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Reply to: Matawan Office

February 12, 2024

Borough of Keyport
Office of Planning and Zoning
70 West Front Street
Keyport, NJ 07735
Attn: Denise Nellis, Board Admin.

RE: Paul Miller – KUPB 20-05
Block 39, Lot 32

Dear Ms. Nellis:

Please be advised that I represent the applicant with reference to the above matter. As a supplement to the application, below is a summary of the proposed operation of the non-profit which requires the variance under NJSA 40:55-70(d). Attached are the by-laws of the non-profit entity. The proposed use will consist of meditations, spiritual discussion, art/history/educational gatherings and museum type tours. Section 2.2 of the attached By-Laws provide the purpose and the mission of the non-profit entity. It is the intent of the applicant to transfer title to the real property to the non-profit as a condition of approval.

There are no proposed renovations to the interior or exterior of the building. There will be upkeep and maintenance required to maintain the historic character of the building.

The hours of operation are initially proposed to be Monday, Wednesday and Friday from 11:00 a.m. to 12:00 p.m. and Sunday 1:00 p.m. to 4:00 p.m. Once the use is fully operational it is expected that the hours will generally be midday and evening hours during the week and daytime hours during the weekend. In addition, on the weekends there may be an occasional art and/or museum related event. It is anticipated that groups of 10 people or less will be the norm at any event.

There are no proposed overnight stays except for an occasional out of town visitor or volunteer. No portion of the building will be rented. There will likely be a part time caretaker but otherwise no employees, only volunteers.

The building has a kitchen for warming of food and a refrigerator to store perishables. There will be no food preparation on site and if food is served for any event it will be catered from an off-site vendor.

The first floor consists of a meditation room, a meeting room, a kitchen, a garden room and a room for storage off of the kitchen. The first floor is where all of the public activities will occur. The second floor has three bedrooms and a library. This floor will be used for office space and storage for the non-profit organization. The third floor has two bedrooms and a storage room. The third floor bedrooms will be used for the occasional overnight visitor.

Very truly yours,

Salvatore Alfieri
SA/jdl

THE THEODORE J. MILLER FOUNDATION

BYLAWS

ARTICLE 1

NAME AND LOCATION

1.1 – Name of Corporation

The name of this corporation, which is a nonprofit corporation organized under the Nonprofit Corporation Act of the State of New Jersey, is "The Theodore J. Miller Foundation" (hereinafter "Foundation").

1.2 – Location of Foundation

The principal office for the transaction of the business of the Foundation is located at 80 West Front Street, Keyport, New Jersey 07735 (Monmouth County, New Jersey). The Board of Directors may change the location of the principal office. The Foundation may also have such other offices as the Board of Directors determines from time to time.

ARTICLE 2

PURPOSE

2.1 – General Purpose

The general purpose of the Foundation (as stated in the "Third" section of the "Certificate of Incorporation of The Theodore J. Miller Foundation" [dated April 22, 2019]) is to receive and administer funds for charitable and other exempt purposes within the meaning of §501(c)(3) of the Internal Revenue Code of 1986 (as amended) including, for such purposes:

(a) The administration of funds donated for charitable purposes.

(b) The making of distributions for such purposes in accordance with the terms of donations, bequests or devises to the Foundation not inconsistent with the purposes of the Foundation.

(c) Providing for distributions from time to time of the property held by the Foundation in such manner that charitable purposes will be effectively served notwithstanding changed conditions that may have arisen or will arise in the charitable needs of the area served by the Foundation from the time of original receipt from a donor.

2.2 – Specific Purposes

The specific purposes of the Foundation include, without limitation, the following:

(a) The preservation and maintenance of the property and physical structures located at 80 West Front Street, Keyport, NJ. This property is a key stately feature and downtown centerpiece to the historic ambiance of Keyport.

(b) The utilization of the property and physical structures in conjunction with historical, educational, arts, and museum-related programs which enhance and benefit both the immediate Keyport, NJ area and the entire world.

(c) The utilization of the main structure, also known as the "House" or "The Masters Octave" (constructed in 1860), in support of spiritual education and personal advancement.

(d) The pursuit and encouragement for the preservation of other area historical sites; to provide educational and cultural programs for the community; to provide assistance to historical, civic, and educational organizations; to encourage arts and cultural organizations to develop and to assist such organizations in the development and presentation of programs to the community.

ARTICLE 3

MEMBERSHIP

3.1 – Membership

The Foundation shall have no members other than the persons elected or appointed as members of the Board of Directors, who shall be considered to be the members of the Foundation for the purposes of any statutory provision or rule of law relating to members of a non-stock nonprofit corporation.

3.2 – Associates

The Board of Directors may provide for the creation and recognition of associates of the Foundation to be known as "Foundation Associates" in its discretion. Such Foundation Associates will have no authority to act for or incur any liability against the Foundation, and will have no vote in the Foundation's corporate affairs.

ARTICLE 4

DIRECTORS

4.1 – Powers

Subject to any limitations of the Articles of Incorporation, the New Jersey Nonprofit Corporation Act or these Bylaws, all corporate powers shall be exercised by, or under the authority of, and the business and affairs of the Foundation shall be controlled by the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the directors shall have the following powers:

(a) To appoint and remove all officers of the Foundation subject to such limitations as may appear in the Bylaws, and to prescribe such powers and duties for officers as may not be inconsistent with law, with the Articles of Incorporation, or the Bylaws.

(b) To conduct, manage and control the affairs of the Foundation, and to make such rules and regulations therefor, not inconsistent with law, or with the Articles of Incorporation, or the Bylaws, as they may deem best.

(c) To designate any place for the holding of any Board of Directors meeting, to change the principal office of the Foundation for the transaction of its business from one location to another; to adopt make and use a corporate seal and to alter the form of such seal from time to time, as, in their judgment, as they may deem best, provided such seal shall at all times comply with the provisions of law.

(d) To borrow money and incur indebtedness for the purpose of the Foundation and to cause to be executed and delivered therefor, in the Foundation's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt, and securities thereof.

(e) To manage in such manner as they may deem best, all funds and property, real and personal, received and acquired by the Foundation, and to distribute, loan or dispense the same or the income and profits therefrom.

(f) To create such trusts, foundations, and subsidiaries, as the Board of Directors shall deem necessary and to appoint the trustees, directors, or other governing officials of such legal entities.

4.2 – Number of Directors

The numbers of directors constituting the entire Board shall be a minimum of three (3) and a maximum of five (5), as fixed by resolution of the Board. Subject to the forgoing, the number of directors may be determined from time to time by action of the Board of Directors, provided that any action by the Board of Directors to effect such increase above the maximum or decrease below the minimum shall require the vote of at least two-thirds (2/3) of all directors then in office.

4.3 – Qualifications for Office

Every director must be a member in good standing of this Foundation. Each director must be a U.S. citizen. No person who is holding public office is eligible to be a director. Each director is to be selected for knowledge of the charitable needs of the Foundation and shall serve with compensation as determined to be fair and appropriate by the Board of Directors and for reasonable expenses incurred for the Foundation. Directors appointed by the holder of any office or an officer or Board of any other organization are to act in their own right and not as a representative of any interest or group. Each director shall be at least eighteen (18) years of age.

4.4 – Election of Directors

The Board of Directors shall choose their own members. The term of each director, upon being elected to office, shall begin immediately.

4.5 – Term of Office

The regular term of office for each director shall be three (3) years, unless sooner terminated by death, incapacity, resignation, or removal. All directors shall hold office until the expiration of the term for which each was elected, until a successor has been duly elected and qualified, or until the director's prior resignation or removal as hereinafter provided. A Director may succeed himself or herself in office.

4.6 – Staggering of Terms

The terms of the directors shall be staggered. In order to stagger the terms of directors, as close as possible to one-third (1/3) of the directors shall be selected each year. In order to stagger the terms of the initial directors, upon the effective date of these Bylaws or upon the installation of the initial directors, whichever occurs later, the directors shall draw lots to determine which individuals shall serve for an initial term of one (1), two (2), or three (3) years.

4.7 – Nomination of Directors

Prior to the annual meeting of voting members, the Board of Directors shall gather a list of names of eligible nominees as directors for the ensuing year. Said list shall contain the names of at least one (1) eligible nominee to each vacancy. Nominations for directors must be delivered to the Secretary at least sixty (60) days before the annual meeting of the voting members. The Secretary shall attach a list of nominees to the notification of the annual meeting of the voting members.

4.8 – Removal, Resignation

Any director may resign from office at any time by giving written notice thereof to an officer of the Foundation. Any director may be removed for cause by a two-thirds (2/3) vote of all of the other directors then in office.

4.9 – Existence of Vacancies

A vacancy in the Board of Directors exists in case of the happening of any of the following events:

(a) The death, incapacity, resignation, or removal of any director.

(b) The authorized number of directors is increased.

4.10 – Filling of Vacancies

Any vacancy occurring on the Board of Directors may be filled by a vote of the majority of the remaining directors. A director so chosen shall serve for the balance of the unexpired term of the vacant office. If the Board of Directors accepts the resignation of a director, tendered to take effect at a future time, the Board may elect a successor to take office when the resignation becomes effective for the balance of the unexpired term of the resigning director. However, the Board has the power to fill or leave unfilled, until the next election, all vacancies occurring on the Board, including those created by an authorized increase in the number of directors. In the event the Board decides to fill a vacancy for a director whose office is subject to election by the voting membership, the President may call a special meeting of the voting members to elect such director. In the event that less than a quorum of the Board remains to fill vacancies, then in that event, a vote of one hundred percent (100%) of the remaining directors shall be required to fill any vacancy.

4.11 – Place and Number of Meetings

Meetings of the Board of Directors shall be held at any place which has been designated from time to time by resolution of the Board or by written consent of all directors. In the absence of such designation, meetings shall be held at the principal office of the Foundation. The Board shall hold at least one (1) meeting each calendar year.

4.12 – Annual and Special Meetings

During January of each year, immediately following each annual meeting of voting members, the Board of Directors shall hold an annual meeting for the purpose of filling vacancies on the Board and the election of officers. Other business may be transacted at the annual meeting if proper notice thereof is given. Special meetings of the Board of Directors for any purpose may be called at any time by the President, or, if the President is absent, or unable or refuses to act, by one-third (1/3) of the directors then in office.

4.13 – Notice of Meetings

A regular meeting of the directors may be held without prior notice. Notice of the time and place of special meetings of the Board shall be given personally to the directors or sent by mail or other form of communication, charges prepaid, addressed to the director at their address as shown upon the records of the Foundation at least three (3) days in advance of such meeting. Such notice shall state the general nature of the business to be considered at the special meeting.

4.14 – Quorum and Voting

A majority of the elected and qualified directors shall be necessary to constitute a quorum for the transaction of business. A quorum will consist of at least fifty-one (51%) percent of the total number of directors. Every act or decision done or made by a majority of the directors present at a meeting duly held, at which a quorum was present, shall be regarded as the act of the Board of Directors, unless a greater number is required by law or by the Articles of Incorporation or by these Bylaws. Each director present shall be entitled to one (1) vote. Voting by proxy shall not be permitted.

A director may participate in any meeting of the directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this paragraph constitutes presence in person at the meeting.

The transactions of any meetings of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though they had a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consent, or approvals shall be filed with the corporate records are made a part of the minutes of the meeting.

4.15 – Presumption of Assent

A director who is present at any meeting of the directors, or a committee thereof of which the director is a member, at which action on a corporate matter is taken, is presumed to have assented to such action unless a dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as the Secretary of the meeting before or promptly after the adjournment thereof. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a dissent with the Secretary of the Foundation within a reasonable time after obtaining knowledge of the action.

4.16 – Action by Unanimous Written Consent

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting and with the same force and effect as if taken by a unanimous vote of directors, if authorized by writing signed individually or collectively by all directors. Such consent shall be filed with the regular minutes of the Board.

4.17 – Notice of Adjournment

Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned.

ARTICLE 5

OFFICERS

5.1 – Responsibility

All officers are subordinate and responsible to the Board of Directors.

5.2 – Number and Selection

The Board of Directors shall appoint a President, a Secretary and a Treasurer, and may appoint one (1) or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, and such other officers as they may determine. Any two (2) or more offices may be held by the same person except the office of President. The President and the Vice President, if any, must also be a director of the Foundation. Each officer shall hold office until a successor is elected and qualified, or until the officers resignation, death or removal. Vacancies in offices shall be filled by election by the Board of Directors at any time to serve unexpired terms.

5.3 – Resignation and Removal

The resignation of any officer shall be tendered in writing to any other officer and shall be effective as of the date stated in the resignation. Any officer may be removed during their term by majority vote of the Board of Directors whenever, in their judgment, removal would serve the best interests of the Foundation. Such removal shall terminate all authority of the officer, except that any rights to compensation and other perquisites shall depend on the terms of the officer's employment and the circumstances of removal.

5.4 – President

The president shall be the chief executive and operating officer of the Foundation, and subject to the direction and under the supervision of the Board of Directors, shall have general charge of the business affairs and property of the Foundation. The President shall preside at all meetings of the Board of Directors. The President shall have such other duties and responsibilities and may exercise such other powers as are usually incident to the office or as from time to time may be assigned by these Bylaws or by the Board of Directors.

5.5 – Vice President

At the request of the President, or in the President's absence or disability, the Vice President shall perform all the duties of the President. When so acting, the Vice President shall have all of the powers of, and be subject to, all the restrictions upon the President. The Vice President shall have such other duties and responsibilities and may exercise such other powers as from time to time may be assigned by the President or the Board of Directors or as may be provided in these Bylaws.

5.6 – Secretary

The Secretary shall cause to be kept at the principal office of the Foundation, the Secretary's principal place of business, or such other place has the Board of Directors may order, the official seal of the Foundation (if any), the membership book, and any book of minutes of all meetings of directors and members. The Secretary shall keep a membership book containing names and addresses of each member and the date upon which the memberships ceased. The Secretary should give the notices of the special meetings of the voting members as provided in these Bylaws. The Secretary shall also maintain and protect a file of all official and legal documents of the Foundation. The Secretary shall perform such other and further duties as may be required by law or as may be prescribed or required from time to time by the Board of Directors or the Bylaws.

5.7 – Treasurer

The Treasurer shall have custody of all Foundation funds; keep full and accurate accounts of all receipts and disbursements of the Foundation, an inventory of assets, and a record of the liabilities of the Foundation; deposit all money and other securities in such depositories as may be designated by the Board of Directors; disburse the funds of the Foundation as ordered by the President or the Board of Directors taking proper vouchers for disbursements; and prepare all statements and reports required by law, by the President or by the Board of Directors. The Treasurer shall have such other duties and responsibilities and may exercise such other powers as are usually incident to the office or as from time to time may be assigned by the Bylaws, the Board of Directors, or the President. The Board of Directors or the President may delegate all or part of the authority and duties of the Treasurer to subordinate officers.

5.8 – Salaries

The salaries of the officers, if any, of the Foundation shall be fixed from time to time by the Board of Directors. The Board of Directors may delegate to any officer the authority to fix the salary or other compensation of subordinate officers. No officer or subordinate officer shall be prevented from receiving such salary by reason of the fact that such officer is also a director of the Foundation. The Board of Directors may make provision for continuance, for a reasonable period, of a reasonable portion of the salary of any officer who may become disabled during their term of office.

5.9 – Annual Transition

To maintain Foundation continuity, officers whose terms of office have expired shall assure the orderly transition of authority to their successors before being relieved of their responsibilities. Similarly, officers whose terms of office have expired shall take all appropriate steps to substitute their successors on all of the Foundation's financial accounts and signature cards.

ARTICLE 6

ADMINISTRATION OF DONATIONS

6.1 – Donations

All donations of any nature, unless designated for a specific purpose, shall be used for such purposes as the Board of Directors may direct; and in the absence of any direction by the Board, such may be used for the general purposes of the Foundation. Donations include bequests and devices of deceased persons. The Board shall take all appropriate actions to make the Foundation known to the people of the community and in that connection to seek donations to the Foundation from a wide segment of the population of that community. At the discretion of the Board of Directors, the Foundation may raise revenues through fundraising activities and donations. The Board of Directors has the right to refuse any donation made or offered to the Foundation with or without cause and its sole discretion.

6.2 – All Donations Subject to these Bylaws

Donors may make donations to or for the use of the Foundation by naming or otherwise identifying the Foundation in the gift transfer instrument. Each donor by making a donation to or for the use of the Foundation accepts and agrees to all the terms of these Bylaws. Further, each donor specifically provides that any fund created as a result of such donation shall be subject to the provisions and these Bylaws relating to the presumption of donor's intent, the variance from donor's directions, for amendments and dissolution, and to all other terms of these Bylaws as amended from time to time.

6.3 – Charitable Purpose of Funds

Each fund of the Foundation shall be presumed to be intended, and shall be actually applied:

(a) to be used only for charitable purposes;
(b) to be productive of a reasonable return of net income which is to be distributed at least annually or if accumulated is to be accumulated only in a reasonable amount and for a reasonable period for charitable purposes; and
(c) to be used only for such of those purposes and such manner as not to disqualify the donation from deduction as a charitable contribution, gift or bequest in computing any federal income, gift or estate tax of the donor or his estate and not to disqualify the Foundation from exemption under §501(c)(3) of the Internal Revenue Code.

6.4 – Designation of Use of Donations

Any donor may, with respect to a donation made by them to or for the use of the Foundation, give directions at the time of the donation in accordance with the following:

(a) The donor may specify the geographical limits for use of the donation, including use in or for areas within or outside the community in which the Foundation is located.
(b) The donor may, but only with respect to donations of Five Thousand Dollars ($5,000) or more, designate the: 1) field of charitable purposes or particular charitable organizations or purposes to be supported; 2) manner of distribution including amounts, times and conditions of payments and whether from principal or income; 3) a name as a memorial or otherwise for a fund given, or addition to a fund previously held, or an anonymity for the donation; and 4) reasonable limits on or additions to the investment or administrative powers of the Foundation.
(c) All such directions or designations by donor shall be followed except as otherwise provided in this Article.

6.5 – Segregation of Funds

No donation shall be required to be separately invested or held unless the donor so directs, or it is necessary in order to follow any other direction by the donor as to purpose, investment or administration, or in order to prevent tax disqualification, or is required by law. However, the Board may segregate any fund whenever convenient or useful as determined by the Board in its sole discretion. Directions for naming a fund as a memorial or otherwise may be satisfied by keeping under such name internal bookkeeping accounts reflecting appropriately the interest of such fund in each common investment.

6.6 – Improper Donor Directions

If any direction by the donor, however expressed, would, if followed, result in the use of any donation or fund contrary to the charitable purposes of the Foundation, or if the Board is advised by counsel that there is a substantial risk of such result, the directions shall not be followed, but shall be varied by the Board so far as necessary to avoid such result, except that if a donor has clearly stated that compliance with the direction is a condition of such donation, then the donation shall not be accepted in case of such advice unless an appropriate judicial or administrative body first determines that the condition and direction need not be followed. Reasonable charges and expenses of counsel for such a device and proceedings shall be proper expenses of administration.

6.7 – Changed Circumstances

Whenever the Board of Directors decides that conditions or circumstances are such or have so changed since a direction by the donor as to purpose, or as to manner of distribution or use, that literal compliance with the direction is unnecessary, undesirable, impractical or impossible, or the direction is not consistent with the Foundation's charitable purposes, it may, by affirmative vote of two-thirds (2/3) of the directors, order such variance from the direction and such application of the whole or any part of the principal or income of the fund to other charitable purposes, as in its judgment will then more effectively serve such needs. Similarly, whenever the Board decides that a donor's directions as to investment or administration have because of changed circumstances or conditions or experience proved impractical or unreasonably onerous, and impedes effectual serving of such needs, the Board may likewise order a variance from such directions to the extent in its judgment is necessary.

6.8 – Charitable Trusts

If a donation is made to the Foundation by means of any charitable trust or charitable trust instrument, the payments to or for the use of the Foundation shall be regarded as Foundation funds only when the Foundation becomes entitled to their use, but the Board may take such actions as it from time to time deems necessary to protect the Foundation's rights to receive such payments.

ARTICLE 7

DISTRIBUTIONS AND DISBURSEMENTS

7.1 – Board Determinations

The Board shall from time to time but not less frequently than annually:

(a) Determine all distributions to be made from net income and principal of each fund pursuant to these Bylaws and any applicable donor's directions and make payments to organizations or persons to whom payments are to be made, in such amount and at such times and with such accompanying restrictions, if any, it deems necessary to assure use for the charitable purposes and in the manner intended.

(b) Determine all disbursements to be made for administrative expenses incurred by the Board and direct their respective officers as to payment thereof and funds to be charged. Disbursements for proper administration of expenses incurred by the Board, including salaries for such professional and other assistants as it from time to time deems necessary, shall be directed to be paid as far as possible, first from any funds directed by the donor for such purpose, and any balance out of other Foundation funds.

7.3 – Distributions of Parent Principal

Determinations may be made to distribute all or part of the principal from funds donated without directions as to principal or income, as well as pursuant to directions expressly permitting the use of principle. The Board shall in such circumstance inform the investment manager of the Foundation, if any, as far in advance as the Board deems practicable so as to permit the investment manager to adjust its investment policies accordingly and may, upon being advised as to how the desired distribution and any necessary liquidation of investments can most economically be accomplished, adjust its directions for distribution accordingly.

7.4 – Investment Managers

The Board of Directors may hire, for a reasonable period and for a reasonable rate of compensation, with right of prompt termination on agreed terms, one (1) or more individuals, firms or corporations to buy, sell and otherwise deal with the investment funds of the Foundation as an investment manager. Each investment manager shall be required to make prompt and frequent reports to the Board with respect to investment decisions and the performance of the funds under its management. The Board may elect to obtain the services of multiple investment managers for the sake of evaluating the relative and comparative performance of each.

7.5 – Investment Guidelines

Each investment manager shall be subject to the general supervision of the Board and shall act only in accordance with guidelines established by the Board with respect to:

(a) the objectives of investment;
(b) the type and size of commitments to any one (1) situation;
(c) the appropriateness of investments for the Foundation's portfolio; and
(d) in such other respects as the Board may deem appropriate from time to time.

ARTICLE 8

PROHIBITED ACTIVITIES

8.1 – Actions Jeopardizing Tax Status

This Foundation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxes under §501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law.

8.2 – Lobbying and Political Activities

(a) The Foundation shall not lobby (including the publishing or distribution of statements) or otherwise attempt to influence legislation except as authorized by resolution adopted by the Board of Directors.

(b) The Foundation shall not participate or intervene in (including the publishing or distribution of statements) any political or judicial campaign on behalf of any candidate for public office whatsoever.

8.3 – Private Inurement

No part of the net income or net assets of the Foundation shall inure to the benefit of, or be distributable to, its directors, officers, members or other private persons. However, the Foundation is authorized to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of its tax exempt purposes.

8.4 – Non-Discrimination

In the conduct of all aspects of its activities, the Foundation shall not discriminate on the grounds of race, color, national origin or gender.

8.5 – Prohibited Acts

At any time during which the Foundation is deemed a private Foundation, the Foundation shall not engage in any act of self-dealing as defined in the Internal Revenue Code for §4941(d); the Foundation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Code §4942; the Foundation shall not own any excess business holdings that would subject it to tax under Code §4943; the Foundation shall not make any investments in such manner as to subject the Foundation to the tax imposed by Code §4944; and the Foundation shall not make any taxable expenditures as defined in Code §4945(d).

8.6 – Conflicts of Interest

A conflict of interest occurs when a person under a duty to promote the interests of the Foundation (a "fiduciary") is in a position to promote a competing interest instead. Fiduciaries include all Foundation employees, directors or officers, and members of any Foundation committee. Undisclosed or unresolved conflicts of interest are a breach of the duty to act in the best interests of the Foundation and work to the detriment of the Foundation.

8.7 – Typical Conflict Situations

Conflicts of interest are likely to arise whenever: a) a fiduciary has a personal interest in a vendor of goods or services to the Foundation; b) Foundation employees are loaned to other organizations, or the employees of another organization are loaned to this Foundation; or c) Foundation fundraisers give financial advice to donors.

8.8 – Discharging Conflicts of Interest

All conflicts of interest must be disclosed to the Board of Directors. After disclosure is made, the individual with a conflicting interest must not participate in judging the merits of that interest. That is, such individual must abstain from voting on, or recommending a course of action with respect to, the situation giving rise to the conflict. When these are done, the conflict of interest has been properly discharged.

8.9 – Preventing Conflict Situations

The Foundation, through the Board of Directors, shall encourage all fiduciaries to prevent conflicts of interest where possible.

(a) Fiduciaries should refuse to enter into self-dealing relationships with the Foundation as a vendor.

(b) Fiduciaries should not accept anything but gifts of insubstantial value from vendors.

(c) The lending of employees to, or acceptance of loaned employees from, other organizations should be avoided. If done, however, a clearly drafted contract defining wages, responsibilities, indemnification and conditions of employment is required.

(d) Fundraisers should be advised not to recommend that making any donation to the Foundation is in the best interests of a donor.

(e) Financial, tax, and legal aspects of giving to the Foundation should be discussed with a donor only when the donor has independent financial, tax or legal counsel present.

(f) Donors who plan to make a sizable gift in response to a personal solicitation should be encouraged to act only with the advice of independent counsel.

8.10 – Additional Conflicts of Interest

(a) A member of the Board of Directors may not submit a grant proposal on behalf of himself or be the recipient of funds for himself through an institution or organization which employs the member or with which the member is affiliated.

(b) Whenever a member of the Board of Directors participates in any way in a project funded by the Foundation, the grant proposal should clearly indicate the nature of the member's participation in the project.

8.11 – Litigation

The Foundation shall not be a voluntary party in any litigation without the prior written approval of the Board of Directors.

ARTICLE 9

OTHER FINANCIAL MATTERS

9.1 – Property of the Foundation

The title to all property of the Foundation, both real and personal, shall be vested in the Foundation.

9.2 – Dedication of Assets

This Foundation does not contemplate pecuniary gain or profit to the members thereof except as provided by law under §501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time. The property of this Foundation is irrevocably dedicated to tax exempt purposes under said §501(c)(3) as described herein and no part of the net income or assets of this organization shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private persons.

9.3 – Disposition upon Dissolution

Upon the dissolution or winding up of the Foundation (as stated in the "Third" section of the "Certificate of Incorporation of The Theodore J. Miller Foundation" [dated April 22, 2019]), or in the event it shall cease to engage in carrying out the purposes and goals set forth in these Bylaws, all of the business, property, assets and income of the Foundation remaining after payment, or provision for payment, of all debts and liabilities of this Foundation, shall be distributed to a nonprofit fund, Foundation, or corporation which is organized and operated exclusively for tax exempt purposes which are reasonably related to the purposes and goals of this Foundation, as may be determined by the Board of Directors of this Foundation in its sole discretion, and which has established its tax exempt status under §501(c)(3) of the Internal Revenue Code of 1986, as amended. In no event shall any of the business, properties, assets or income of this Foundation, in the event of dissolution thereof, be distributed to the directors, members or officers, either for the reimbursement of any sums subscribed, donated or contributed by the same, or for any other purposes.

9.4 – Contracts

The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation. Such authority may be general or confined to a specific instance. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Foundation by any contract or engagement, or to pledge its credit, or render it pecuniarily liable for any purpose or to any amount. When the execution of any contract or other instrument has been authorized by the Board of Directors without specification of the executing officer, the President, either alone or with the Secretary or any Assistant Secretary, may execute the same in the name of, and on behalf of, the Foundation, and any such officer may have fixed the corporate seal (if any) of the Foundation thereto.

9.5 – Voting Stock Owned by the Foundation

The Board of Directors met by resolution provide for the designation of the person who shall have full power and authority on behalf of the Foundation to vote either in person or by proxy at any meeting of the security holders of any corporation or other entity in which this Foundation may hold voting stock or other securities, and may further provide that at any such meeting such person may possess and exercise all of the rights and powers incident to the ownership of such voting securities which, as the owner thereof, this Foundation might have possessed and exercised if present. The Board of Directors may revoke any such powers as granted at its pleasure.

9.6 – Financial Accounts

The Foundation may establish one (1) or more checking accounts, savings accounts or investment accounts with appropriate financial entities or institutions as determined in the discretion of the Board of Directors to hold, manage or disperse any funds for Foundation purposes. All checks, drafts or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the Foundation, shall be signed by such officer or agent of the Foundation, and in such manner, as is determined by the Board of Directors from time to time.

9.7 – Appointment and Employment of Advisors

The Board may from time to time appoint, as advisers, persons whose advice, assistance and support may be deemed helpful in determining policies and formulating programs for carrying out the Foundation's purposes. The Board is authorized to employ such persons, including an executive officer, attorneys, accountants, agents and assistants as in its opinion are needed for the administration of the Foundation and to pay reasonable compensation for services and expenses thereof.

9.8 – Auditing of Accounts

The accounts of each fund shall, without revealing the identity of any donor who directed anonymity at the time of the donation, be audited in accordance with generally accepted auditing practices by an independent auditor appointed or approved by the Board at such times as the Board may determine.

9.9 – Financial Statements and Reports

An independent auditor appointed or approved by the Board shall at such time as the Board determines prepare for the Foundation as a whole a consolidated financial statement, including a statement of combined capital assets and liabilities, a statement of revenues, expenses and distributions, a list of projects and/or organizations to or for which funds were used or distributed for charitable purposes, and such other additional reports or information as may be ordered from time to time by the Board. The auditor shall also prepare such financial data as may be necessary for returns or reports required by state or federal government to be filed by the Foundation. The auditor's charges and expenses shall be proper expenses of administration.

9.10 – Limitations on Debt

No debt shall be incurred by the Foundation beyond the accounts payable incurred by it as a result of its ordinary operating expenses, and no evidence of indebtedness shall be issued in the name of the Foundation unless authorized by the Board of Directors. Specifically, without limitation, no loan shall be made to any officer or director of the Foundation. Any director or officer who assents to or participates in the making of any such loan shall be liable, in addition to the borrower, for the full amount of the loan until it is fully repaid.

9.11 – Liability of Directors and Officers

No director or officer of the Foundation shall be personally liable to its creditors or for any indebtedness or liability and any and all creditors shall look only to the Foundation's assets for payment. Further, neither any officer, the Board nor any of its individual members shall be liable for acts, neglects or defaults of an employee, agent or representative selected with reasonable care, nor for anything the same may do or refrain from doing in good faith, including the following of done in good faith: errors in judgment, acts done or committed on advice of counsel, or any mistakes of fact or law.

9.12 – Fiscal year

The fiscal year of the Foundation shall be maintained in conformity with the fiscal year of the calendar year.

ARTICLE 10

INDEMNIFICATION

10.1 – Nonderivative Actions

Subject to all of the other provisions of this Article, the Foundation shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, formal or informal (other than an action by or in the right of the Foundation), by reason of the fact that the person is or was a director or officer of the Foundation, or, while serving as a director or officer of the Foundation, is or was serving at the request of the Foundation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses (including actual and reasonable attorney fees), judgments, penalties, fines, and amounts paid and settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Foundation or its members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interest of the Foundation or its members and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

10.2 – Derivative Actions

Subject to all of the provisions of this Article, the Foundation shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Foundation to procure a judgment in its favor by reason of the fact that the pertinent person is or was a director or officer of the Foundation or, while serving as a director or officer of the Foundation, is or was serving at the request of the Foundation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses (including attorney fees) and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interest of the Foundation or its members. However, indemnification shall not be made for any claim, issue, or matter in which the person has been found liable to the Foundation unless and only to the extent that the court in which the action or suit was brought as determined on application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

10.3 – Expenses of Successful Defense

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in this Article, or in defense of any claim, issue, or matter in the action, suit, or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorney fees) incurred by the person in connection with the action, suit, or proceeding in any action, suit, or proceeding brought to enforce the mandatory indemnification provided by this section.

10.4 – Definition

For the purposes of this Article, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Foundation" shall include any service as a director or officer of the Foundation that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants, or its beneficiaries; and a person who acted in good faith and in a manner that person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Foundation or its members."

10.5 – Contract Right; Limitation on Indemnity

The right to indemnification conferred in this Article shall be a contract right and shall apply to services of a director, officer, or as an employee or agent of the Foundation as well as in the person's capacity as a director or officer. Except as provided in Section 3 of this Article, the Foundation shall have no obligations under this Article to indemnify any person in connection with any proceeding, or part thereof, initiated by the person without authorization by the Board of Directors.

10.6 – Determination that Indemnification is Proper

Any indemnification under this Article (unless ordered by court) shall be made by the Foundation only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 1 or 2 of this Article, whichever is applicable, and upon an evaluation of the reasonableness of expense and amounts paid in settlement. The determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by majority vote of a committee of two (2) or more directors who are not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion, which counsel shall be selected in one of the following ways: (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b); or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the members, except for members who are also directors, officers, employees, or agents who are parties or threatened to me made parties to the action, suit, or proceeding.

10.7 – Proportionate Indemnity

If a person is entitled to indemnification under this Article for a portion of expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the Foundation shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which a person is entitled to be indemnified.

10.8 – Expense Advance

The Foundation may pay or reimburse the reasonable expenses incurred by a person referred to in Section 1 or 2 of this Article who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if all of the following apply: (a) the person furnishes the Foundation a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 1 or 2 of this Article; (b) the person furnishes the Foundation a written undertaking executed personally, or on his or her belief, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 1 or 2 of this Article. The authorization of payment must be made in the manner specified in Section 6 of this Article.

10.9 – Non-Exclusivity of Rights

The indemnification or advancement of expenses provided under this Article is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Foundation. However, the total amount of expenses advance or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

10.10 – Indemnification of Employees and Agents of the Foundation

The Foundation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Foundation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of any director or officer of the Foundation.

10.11 – Former Directors and Officers

Indemnification provided in this Article continues for a person who has ceased to be a director, officer, employee, or agent and shall in inure to the benefit of the heirs, executors, and administrators of the person.

10.12 – Insurance

The Foundation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint-venture, trust, or other enterprise, against any liability asserted against the person and incurred by him or her in any such capacity or rising out of his or her status as such, whether or not the Foundation would have power to indemnify the person against the liability under these Bylaws or the laws of the state of New Jersey.

10.13 – Changes in New Jersey Law

If there are any changes of the New Jersey statutory provisions applicable to the Foundation relating to the subject matter of this Article, then the indemnification to which any person shall be entitled under this Article shall be determined by the changed provisions, but only to the extent that the change permits the Foundation to provide broader indemnification rights and the provisions permitted the Foundation to provide before the change. Subject to the next Section, the Board of Directors is authorized to amend these Bylaws to conform to any such changed statutory provisions.

10.14 – Amendment or Repeal of Article

No amendment or repeal of this Article shall apply to or have any effect on any director, officer, employee, or agent of the Foundation for or with respect to any acts or omissions of the director, officer, employee, or agent occurring before the amendment or repeal.

10.15 – Impact of Tax Exempt Status

The rights to indemnification set forth in this Article are expressly conditioned upon such rights not violating the Foundation status as a tax exempt organization described in §501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 11

AMENDMENTS TO BYLAWS

11.1 – Adoption

Except as otherwise provided herein with respect to greater voting requirements, or provisions which are not subject to amendment, if any, these Bylaws may be adopted, amended, restated or repealed by a majority of the Board of Directors

11.2 – Inspection of Bylaws

The original or copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, shall at all times be kept in the principal office of the Foundation for the transaction of business, and shall be open to inspection by the members, officers, and directors at all reasonable times during office hours.

State of New Jersey

Monmouth County

I, Gerrit H. Boldt, hereby certify that I am the duly elected Secretary of The Theodore J. Miller Foundation; that attached hereto are the Bylaws of the within named corporation, and that such have been duly enacted and are in full force and effect as of the date hereof.

Dated: September 27, 2019

Gerrit H. Boldt

Sworn to and subscribed before me this 27th day of September, 2019

Notary public

My commission expires: 8/17/23