

# Olivette

*...in the center of it all*

**CITY COUNCIL AGENDA SUBMISSION**  
**March 14, 2023**

**Agenda Item:**

**Resolution 2023-235** - A Resolution Approving the Incorporation of Olivette Parks Foundation, Inc.

**Description:**

Proposed Articles of Incorporation and By-Laws are established for the intended creation of a non-profit corporation dedicated to the improvement and maintenance of parks and the promotion of parks and recreational opportunities for all ages.

The creation of a charitable 501(c)3 organization has been discussed for many years as a means to accept donations and create new grant opportunities.

**Recommended Action:**

**Motion to Approve Resolution 2023-235 A Resolution Approving the Incorporation of the Olivette Parks Foundation Inc.**

**Attachments:**

Olivette Parks Foundation, Inc. Articles of Incorporation  
Olivette Parks Foundation, Inc. Bylaws

**Funding Request:**

None

**Submitted by:**

*Darren Mann, CPA*  
**DEPARTMENT HEAD**

**RESOLUTION #2023-235:**

**A RESOLUTION APPROVING THE INCORPORATION OF  
OLIVETTE PARKS FOUNDATION, INC.**

**Whereas**, the City of Olivette (the “City”) wishes to establish, improve, and maintain parks and recreational opportunities for all ages; and

**Whereas**, the City wishes to establish an entity to accept donations and maximize grant opportunities; and

**Whereas**, the City believes that establishing a corporation with the intent of seeking non-profit status is the most appropriate path to further these goals; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF  
OLIVETTE, MISSOURI, AS FOLLOWS:**

1. That the City Manager is hereby directed to file the Articles of Incorporation attached to this resolution in Exhibit A.
2. That the By Laws attached to this resolution in Exhibit A are hereby adopted and determined to be enacted at incorporation of the entity.

PASSED THIS 14th DAY OF March, 2023.

(SEAL)

ATTEST:

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Mayor Maxine Weil

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Denise Mandle  
City Clerk

Exhibit A

**BYLAWS**  
**OF THE**  
**OLIVETTE PARKS FOUNDATION, INC.**

**ARTICLE I**

**OFFICES, RECORDS, SEAL**

**1. Offices.**

a. *Registered Office and Registered Agent.* The Corporation shall have and continuously maintain within the State of Missouri, a registered office and a registered agent, whose office must at all times be identical with the registered office. The address of the initial registered office and the name of the initial registered agent shall be as stated in the Articles of Incorporation. The Board of Directors may change the address of the registered office or the identity of the registered agent by complying with the applicable provisions of the Missouri Nonprofit Corporation Act, Chapter 355 of the Missouri Revised Statutes, as amended (the “Act”).

b. *Principal Office.* The principal office of the Corporation shall be located within the State of Missouri (the “State”), at such place as may from time to time be designated by the Board of Directors.

**2. Records.** The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board of Directors and each committee of the Board of Directors. The Corporation shall keep at its principal office, or at its registered office, a record of the name and place of residence of each director and each officer.

**3. No Seal.** The Corporation shall not have a corporate seal.

**ARTICLE II**

**PURPOSES**

**1. Purposes Stated in Articles.** The purposes of the Corporation shall be those purposes stated in the Articles of Incorporation of the Corporation.

**2. Nonprofit Corporation.** The Corporation shall be a nonprofit corporation and no part of the net earnings or other assets of the Corporation shall inure to the benefit of any director, contributor, officer or other private individual having, directly or indirectly, any personal or private interest in the activities of the Corporation.

### ARTICLE III

#### **NO MEMBER OR CAPITAL STOCK**

The Corporation shall not grant or issue any member interest or capital stock.

### ARTICLE IV

#### **BOARD OF DIRECTORS**

**1. Powers of Board of Directors.** The Board of Directors shall have and is vested with all and unlimited powers and authorities, except as may be expressly limited by law, the Articles of Incorporation or these Bylaws, to supervise, control, direct and manage the property, affairs and activities of the Corporation, to determine the policies of the Corporation, to do or cause to be done any and all lawful things for and on behalf of the Corporation, to exercise or cause to be exercised any or all of its powers, privileges or franchises, and to seek the effectuation of its objects and purposes; provided, however, that (i) the Board of Directors shall not authorize or permit the Corporation to engage in any activity not permitted to be transacted by the Articles of Incorporation or by a corporation organized as a nonprofit corporation under the Act, (ii) none of the powers of the Corporation shall be exercised to carry on activities, otherwise than as an insubstantial part of its activities, which are not in themselves in furtherance of the purposes of the Corporation, and (iii) all income and property of the Corporation shall be applied exclusively for its nonprofit purposes and shall not inure to the benefit of any private entity or person.

**2. Number of Directors; Qualifications.** The Board of Directors shall consist of five (5) persons, comprised of the five (5) persons serving, from time to time, as the Mayor and the City Council of the City. Notwithstanding the foregoing, if there is a vacancy in the office of the Mayor or any Councilmember of the City, the Board of Director position or positions attributable to the vacancy in the office of the Mayor or any Councilmember, as applicable, shall remain vacant until such time as a person legally assumes the office of the Mayor or Councilmember, as applicable.

**3. Powers of Directors.** Each director shall have the same powers, rights, duties and obligations as any other director, including without limitation the power and right to do all things set forth in paragraph 1 of this Article IV, to vote on all matters presented to the Board of Directors, to serve as an officer of the Board of Directors, to serve on any committee of the Board of Directors, to be indemnified and to participate in the calling of special meetings of the Board of Directors.

**4. Commencement of Term of Office of Directors.** A director shall not be deemed to have commenced his or her term of office or to have any of the powers or responsibilities of a director (i) unless such director is qualified to act as such, and (ii) until the time such director accepts the office of director either by a written acceptance or by participating in the affairs of the Corporation at a meeting of the Board of Directors or otherwise.

**5. Appointment of Directors; Terms.**

a. *Initial Terms.* Each director serving by reason of his or her assumption of the office of Mayor or Councilmember shall serve until he or she is no longer the Mayor or a Councilmember.

b. *Appointment.* All directors shall be deemed to have been appointed to the Board of Directors as of the date of their oath of office and acceptance of the office of Mayor or Councilmember, as applicable.

6. **Vacancies.** In the event of any vacancy among the directors resulting from the death, resignation, removal or disqualification, the vacant director position shall remain unoccupied until a successor director is appointed (or deemed appointed) as provided in Section 5.

7. **Compensation of Directors.** No director shall receive compensation from the Corporation for any service such director may render to it as a director. A director may be reimbursed for his or her actual expenses reasonably incurred in and about such director's performance of his or her duties as a director.

8. **Committees.** Committees not having the authority of the Board of Directors in the management of the Corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each such committee shall have such duties and authority as are from time to time delegated to it by the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon such Board or member by law.

The Board of Directors shall have no authority to appoint an executive committee or any other committee having the authority of the Board of Directors.

9. **Resignation of Directors.** Any director may resign from the Board of Directors. Such resignation shall be in writing addressed to the Secretary of the Corporation and shall be effective upon the Secretary of the Corporation's receipt of the notice. Notwithstanding anything to the contrary contained herein, any vacancy caused by resignation of a director shall remain vacant until such time as another individual is appointed (or deemed appointed) pursuant to Section 5.

10. **Removal.** Any director may be removed at any time, with or without cause, by the City Council by providing written notice to the Secretary of the Corporation. Such removal shall be effective upon the Secretary of the Corporation's receipt of the notice of removal. Notwithstanding anything to the contrary contained herein, any vacancy caused by removal of a director shall remain vacant until such time as another individual is appointed (or deemed appointed) pursuant to Section 5.

## ARTICLE V

### MEETINGS

1. **Place.** Meetings of the Board of Directors of the Corporation shall be held at the principal office of the Corporation, as designated by the Board of Directors, or at any other place within the bounds of the State, as may be determined from time to time by resolution of the Board or by written consent of the members thereof.

2. **Regular Meetings.** The Board of Directors may hold regular meetings at such time and place as may be determined from time to time by resolution of the Board of Directors. Notice of a regular meeting need not be given to directors. Any business may be transacted at a regular meeting.

3. **Special Meetings.** Special meetings of the Board of Directors may be held at any time or place and for any purpose or purposes. Special meetings may be called by the Chairperson or by the

Secretary or by a majority of the Board of Directors by notice duly given by the officer or directors calling the same in the manner hereinafter provided.

#### **4. Notice of Meetings.**

a. *Notice to Directors.* Notice of a regular meeting need not be given to directors. Written notice stating the place, day and hour of a special meeting (or that the special meeting will be by conference telephone call) and the purpose or purposes for which the meeting is called shall be delivered to each director not less than three (3) days before the date of the meeting, either personally, by mail, electronic mail, facsimile transmission, overnight delivery service or telegram, by or at the direction of the officer or the directors calling the meeting. If mailed or sent by overnight delivery service, such notice shall be deemed to be delivered when deposited in the United States mail or with the overnight delivery service, addressed to the director at such director's address as it appears on the records of the Corporation, with postage thereon prepaid. If notice is given by facsimile transmission or electronic mail, such notice shall be deemed to be delivered when the same is actually transmitted to the recipient.

b. *Public Notice.* Public notice of each such regular or special meeting shall be given at least twenty four (24) hours prior to the commencement of the meeting by posting a notice on a bulletin board, or other prominent place easily accessible to the public and clearly designated for the purpose of posting notices, at the Corporation's principal office, which notice shall include the following:

- (i) time, date, and place of the meeting, and
- (ii) tentative agenda of the meeting, with sufficient details so that the public may reasonably determine the subject matter of the meeting.

The Corporation shall also attempt to post such notice at the bulletin board or other officially designated place where meeting notices are posted at the principal place of business for the City, but the failure to arrange for such posting shall not invalidate the notice or the proceedings at the meeting. The Corporation shall also make copies of such notice available at least twenty four (24) hours prior to the commencement of the meeting, to any representative of the news media who has requested notice of the meeting, whether by way of a blanket request for notice of any Corporation meeting or a specific request for notice of a particular Corporation meeting. If notice is requested by a member of the news media less than twenty four (24) hours prior to a meeting, the Corporation shall make the notice available to any such member of the news media within a reasonable time period thereafter prior to the meeting. Notice for meetings to be held by conference telephone call shall designate a place where members of the public may hear the conference call for purposes of complying with Chapter 610, Revised Statutes of Missouri, as amended (the "**Sunshine Law**").

c. *Compliance with Sunshine Law.* The Corporation is a "quasi-public governmental body" pursuant to the Sunshine Law; therefore, notwithstanding any other provision of these Bylaws and in addition to any requirements of these Bylaws, the Corporation shall give notice of and conduct all meetings of the Board of Directors in accordance with the Sunshine Law.

**5. Waiver of Notice.** Any notice provided or required to be given to the directors may be waived in writing by any of them whether before or after the time stated therein. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where the director attends a

meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**6. Quorum.** The presence of a majority of the Board of Directors shall be required for and shall constitute a quorum for the transaction of business at all meetings. Vacant positions are not counted in determining a majority of the Board of Directors. The act of a majority of the directors present at a meeting at which a quorum is present shall be valid as the act of the Board of Directors except in those specific instances in which a larger vote may be required by law, the Articles of Incorporation or these Bylaws.

**7. Proxies.** Proxies to vote with respect to any matter shall not be allowed or accepted.

**8. Voting.** Each director present at any meeting shall be entitled to cast one vote on each matter coming before such meeting for decision. If a roll call is taken, all votes shall be recorded so as to attribute each “aye” and “nay” vote, or abstinence if not voting, to the name of the respective director.

**9. Meeting by Conference Telephone.** Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting. Notice for such meetings shall designate a place where members of the public may hear the conference call.

## ARTICLE VI

### OFFICERS

**1. General.** The officers of the Corporation shall be a Chairperson, a Vice Chairperson, a Secretary, an Assistant Secretary, a Treasurer and an Assistant Treasurer. More than one office may be held by the same person.

**2. Qualifications of Officers.** Except for the offices of Assistant Secretary and Assistant Treasurer, each officer shall meet the qualifications applicable to a member of the Corporation Board of Directors.

**3. Chairperson.** The Chairperson shall be the chief executive officer of the Corporation, shall have such general executive powers and duties of supervision and management as are usually vested in the office of the chief executive officer of a corporation, and shall carry into effect all directions and resolutions of the Board of Directors. The Chairperson shall preside at all meetings of the Board of Directors at which he or she may be present.

The Chairperson may execute all bonds, notes, debentures, mortgages, contracts and other instruments for and in the name of the Corporation.

The Chairperson shall have the right to attend any meeting of any committee of the Board of Directors and to express his or her opinion and make reports at such meeting; provided, however, that unless the Chairperson is specifically appointed to any committee, the Chairperson shall not be considered to be a committee member or have the right to vote or be counted for the purpose of determining a quorum at any such meeting.



The Chairperson shall have such other duties, powers and authority as may be prescribed elsewhere in these Bylaws or by the Board of Directors.

**4. Vice Chairperson.** The Vice Chairperson shall work in cooperation with the Chairperson and shall perform such duties as the Board of Directors may assign to him or her. In the event of the death, and during the absence, incapacity, inability or refusal to act of the Chairperson, the Vice Chairperson shall be vested with all the powers and perform all of the duties of the office of Chairperson. In the absence of the Chairperson, the Vice Chairperson shall preside at all meetings of the Board of Directors at which he or she may be present. The Vice Chairperson shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

**5. Secretary.** The Secretary shall attend the meetings of the Board of Directors, and shall record or cause to be recorded all votes taken and the minutes of all proceedings in the minute book of the Corporation to be kept for that purpose. The Secretary shall perform like duties for any committee established pursuant to these Bylaws when requested by such committee to do so. The Secretary shall be the custodian of all the books, papers and records of the Corporation and shall, at such reasonable times as may be requested, permit an inspection of such books, papers and records by any director of the Corporation. The Secretary shall upon reasonable demand furnish a full, true, authenticated and correct copy of any book, paper or record in his or her possession. The Secretary shall be the administrative and clerical officer of the Corporation under the supervision of the Chairperson and the Board of Directors.

The Secretary shall have the principal responsibility to give or cause to be given notice of the meetings of the Board of Directors, but this shall not lessen the authority of others to give such notice as provided in these Bylaws.

The Secretary shall have the general duties, powers and responsibilities of a secretary of a corporation and shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

**6. Treasurer.** The Treasurer shall have supervision and custody of all moneys, funds and credits of the Corporation and shall cause to be kept full and accurate accounts of the receipts and disbursements of the Corporation in books belonging to it. The Treasurer shall keep or cause to be kept all other books of account and accounting records of the Corporation as shall be necessary, and shall cause all moneys and credits to be deposited in the name and to the credit of the Corporation in such accounts and depositories as may be designated by the Board of Directors. The Treasurer shall disburse or supervise the disbursement of funds of the Corporation in accordance with the authority granted by the Board of Directors, taking proper vouchers therefor. The Treasurer shall be relieved of all responsibility for any moneys or other valuable property or the disbursement thereof committed by the Board of Directors to the custody of any other person or corporation, or the supervision of which is delegated by the Board to any other officer, agent or employee.

The Treasurer shall render to the Chairperson or the Board of Directors, whenever requested by them, an account of all transactions as Treasurer and of those under the Treasurer's jurisdiction and the financial condition of the Corporation.

The Treasurer shall have the general duties, powers and responsibilities of a treasurer of a corporation, shall be the chief financial and accounting officer of the Corporation and shall have and perform such other duties, responsibilities and authorities as may be prescribed from time to time by the Board of Directors.

7. **Assistant Secretary and Assistant Treasurer.** Each Assistant Secretary or Assistant Treasurer, if any, in order of their seniority, in the event of the death, and during the absence, incapacity, inability or refusal to act of the Secretary or Treasurer, respectively, shall perform the duties and exercise the powers of said respective officers and perform such other duties as the Board of Directors may from time to time prescribe.

8. **Duties of Officers May Be Delegated.** If any officer of the Corporation is absent or unable to act, or for any other reason that the Board of Directors may deem sufficient, the Board may delegate, for the time being, some or all of the functions, duties, powers and responsibilities of any officer to any other officer, or to any other agent or employee of the Corporation or other responsible person, provided a majority of the whole Board of Directors concurs therein.

## ARTICLE VII

### ADDITIONAL PERSONNEL

1. **Executive Director.** The person who serves as the City Manager of the City shall serve as the Executive Director of the Corporation. If the City Manager of the City ceases to serve in that position for any reason, then the same person shall simultaneously cease to serve as the Executive Director of the Corporation. When the City selects a new person to serve as the City Manager of the City, such person shall simultaneously commence to serve as the Executive Director of the Corporation. The Executive Director, under the direction of the Chairman, or the Board of Directors, shall have general supervision over and be in administrative charge of all the activities of the Board of Directors. Except as otherwise provided by resolution of the Board of Directors, the Executive Director shall make final certification for payment of all duly authenticated and authorized items of expenditure for payment from any Corporation funds from whatever source derived, and whenever the Chairman or the Treasurer is required to sign vouchers, requisitions and other instruments made by the Board of Directors, the Executive Director shall approve the same for submission to the Chairman or the Treasurer for signature. The Executive Director shall assist the Secretary in the performance of the Secretary's duties and shall have the full power to act in the place and instead of the Secretary at any time directed to do so by the Chairman, the Secretary or the Board of Directors.

The Executive Director shall have such other duties, power and authority as may be prescribed elsewhere in these Bylaws and as the Corporation by resolution may from time to time provide.

In the event of the death, absence, incapacity, inability or refusal to act of the Executive Director, the Member shall designate some other person to exercise, and in the absence of such designation the Chairman shall exercise, all of the powers and perform all of the duties of the Executive Director.

2. **Additional Personnel.** The Corporation may from time to time employ such other personnel as it may deem necessary to exercise its powers, duties and functions. Persons so appointed shall serve at the pleasure of the Corporation, subject to the laws of the State of Missouri. The Corporation may also from time to time retain or contract for the services of architects, engineers, accountants, attorneys, financial consultants, and such other persons, firms or corporations necessary to carry out its duties and to fix the compensation therefor.

3. **Other Agents.** The Corporation from time to time may also appoint such other agents for the Corporation as it shall deem necessary or advisable, each of whom shall serve at the pleasure of the Corporation or for such period as the Corporation may specify, and shall exercise such powers, have such

titles and perform such duties as shall be determined from time to time by the Corporation or by an officer empowered by the Corporation to make such determinations.

## ARTICLE VIII

### GENERAL PROVISIONS

**1. Compensation.** No officer who is also a member of the Board of Directors shall receive any salary or compensation from the Corporation for any services such officer may render to it as an officer. Salaries and compensation of all other officers, agents and employees of the Corporation, if any, may be fixed, increased or decreased by the Board of Directors. Each officer may be reimbursed for such officer's actual expenses if they are reasonable and incurred in connection with the purposes and activities of the Corporation.

**2. Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation.

**3. Depositories and Checks.** The moneys of the Corporation shall be deposited in such manner as the Board of Directors shall direct in such banks or trust companies as the Board of Directors may designate and shall be drawn out by checks or drafts signed in such manner as may be provided by resolution adopted by the Board of Directors.

**4. Bonds.** The Board of Directors may require that any officer or employee handling money of the Corporation be bonded at the Corporation's expense, in such amounts as may be determined by the Board of Directors.

**5. Custodian of Securities.** The Board of Directors may from time to time appoint one or more banks or trust companies to act for reasonable compensation as custodian of all securities and other valuables owned by the Corporation, and to exercise in respect thereof such powers as may be conferred by resolution of the Board of Directors. The Board of Directors may remove any such custodian at any time.

**6. Fiscal Year.** The fiscal year of the Corporation shall end on June 30.

**7. Certain Loans Prohibited.** The Corporation shall not make any loan to any officer or director of the Corporation. No loans shall be contracted on behalf of the Corporation and no evidence of any financial obligation shall be issued in its name unless authorized by a resolution of the Board of Directors.

**8. Indemnification and Liability of Directors, Officers, Employees and Agents.**

a. The Corporation shall indemnify out of the funds of the Corporation any individual (including the heirs, executors, administrators and estate of such individual) 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 said individual is or was a director, officer, employee or agent of the Corporation, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by said individual in connection with such action, suit, or proceeding if said individual acted in good faith

and in a manner said individual 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 said individual's conduct was unlawful.

b. The Corporation shall indemnify out of the funds of the Corporation any individual (including the heirs, executors, administrators and estate of such individual) who was or is a party or is threatened to be a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that said individual is or was a director, officer, employee or agent of the Corporation, against costs, expenses, including attorneys' fees, actually and reasonably incurred by said individual in connection with the defense or settlement of the action, suit or proceeding if said individual acted in good faith and in a manner said individual reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such individual shall have been adjudged to be liable for negligence or misconduct in the performance of said individual's duty to the Corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the individual is fairly and reasonably entitled to indemnification for such expenses which the court shall deem proper.

c. To the extent that a director, officer, 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 subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, said individual shall be indemnified against costs, expenses, including attorneys' fees, actually and reasonably incurred by said individual in connection with the action, suit or proceeding.

d. Any indemnification under subsections (a) and (b) of this section, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because said individual has met the applicable standard of conduct set forth in this section. The determination shall be made by the directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable if a quorum of disinterested members so directs, by independent legal counsel in a written opinion.

e. Costs and expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the Corporation in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that the individual is entitled to be indemnified by the Corporation as authorized in these Bylaws.

f. The indemnification provided by this Bylaw provision shall not be exclusive of any other rights to which those indemnified may be entitled under any other Bylaw provision or under any agreement or vote of disinterested directors or otherwise, both as to action in such individual's official capacity and as to action in another capacity while holding such office, and shall continue as to an individual who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a individual, and shall not limit in any way any right which the Corporation may have to make different or further indemnifications with respect to the same or different persons or classes of persons.

g. The Corporation shall have the power to give any further indemnity, in addition to the indemnity authorized or contemplated under other subsections of this Article VIII, Section 8, to any individual who is or was a director, officer, employee or agent provided such further indemnity is authorized, directed, or provided for in any bylaw or agreement of the Corporation which has been adopted by a vote of the members of the Corporation, and provided further that no such indemnity shall indemnify any individual from or on account of such individual's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct.

h. Out of the funds of the Corporation, the Corporation may purchase and maintain insurance on behalf of any individual who is or was a director, officer, employee, or agent of the Corporation, against any liability asserted against said individual and incurred by said individual in any such capacity, or arising out of said individual's status as such, whether or not the Corporation would have the power to indemnify said individual against such liability under the provisions of these Bylaws.

**9. Liability of Directors and Officers, Employees and Agents.** No person shall be liable to the Corporation for any loss, damage, liability or expense suffered by it on account of any action taken or omitted to be taken by such person as a director, officer, employee or agent of the Corporation if such person (i) exercised the same degree of care and skill as a prudent person would have exercised under the circumstances in the conduct of his or her own affairs, or (ii) took or omitted to take such action in reliance upon advice of counsel for the Corporation, or upon statements made or information furnished by directors, officers, employees or agents of the Corporation which such person had no reasonable grounds to disbelieve.

**10. Absence of Personal Liability.** The directors and officers of the Corporation are not individually or personally liable for the debts, liabilities or obligations of the Corporation.

**11. Insurance.** The Corporation may purchase and maintain insurance and bonds on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other entity, against any liability asserted against and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article.

**12. Custodian of Records.** The Board of Directors may from time to time appoint one or more persons or entities to act as custodian of all the books, papers and records of the Corporation and to exercise in respect thereof such powers as may be conferred by the Board of Directors. The custodian shall, at such reasonable times as may be requested, permit an inspection of such books, papers and records by any director of the Corporation. The custodian shall upon reasonable demand furnish a full, true and correct copy of any book, paper or record in his, her or its possession. The Board of Directors may remove any such custodian at any time.

## **ARTICLE IX**

### **AMENDMENTS**

Until the Board of Directors is first appointed, the Incorporator of the Corporation shall have the power to make, alter, amend and repeal the Bylaws of the Corporation and to adopt new Bylaws. After the Board of Directors is first appointed, the power to make, alter, amend and repeal the Bylaws of the

Corporation and to adopt new Bylaws shall rest solely with the Board of Directors. The Corporation shall keep at its principal office a copy of the Bylaws, as amended, which shall be open to inspection by any director at all reasonable times during office hours.

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**CERTIFICATE OF BOARD OF DIRECTORS**

The foregoing Bylaws were duly adopted as and for the Bylaws of the Olivette Parks Foundation, Inc. by the Board of Directors of said Corporation at its first meeting held on \_\_\_\_\_, 2023.

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Executive Director of the Corporation