Affiliates of the Corporation, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for charitable, scientific, religious, and educational purposes as shall at the time qualify under Section 501(c)(3) of the Code, pursuant to a plan of distribution adopted by the board of directors of the Corporation, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations.

For purposes of this Article VIII, Section 2, an "Affiliate" shall mean any not-for-profit corporation which controls or is controlled by the Corporation.

ARTICLE X

EXEMPT ACTIVITIES

Notwithstanding any other provision of these By-laws, no director, officer, employee or representative of this Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section

501(c)(3) of the Code and its Regulations as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170(c)(2) of the Code and Regulations as they may exist or as they may hereafter be amended.

ARTICLE XI

INDEMNITY

Section 1. Right to Indemnification. To the extent and in the manner permitted by law, the Corporation shall indemnify (a) any person made a party to an action or proceeding by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he, his or her testator or intestate, is or was a director, officer or employee of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, or in connection with an appeal therein, except in relation to matters as to which such person is adjudged to have breached his or her duty to the Corporation, and (b) any person made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the Corporation to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, any director, officer or employee of the Corporation served in any capacity at the request of the Corporation, by reason of the fact that he, his or her testator or intestate was a director, officer or employee of the Corporation, or served such other corporation in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such person acted in good faith, for a purpose which he or she reasonably believed to be in the interests of the Corporation and, in criminal action or proceedings, in addition had no reasonable cause to believe that his or her conduct was unlawful.

Section 2. Advancement of Expenses. Expenses incurred by a director, officer or employee in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article XI may be paid by the Corporation in advance of the final disposition of such action or proceeding upon (a) the receipt of an undertaking by or on behalf of such director, officer or employee to repay such advance in case such director, officer or employee is ultimately found not to be entitled to indemnification as authorized by this Article XI, and (b) approval by the Board of Directors acting by a quorum consisting of directors who are not parties to such action or proceeding. To the extent permitted by law, the Board of Directors shall not be required to find that the director, officer or employee has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Corporation makes any advance payment of expenses hereunder.

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article XI, (a) shall be available with respect to events occurring prior to the adoption of this Article XI, (b) shall continue to exist after any rescission or restrictive amendment of this Article XI with respect to events occurring prior to such rescission or amendment, (c) shall 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, officer or

employee (or, if applicable, at the sole discretion of the testator or intestate of such director, officer or employee seeking such rights), on the basis of applicable law in effect at the time such rights are claimed, and (d) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the director, officer or employee for whom such rights are sought were parties to a separate written agreement.

Section 4. Other Rights. The rights of indemnification and to the advancement of expenses provided in this Article XI shall not be deemed exclusive of any other rights to which any director, officer or employee of the Corporation or other person may now or hereafter be otherwise entitled, whether contained in the Corporation's Certificate of Incorporation, these By-laws, a resolution of the Board of Directors, or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article XI shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any director, officer or employee of the Corporation or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5. Severability. If this Article XI 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 XI shall remain fully enforceable. Any payments made pursuant to this Article XI shall be made only out of funds legally available therefore.

ARTICLE XII

CORPORATE FINANCES

Section 1. Corporate Funds. The funds of the Corporation shall be deposited in its name with such banks, trust companies or other depositories as the Board of Directors may from time to time designate. All checks, bills, notes, drafts and other negotiable instruments of the Corporation shall be signed by such officer or officers, agent or agents, employee or employees as the Board of Directors may from time to time designate. No officer, agent, employee or independent contractor of the Corporation, alone or with others, shall have the power to make any checks, bills, notes, drafts or other negotiable instrument, or endorse the same in the name of the Corporation, or contract or cause to be contracted any debt or liability in the name of the Corporation or otherwise bind the Corporation thereby, except as provided in these By-laws.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless otherwise provided by the Board of Directors.

Section 3. Gifts. The Board of Directors 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 4. Voting of Securities Held by the Corporation. Stocks or other securities owned by the Corporation may be voted in person or by proxy as the Board of Directors shall specify. In the absence of any direction by the Board of Directors, such stocks or securities shall be voted by the President as he or she shall determine.

Section 5. Income from Corporation Activities. All income from activities of the Corporation shall be applied to the maintenance, expansion or operation of the lawful activities of the Corporation.

ARTICLE XIII

AMENDMENTS

These By-laws may be amended, added to or altered or repealed or new By-laws may be adopted at any meeting of the Board of Directors by a vote of at least a majority of all the directors, provided that notice of the proposed action to be considered and acted upon and stating the nature thereof, is inserted in the notice or waiver of notice of said meeting.

ARTICLE XIV

CONSTRUCTION

If there is any conflict between the provisions of the Certificate of Incorporation and these By-laws, the provisions of the Certificate of Incorporation shall govern.

Effective: _____

[SIGNATURE PAGE FOLLOWS]

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the By-laws of **EMPIRE STATE PASSENGERS FOUNDATION, INC.**, a New York Not-for-Profit Corporation, as in effect on the date hereof.

By: _____

Name: Steve Strauss

Title: Secretary of Corporation