

BYLAWS OF THE
FOX CHAPEL KILLER WHALES INC.
Revised as of February 19, 2020

ARTICLE 1 – ESTABLISHMENT

SECTION 1 – The organization is established as the Fox Chapel Killer Whales Inc. (hereinafter referred to as the corporation, FCKW, the organization and/or the club), a non-profit corporation incorporated under the laws of the Commonwealth of Pennsylvania.

SECTION 2 – The registered office address of the club shall be as shown in paragraph 2(a) of the Articles of Incorporation. Such addresses may be changed from time to time at the discretion of the board of directors provided that all notifications required by the laws of the Commonwealth are accomplished relative to such change.

SECTION 3 – The fiscal year of the organization shall commence on the 1st day of September each year and shall terminate on the 31st day of August of the following year.

ARTICLE 2 – PURPOSE AND POWERS

SECTION 1 – Organizational Purpose – The purposes of the organization shall include the following:

- A. To provide an opportunity for all members to engage in a wholesome, lifesaving, lifetime sport, and recreational activity;
- B. To promote physical fitness and good patterns of physical development and to encourage proper conditioning and health habits;
- C. To provide opportunities for social, emotional, and educational development and to encourage peer and family participation;
- D. To promote the involvement in age-group programs and provide an opportunity for members to compete in organized swimming competitions in both the Allegheny Valley Conference and United States Swimming; and
- E. To carry out any and all other activities described in the Articles of Incorporation and these bylaws which are reasonably necessary for the operation and continued existence of the organization.

SECTION 2 – Organizational Powers – The corporation shall be authorized to engage in any lawful activities that may be necessary to properly carry out the purposes of the club and conduct its affairs, including the exercise of any and all of the general powers conferred by 15 Pa. C.S.A. 5502, subject to any restrictions or limitations imposed by statute or those contained in the Articles of Incorporation or these bylaws.

ARTICLE 3 – MEMBERSHIP

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SECTION 1 - Membership Defined – Membership in the organization shall be defined as follows:

- A. Competitor Members – FCKW swimmers

- B. Regular Members – Regular members of the club are:
 - i. person(s) who is/are the parent(s) or legal guardian(s) of a competitor member(s); and
 - ii. competitor members over the age of 21

SECTION 2 – Conditions of Membership: Membership in the organization shall be subject to the following:

A. Membership is a privilege: While we generally have an "open" membership policy, the Board of Directors of FCKW reserves the right to deny applications for membership and/or or terminate existing memberships for "cause." "Cause" includes dishonesty, unduly disruptive or harassing behavior, prior unsatisfactory membership in FCKW, or any other reason that leads the Board to determine that the person's membership is not in the best interests of FCKW. A decision to deny or terminate membership shall be processed in accordance with the expulsion provision set forth in Section 2.E of the FCKW Bylaws.

B. Members shall not be younger than five years old. Eligibility shall be determined based on the applicant's age as of October 1. Competitor members must be able to swim unassisted and continuously a minimum of 25 yards.

C. Membership shall be open to any resident of the Commonwealth of Pennsylvania provided, however, that a minimum of 75% of the competitor members are residents of the Fox Chapel School District. In the event that acceptance of all applications submitted by non-residents of the Fox Chapel School District would decrease resident membership below the stated minimum, individual non-resident applications shall be rejected in sufficient quantity to retain the minimum resident membership stated herein. Such rejection of applications shall be accomplished using the following criteria listed in order of application:

- i. prior satisfactory membership in FCKW;
- ii. needs of the club for certain age category swimmers;
- iii. date of registration; and
- iv. drawing of lots or any other method of chance selection deemed appropriate.

SECTION 3 – Application for Membership – Applications for membership shall be subject to the following:

A. The time, place, method and form of all applications for membership shall be set and regulated by the board of directors.

B. All membership dues, fees and other charges shall be set, regulated and payable under the authority of and in the manner prescribed by the board.

C. The acceptance of applications for membership from competitive members over the age of 21 shall be at the total discretion of the board of directors. The board shall use the following criteria when considering such applications for membership:

- i. the club's organizational purposes;
- ii. prior satisfactory membership in FCKW;
- iii. contributions by the proposed member to the club's organizational purposes; and
- iv. such other criteria as the board deems relevant.

The majority vote of the board of directors shall be required to accept such a member.

SECTION 4 – Term of Membership – The term of membership shall commence and end as follows:

A. Membership shall commence upon acceptance of a properly executed membership application and payment of all required fees, dues and charges.

B. Membership shall continue after commencement for a period not in excess of one year or until August 31 of the following year unless sooner terminated as provided herein in this Section 4.

C. Membership shall terminate after commencement but prior to August 31 of the following year when:

- i. a member fails to pay their dues, fees or charges within 30 days after the conclusion of the normal registration period (or within 30 days after initial registration for registrations occurring after the normal registration period) unless an extension of the 30 day requirement is approved by the board of directors for unusual circumstances or undue hardship;
- ii. a member is no longer eligible under the membership terms set forth in this article; or
- iii. a member is expelled for cause as prescribed in Section 5 below.

SECTION 5 – Expulsion – A member may only be expelled and membership terminated as follows:

A. Grounds for expulsion exist which consist of violations of (i) the Athlete Code of Conduct, (ii) the USS In Meet Rules of Conduct, or (iii) USS/AMS Rules and Regulations.

B. Notification of the intent to expel the member is provided in writing by the board of directors via registered mail. Such notification shall (1) detail the grounds for the proposed expulsion, (2) set the date of the proposed expulsion (which shall not be less than 15 days from the date of the notice), and (3) provide the member the opportunity to either (a) plead guilty to the violations and relinquish his/her membership or (b) request a trial by the board of directors. Such trial may take place only in the presence of the entire board of directors then in office. Election of either option shall be given to the board of directors via registered mail to the registered office of the corporation.

C. Within five days of its receipt of the member's request for a trial, the board shall set the time and place for the conduct of such trial which shall be not later than 15 days after election by the member. The member and parent/guardian shall be present at the trial and may present such witnesses and documents as they deem appropriate for defense of the right of membership. The organization shall likewise have the right to present such witnesses and documents as it deems appropriate as the basis for the proposed expulsion. Failure on the part of the member and/or their legal guardian to be physically present for such trial shall be considered a plea of no contest.

D. Upon conclusion of the trial, the board of directors shall vote by secret ballot to either convict or acquit the member of the charges. A 2/3 vote of the entire board shall be required to convict and expel the member. If a 2/3 vote does not sustain the expulsion, the member shall be returned to good standing without prejudice to future actions.

E. If 2/3 of the board of directors votes to convict and expel the member, such expulsion shall be effective immediately upon notification to the member. If a member is expelled under this Section 5 for cause, or if membership terminates under Section 4, all rights, privileges and interests in the organization shall cease and any positions on the board of directors which the member held prior to expulsion shall be declared vacant. No member who is expelled under this Section 5, or whose membership terminates under Section 4, shall be entitled to reimbursement of any fees, dues or charges paid to the club.

SECTION 6 – Rights and Liabilities of Members

A. Regular members shall have one vote on all matters brought before a vote of the membership. Provided, however, that if both parents or legal guardians of a competitor member are regular members, then such parents or

guardians shall have one vote between them. Competitor members who are not also regular members shall have no voting rights.

B. No director, officer, member, authorized agent or representative of the organization shall be liable or responsible for any debts or liabilities of the organization or shall be liable to the organization except to the extent of their unpaid portion of membership fees, dues, assessments or charges. Provided, however, that any expenses incurred by such member, director, officer, authorized agent or representative on behalf of the organization which create such debt or liability shall have been approved in advance by the board of directors.

SECTION 7 – Meeting of Members

A. The organization shall hold, at minimum, one meeting of the membership annually in the spring at the FCKW team banquet for the purpose of reviewing the activities and financial affairs of the club, electing members of the board of directors and conducting such other business as may properly come before the membership. The organization may also hold other special meetings of the membership as may be deemed necessary for the proper conduct of the affairs of the organization. Such special meetings may be called by the President, by majority vote of the board or upon the written request of at least 10% of the regular members.

B. All meetings of the members shall be held at a convenient hour and place designated by the board of directors. Written notice of all such meetings shall be given to all members not less than 10 calendar days before such meeting. Such notice may be given either individually, by written notice distributed to members at the pool, or by posting on the official FCKW web site. All such notices shall specify the general nature of the business to be transacted, the date, time and the location of the meeting.

ARTICLE 4 – BOARD OF DIRECTORS

SECTION 1 – Nomination and Election

A. The board of directors of the organization shall consist of ten directors, including the four officers of the corporation and the Head Coach. Directors shall be elected for staggered two-year terms beginning on September 1 and ending on August 31 of the second year. At least one voting member shall be a registered member of the Flying Fish Heads master swim group.

B. The officers of the organization shall be President, Vice-President, Secretary and Treasurer. The President must be a resident of the Fox Chapel Area School District. No person shall hold more than one office at any time.

C. All directors shall be regular members in good standing at the time of both nomination and election; and shall maintain their regular membership status and good standing during their entire term of office. Each family shall be limited to one regular member on the board at any time. Non-residents of the Fox Chapel

Area School District meeting these qualifications may serve as directors/ officers (with the exception of President), provided that the total number of non-residents on the board does not exceed 20% of the total number of directors.

D. The President shall appoint a nominating committee consisting, at minimum, of one elected officer (who shall serve as the Judge of Elections) and two regular members of the organization who shall solicit candidates and select nominees for the ballot. The Judge of Elections may not be a candidate for re-election.

E. Election of new directors and officers shall be by voice vote at the regular meeting of the members in the spring at the FCKW team banquet. At the request in writing of at least 10% of the regular members, the election shall be by written ballot. Each family shall be entitled to only one vote regardless of the number of competitor members in the family. No proxy votes shall be permitted. Only those members present shall be entitled to vote. In the event that the ballots for an individual position result in a tie vote, the winner shall be decided by a majority vote of the board of directors.

F. Newly elected directors may attend regular meetings of the board of directors held from time to time after elections until August 31 to facilitate the transition process in an orderly fashion. Such attendance shall be solely in the capacity of an observer, without opportunity for recognition in the board proceedings, participation in the business of the board, or vote on any issue before the board.

SECTION 2 – Powers

A. Exercise of the organizational powers (Article 2, Section 2) and the management of the affairs of the organization shall be vested in the board of directors. The President shall serve as the chairperson of the board and shall conduct all business of the board.

B. The standing committees of the board of directors shall be those described in Section 4. Each director, except the Head Coach, shall be the chairperson of one or more of the standing committees. Standing committee chairpersons shall be determined by board vote prior to the September meeting of the board of directors.

C. Each director who is the chairperson of a committee shall be responsible for:

- i. recruiting as many committee members as are necessary to fulfill the functions of the committee;
- ii. verifying that the committee has fulfilled all of its responsibilities; and
- iii. reporting to the board on actions taken by the committee.

D. The board of directors shall have the authority to amend the responsibilities of each standing committee and the designated chairperson of such committees, and to appoint such additional special committees as may be deemed necessary from time to time to further and promote the interests and activities of the organization. Special committees shall be comprised of one director (serving as committee chairperson) and any number of regular members selected by the chairperson. Such committees shall be chartered by the board of directors for a specific purpose (e.g. fundraising) and be restricted in term of existence and shall be subject to termination by resolution of the board. Each committee shall have and shall exercise only the express authorities prescribed to it by the board. Further, no committee (standing or special), shall have the authority of the board in reference to affecting any of the following:

- i. filling of vacancies on the board;
- ii. adoption, amendment, or repeal of bylaws;
- iii. amendment or repeal of any resolution of the board;
- iv. action on matters committed by these bylaws or resolution of the board to another committee of the board.

E. Meetings of the board shall be held as announced by the President and a majority shall constitute a quorum. Each board member shall be entitled to vote on all matters which come within the jurisdiction of the board and each board member shall have one non-transferable vote.

F. The board shall have full authority to fix and regulate all fees and other charges for the participation of members in the club's program(s). Further, the board shall have full authority to make, amend, alter or repeal these bylaws, to the full extent permitted by law, by affirmative vote of a majority of members of the board. In addition, the board shall have full power to adopt rules and regulations for the conduct of the business and activities of the organization and to alter and amend same from time to time as may be in the best interest of the organization.

SECTION 3 – Duties of Officers

A. The President shall be the chief executive officer of the organization, shall direct the activities of the organization and, in conjunction with the board, shall enforce these bylaws and such other rules and regulations of the organization as may be applicable. In addition to the organizational responsibilities, the President shall present an annual report of the activities of the organization at the annual meeting of the members; shall sign all written contracts/obligations for the organization; shall countersign with the Treasurer such checks as directed by the board; and shall perform and discharge such other duties as required by law, the Articles of Incorporation, these bylaws, or which may be assigned by the board.

B. The Vice-President shall perform the duties of the President when the President is absent or is otherwise unable to act. No business of the organization may be conducted in the

absence of both the President and the Vice-President. The Vice-President shall also perform such duties as may be required by law, the Articles of Incorporation, these bylaws or which may be assigned by the board.

C. The Secretary shall have the custody and care of the corporate records; shall attend all meetings of the members and the board; shall keep a true and complete record of the proceedings of all such meetings; file and take charge of all papers and documents of the organization; maintain a list of members entitled to vote and copies of all current financial reports and make such list and reports available for inspection by club members. The Secretary shall perform such other duties as may be required by law, the Articles of Incorporation, these bylaws or which may be assigned by the board.

D. The Treasurer shall receive and collect all funds of the organization; keep an accurate record of warrants, receipts and expenditures; deposit all club funds into the designated account at the bank/financial institution; pay by check all bills and obligations authorized by the board, which checks shall be signed by the Treasurer or by the President; prepare income and expense reports for every meeting of the board and/or the membership; attend registration and assist the chairpersons of committees in the capacity as Treasurer. The Treasurer shall submit all books, records, receipts and financial information required for preparation of the annual budget and the annual tax return. The Treasurer shall also perform such other duties as may be required by law, the Articles of Incorporation, these bylaws or which may be assigned by the board.

SECTION 4 – Standing Committees - Standing committees of the club have a continuing full time mission. Each year, the board shall review the committees to determine whether the standing committees meet the club’s needs, and designate a director as chairperson for each standing committee.

ARTICLE 5 – COACHING STAFF

SECTION 1 – Head Coach

A. The coaching staff shall consist of a Head Coach (so designated by the board) who shall meet all the minimum qualifications stated herein in Section 2, and a sufficient number of assistant coaches to carry out all swimming activities and instruction in an effective, efficient and safe fashion given the needs of each swimmer and Red Cross rules and regulations.

B. The Head Coach shall be a permanent member of the board of directors and shall attend all meetings of the board. The Head Coach shall have one vote on all matters brought before the board. Provided, however, that the Head Coach shall recuse himself/herself from all discussions, deliberations and votes relative to the Head Coach position and the contract pertaining thereto. Further, the Head Coach shall be responsible for the training and preparation of all swimmers for competitive swimming and shall have authority to direct any assistant coach(es) and all on-deck activities.

SECTION 2 – Qualifications – All coaches shall be registered with A.M.S. as members and all coaches, including assistant coaches and any person working with competitor members as the sole practice supervisor or warm-up supervisor at meets shall fulfill U.S.S. coach membership

requirements and shall be certified in Cardiopulmonary Resuscitation (CPR), First Aid, and Safety Training for Swim Coaches and any other necessary certification required by U.S.S.

ARTICLE 6 – OPERATIONS

SECTION 1 – Documents and Records

A. Execution of Documents – Except as may otherwise be provided by law, all checks, drafts, promissory notes, orders for the payment of money and other evidences of indebtedness of the organization shall be signed by the Treasurer and countersigned by the President. All contracts, leases or other instruments executed in the name of and on behalf of the organization shall be signed by the Treasurer or by the President, and will have attached copies of the resolutions of the board of directors certified by the Secretary authorizing their execution.

B. Books and Records – The organization shall keep correct and complete books and records of account and will also keep minutes of the proceedings of its board of directors and committees. The organization will keep a membership register giving the names, addresses, classes, and other details of the membership of each member, and the original of its bylaws including amendments to date certified by the Secretary of the organization.

C. Inspection of Books and Records – All books and records of the organization may be inspected by any member or their agent or attorney, for any proper purpose at any reasonable time on written demand under oath stating the purpose of the inspection.

SECTION 2 – Organizational Integrity

A. Nonprofit Status – The organization shall at all times be operated on a nonprofit basis for the mutual benefit of its members. No shares of stock will be issued, no dividend will be paid and no part of the income, earnings or assets of the organization will be distributed to its officers, directors or members. Provided, however, that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and expenses incurred and to make payments and distributions in full furtherance of the purposes set forth herein. To ensure the ongoing success and financial viability, the goal is to maintain a six-month operating surplus from year to year.

B. Covenant Against Legislative or Political Activity – the organization shall not (1) participate in any activity attempting to influence legislation by propaganda or otherwise, (2) directly or indirectly participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office, or (3) engage in activities which characterize the organization as an action organization as defined in paragraph (c) (3) of 26 CFR 1.501(c) (3)-1.

C. Loans – The corporation shall make no loans of money or property to any of its directors, officers or members for any reason whatsoever.

ARTICLE 7 – ACCOUNTABILITY OF FUNDS

SECTION 1 – Fiscal Resources

A. The annual budget shall be prepared by the Treasurer for the approval of the board. Such budget shall detail projections of expense for all elements of cost and shall be presented to the board not later than August 31. The final budget shall be approved not later than September 30. Only such items which have been approved by the board may be disbursed from funds of the organization.

B. All requests for payments from funds of the organization shall: (1) be submitted to the Treasurer; (2) itemize the amount of reimbursement requested; (3) state the purpose of the expenditure; and (4) be accompanied by a receipt.

SECTION 2 – Reviews

A. All legal documents, contracts, leases and other instruments shall be subject to the approval of a majority of the board and shall receive the review and concurrence of legal counsel as appropriate.

B. An independent third party financial manager shall review all financial records and prepare year end financial summary reports. The report shall serve as a basis for the informational Tax Return, Form 990, and shall be signed by the Treasurer certifying the accuracy, completeness and propriety of all financial transactions.

ARTICLE 8 – REMOVAL AND SUCCESSION

SECTION 1 – Removal

A. Member Rights – Directors may be removed from office by the members without assigning any cause by the majority vote of the regular members present at any annual meeting of the membership or other regular election of directors. In the event that any one or more directors are so removed, new directors may be elected at the same meeting.

B. Board of Director Rights – The office of a director may be declared vacant by majority vote of the board of directors (excluding the director who is the subject of such vacation) if such director is declared of unsound mind by an order of the court; is convicted of a felony; or for any other proper cause. For the purposes of these bylaws, proper cause for removal of a director shall include the

following and any such other actions as determined by majority decision of the board:

- i. willful violation of or refusal to comply with the Articles of Incorporation;
 - ii. willful violation of or refusal to comply with these bylaws;
- iii. willful violation of or refusal to comply with any Federal, State or local law pertaining to the operation of the organization;
 - iv. willful and continual dereliction of the duties/responsibilities required for the position for which the director was elected or appointed; or
 - v. failure to maintain their status as a regular member in good standing.

C. Action of Non-Acceptance – The office of an elected director may be declared vacant by the board of directors if, within 30 days after notice of his/her election, he or she does not accept such office either in writing or by attending a meeting of the board of directors.

D. Notwithstanding any provision of this Article 8, Section 1, any removal shall be without prejudice to any contract rights of the director so removed.

SECTION 2 – Succession – In the event of resignation or removal of the President, the Vice-President shall assume the duties of the vacant office for the balance of the term. All other vacant director positions shall be filled by a majority of the vote of the remaining members of the board, though less than a quorum, and each person so elected shall serve for the balance of the unexpired term.

ARTICLE 9 – INDEMNIFICATION

SECTION 1 – Liability – Except for the responsibility or liability of a member of the board pursuant to any criminal statute or for payment of taxes pursuant to local, State or Federal law, a member of the board shall not be personally liable for monetary damages for any action taken or any failure to take any action unless; (i) such director has breached or failed to perform his or her fiduciary duties as provided herein and (ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

SECTION 2 – Fiduciary Duty

A. A member of the board of directors shall stand in a fiduciary relation to the corporation and shall perform his/her duties as a member of the board (including his/her duties as a member of any committee of the board upon which he/she may serve) in good faith, in a manner he/she reasonably believes to be in the best interests of the corporation and with such care (including reasonable inquiry) skill and diligence as a person of ordinary prudence would use under similar circumstances. In performing his/her duties, a member of the board shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements or other financial data, in each case prepared or presented by any of the following:

- i. one or more directors or employees of the corporation whom the member of the board reasonably believes to be reliable and competent in the matters presented;
 - ii. counsel, public accountants or other persons as to matters which the member of the board reasonably believes to be within the professional or expert competence of such person; or
 - iii. a committee of the board upon which he/she does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the member of the board reasonably believes to merit confidence.

A member of the board shall not be considered to be acting in good faith if he/she has knowledge concerning the matter in question that would cause his/her reliance to be unwarranted.

B. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a member of the board of directors or any failure to take any action shall be presumed to be in the best interest of the corporation. The standard of care recited herein shall comply with the requirements of the Directors' Liability Act, 42, Pa. C.S.A. 8361, et seq., and the Associations Code, 15 Pa. C.S.A. 5714 et seq., as the same may be amended from time to time.

SECTION 3 – Third Party Actions – The corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he/she is or was a representative of the corporation, or is or was serving at the request of the corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in a good faith and in a manner which he/she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe his/her conduct was unlawful.

SECTION 4 – Derivative Actions – The corporation shall indemnify each person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he/she is or was a representative of the corporation, or is or was serving at the request of the corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection with the defense or settlement of such action or suit if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or

misconduct in the performance of his/her duty to the corporation unless and only to the extent that the court of common pleas of the county in which the registered office of the corporation is located or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court of common pleas or such other court shall deem proper.

SECTION 5 – Expenses – To the extent that a member of the board of directors, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 3 and 4 above, or in defense of any claim, issue or matter therein, he/she shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by or imposed upon him/her in connection therewith. Further, such expenses may be paid by the corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the member of the board, employee or agent to repay the amount if it is ultimately determined that he/she is not entitled to be indemnified by the corporation as authorized in this Article 9.

SECTION 6 – Procedure for Effective Indemnification – Unless ordered by a court, any indemnification under this Article 9 shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he/she has met the applicable standard of conduct set forth in this Article 9. Such determination shall be made:

1. by the board of directors by a majority vote of a quorum consisting of the members of the board who were not parties to the action or proceeding; or
2. if such quorum is not obtainable, or if obtainable and a majority vote of a quorum of disinterested members of the board so directs, by independent legal counsel in written opinion;
or
3. by the members of the corporation.

SECTION 7 – Non-Exclusivity – The indemnification and advancement of expenses provided by or granted pursuant to this Article 9 shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding such office. Indemnification pursuant to this Article 9 shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

SECTION 8 – Survival – No amendment or repeal of this Article shall adversely affect any right or protection extended to a member of the board of directors, employee or agent hereunder for an act or failure to act occurring prior to the time of such amendment or repeal. Each member of the board of directors, employee and agent shall be deemed to act in such capacity in reliance upon the rights of indemnification and advancement of expenses hereunder and such rights shall continue as to a person who has ceased to be a member of the board of directors,

employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

SECTION 9 – Insurance – The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a representative of the corporation, or is or was serving at the request of the corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the corporation would have the power to indemnify him/her against such liability under the provisions of this Article 9.

SECTION 10 – Statutory Indemnification – Anything set forth in these bylaws to the contrary notwithstanding, it is the intent that the indemnification provisions hereof shall be to the full extent permitted by the Non-Profit Corporation Law, 15 Pa. C.S.A. 5741, et seq. To the extent that the indemnification provisions set forth in these bylaws do not go to the length permitted by said law, said indemnification provisions are hereby deemed to be incorporated by reference.

ARTICLE 10 – DISSOLUTION

SECTION 1 – Filing of Dissolution – The board of directors shall have full power to wind up and settle the affairs of the corporation. In the event that dissolution of the corporation is proposed and adopted as required by 15 Pa. C.S.A. 5971 through 5974, the articles of dissolution shall be executed by two duly authorized officers and filed with the Department of State of the Commonwealth. After such notification, the board shall immediately cause notice of the winding up proceedings to be officially published and to be mailed by certified or registered mail to each known creditor and claimant and to each local government in which its registered office is located.

SECTION 2 – Winding Up and Distribution – The board of directors shall, as speedily as possible, proceed to collect all sums due the corporation, to convert into cash all corporate assets the conversion of which into cash is required to discharge its liabilities, to collect the whole or so much as may be necessary or just of any amounts remaining unpaid on subscriptions for membership, and, out of the assets of the corporation, to discharge or make adequate provision for the discharge of all liabilities of the corporation according to their respective priorities. Any surplus remaining after paying or providing for all liabilities of the corporation shall be distributed by the board among the members per capita.

ARTICLE 11 – AMENDMENT OF BYLAWS

The power to make, alter, amend or repeal these bylaws, is, to the full extent permitted by law, vested in the board of directors. The affirmative vote of a majority of the actual number of the members of the board, elected or appointed, from time to time, shall be necessary to effect alteration, amendment or repeal of the bylaws.

ARTICLE 12 – ORDER OF PRECEDENCE

In the event of any inconsistency between these bylaws, the Articles of Incorporation and applicable law, the inconsistency shall be resolved by giving precedence in the following order:

1. applicable law

2. Articles of Incorporation

3. FCKW bylaws

These bylaws, having been duly approved and adopted, as evidenced by the signatures below, shall become effective upon February 19, 2020 and shall remain in effect until properly modified (as provided herein) or until dissolution of the corporation.

SIGNED:

President

Date

Vice-President

Date

Secretary

Date

Treasurer

Date