



# **making headway** **foundation**

## **AMENDED AND RESTATED BYLAWS OF THE MAKING HEADWAY FOUNDATION**

### **ARTICLE I OFFICE AND REGISTERED AGENT**

Section 1. Principal Office. The principal office of the Making Headway Foundation (the “Corporation”) shall be in the State of New York. The Board of Directors (the “Board of Directors” or “Board”) may change the location of the principal office from time to time.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of New York as the Board of Directors may from time to time determine or the activities of the Corporation may require.

Section 3. Registered Office and Agent. The Corporation shall have and continuously maintain a registered office and a registered agent in the State of New York, as required by the State of New York Not-for-Profit Corporation Law. The registered agent shall be either an individual resident of the State or a corporation authorized to transact business in the State.

### **ARTICLE II PURPOSES**

The purposes for which the Corporation is formed are as follows:

To develop programs of support to help children and their parents cope primarily with the crisis of brain and spinal cord tumors, and to implement sustained support services including guidance, care, comfort and counseling for the children and their families; to educate and train health care professionals and volunteers to improve the care of, and quality of life for the children; to support medical research and enhanced medical care and treatment for children with primarily brain and spinal cord tumors; and to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

**ARTICLE III**  
**MEMBERSHIP**

The Corporation shall have no members.

**ARTICLE IV**  
**BOARD OF DIRECTORS**

Section 1. Powers. This Corporation shall have powers to the full extent allowed by law. All powers and activities of this Corporation shall be exercised and managed by the Board of Directors of this Corporation directly or, if delegated, under the ultimate direction of the Board of Directors.

Section 2. Number of Directors. The Board of Directors shall consist of not less than three (3) Directors, the number of Directors to be determined from time to time by resolution of the entire Board of Directors, provided that no decrease in the number of Directors shall shorten the term of any incumbent Director. As used in this Article, "entire Board of Directors" means the total number of Directors entitled to vote. Each Director shall be at least 18 years of age.

Section 3. Election and Term of Directors. The members of the Board of Directors shall be elected by the Directors at the Annual Meeting, or at a regular meeting, of the Board of Directors. Members of the Board of Directors shall serve for a term of three years until a successor has been elected at the next Annual Meeting or regular meeting marking the end of the Director's term, provided that the Chair shall automatically become a director by virtue of that office and provided also that the running of the term of director shall be suspended for all officers during the time served as an officer. If at any time the Board reaches twelve (12) members, the Board shall reconsider the issue of terms limits at the next regular or Annual Meeting of the Board.

Section 4. Organization. At each meeting of the Board of Directors, the Chair, or, in the absence of the Chair, a Vice Chair, shall preside, or in the absence of either of such officers, a chairman chosen by the majority of the Directors present, shall preside. The Secretary shall act as Secretary of the Board of Directors. In the event the Secretary shall be absent from any meeting of the Board of Directors, a secretary chosen by the majority of the Directors present shall record the minutes.

Section 5. Resignation. Any Director may resign at any time by giving written notice to the Chair of the Corporation. Such resignation shall take effect at the time specified therein, or, if no time is specified, then on delivery.

Section 6. Removal. Any Director may be removed from such office, with or without cause, by a vote of, at minimum, two-thirds of the directors present at any regular or special meeting of the Board called expressly for that purpose. Any director who does not attend at least a

majority of the scheduled Board meetings during each year of his or her term may be asked, at the discretion of the Board, to resign as a director or may be removed as stated above.

Section 7. Vacancies. Vacancies on the Board of Directors shall be filled by majority vote of the remaining members of the Board of Directors present at a meeting for the unexpired term.

Section 8. Annual Meetings. An annual meeting of the Board of Directors of the Corporation shall be held each year. Annual Meetings shall be called by the Chair, or by any two (2) voting directors then in office, and noticed in accordance with Section 10 below.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called at the direction of the Chair or by any two (2) voting directors then in office, to be held at such time, day, and place as shall be designated in the notice of the meeting.

Section 10. Notice. Notice of the time, day, and place of any meeting of the Board of Directors shall be given at least three (3) business days previous to the meeting and in the manner set forth in Section 2 of Article VIII hereof. The purpose for which a special meeting is called shall be stated in the notice. Any director may waive notice of any meeting by a written statement executed either before or after the meeting. Attendance and participation at a meeting without objection to notice shall also constitute a waiver of notice.

Section 11. Quorum. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice to any director.

Section 12. Manner of Acting. Except as otherwise expressly required by law, the Articles of Incorporation of the Corporation, or these Bylaws, the affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Each director shall have one vote. Voting by proxy shall not be permitted.

Section 13. Unanimous Written Consent In Lieu of a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively unanimously consent to such action. Such written consents shall be filed with the minutes of the proceedings of the Board. Such written consents shall have the same force and effect as the unanimous vote of such directors.

Section 14. Telephone Meeting. Any one or more directors may participate in a meeting of the Board of Directors by means of a telephone conference or similar telecommunications device, which allows all persons participating in the meeting to hear each other. Participation by telephone shall be equivalent to presence in person at the meeting for purposes of determining if a quorum is present.

Section 15. Place of Meeting. The Board of Directors may hold its meeting at the principal office of the Corporation, or at such place or places within or without the State of New York as the Board of Directors may from time to time by resolution determine.

Section 16. Compensation. Directors shall receive no compensation for their services but may be reimbursed for the expenses reasonably incurred by them in the performances of their duties.

## **ARTICLE V**

### **OFFICERS**

Section 1. Officers. The officers of the Corporation shall minimally consist of a Chair, a Vice Chair, a Secretary, and a Treasurer. The Corporation shall have such other officers as the Board of Directors may deem necessary and such officers shall have the authority prescribed by the Board. One person shall not hold two offices with the exception of Secretary-Treasurer, which may be filled by the same person.

Section 2. Election of Officers. The officers of the Corporation shall be elected annually by the directors at the Annual Meeting of the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under a contract of employment. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each officer shall extend to the first meeting of directors following the next Annual Meeting and until the officer's successor is elected or appointed.

Section 3. Resignation. Any officer may resign at any time by giving written notice to the Chair of the Board. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then upon delivery.

Section 4. Removal. Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed from such office, with or without cause, by a majority vote of the directors at any regular or special meeting of the Board called expressly for that purpose.

Section 5. Vacancies. A vacancy in any office shall be filled by the Board of Directors for the unexpired term.

Section 6. Chair. The Chair shall act as the chief executive officer of the Corporation and shall give active direction and exercise oversight pertaining to all affairs of the Corporation. He or she may sign contracts or other instruments, which the Board of Directors has authorized to be executed, and shall perform all duties incident to the office of Chair as may be prescribed by the Board of Directors. The Chair shall preside at all meetings of the Board of Directors at which the Chair is present.

Section 7. Vice Chairs. In the absence or incapacity to act of the Chair, or if the office of Chair be vacant, the Vice Chair shall preside at all meetings of the Board, and shall perform the duties and exercise the powers of the Chair, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. Each Vice Chair shall have such powers and shall perform such other duties as may be assigned by the Board of Directors or the Chair.

Section 8. Secretary. It shall be the duty of the Secretary to act as secretary of all meetings of the Board of Directors, and to keep the minutes of all such meetings in a proper book or books to be provided for that purpose; the Secretary shall see that all notices required to be given by the Corporation are duly given and served; the Secretary shall keep a current list of the Corporation's Directors and officers and their residence addresses; the Secretary shall be custodian of the seal of the Corporation and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the minute book containing the minutes of all meetings of Directors, the Executive Committee, and any other committees which may keep minutes, and of all other contracts and documents which are not in the custody of the Treasurer of the Corporation, or in the custody of some other person authorized by the Board of Directors to have such custody. The Secretary shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors.

Section 9. Treasurer. The Treasurer shall be responsible for and oversee all matters of the Corporation. The Treasurer shall, if required by the Board of Directors, obtain a bond for the faithful discharge of his duties, in such sum and with such sureties as the Board of Directors shall require. The Treasurer shall keep and maintain, or cause to be kept and maintained, the books of account and shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, shall ensure staff members properly receive and give receipts for moneys due and payable to the Corporation, and deposit all funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors. The Treasurer shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 10. Additional Officers. Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine.

Section 11. Appointed Officers. The Board of Directors may delegate to any officer or committee the power to appoint and to remove any subordinate officer, agent or employee.

## ARTICLE VI COMMITTEES

Section 1. Nominating Committee. There shall be a Nominating Committee of at least three (3) directors, who shall be elected by a majority of the votes cast by the directors of the Corporation at each Annual Meeting of the Board of Directors and shall serve until the next Annual Meeting. The Nominating Committee shall present a slate of nominees, and shall also take nominations from the floor, so long as seconded, for the Board of Directors at any regular or Annual Meeting following its election. The Nominating Committee shall also present a slate of nominees, and take nominations from the floor, so long as seconded, for the Officers of the Corporation at the Annual Meeting following its election.

Section 2. Executive, Finance, and Audit Committees, and Other Standing Committees. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee, a Finance Committee, and an Audit Committee, and other standing committees consisting of three or more directors. The standing committees shall have such authority as the Board shall by resolution provide; and the Executive Committee shall have all the authority of the Board, except that no such committee shall have authority as to the following matters:

- (a) The filling of vacancies in the Board or in any committee.
- (b) The fixing of compensation of the directors for serving on the Board or on any committee.
- (c) The removal of any directors or officers.
- (d) The amendment or repeal of the bylaws, or the adoption of new bylaws.
- (e) The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable.

Any reference in these bylaws to the Board of Directors shall include the Executive Committee unless the context or express provision otherwise provide.

Section 3. Special Committees. The Board of Directors may designate special committees, each of which shall consist of such persons and shall have such authority as is provided in the resolution designating the committee, except that such authority shall not exceed the authority conferred on the Standing Committees by Section 2 of this Article VI.

Section 4. Term of Office. Each member of a committee shall serve for one year until the next Annual Meeting of the Board of Directors and until a successor is appointed, unless the committee is sooner dissolved.

Section 5. Vacancies. Vacancies in the membership of committees may be filled by the Chair of the Board.

Section 6. Meetings. Meetings of committees, for which 24 hours' notice shall be given, shall be held at such time and place as shall be fixed by the Chair of the Corporation or the Chair of the committee or by vote of a majority of all of the members of the committee.

Section 7. Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the members of the committee shall be the act of the committee. Each committee shall designate, by majority vote of the all of the members of the committee, a Chair to preside over meetings of the committee. The procedures and manner of acting of the Executive Committee and of the committees of the Board shall be subject at all times to the directions of the Board of Directors.

Section 8. Unanimous Written Consent In Lieu of a Meeting. Any action required or permitted to be taken by a committee may be taken without a meeting if all members of the committee shall individually or collectively consent to such action. Such written consents shall be filed with the minutes of the proceedings of the committee. Such written consents shall have the same force and effect as the unanimous vote of such committee members.

Section 9. Alternate Members. The Board of Directors may designate one or more directors as alternate members of the Executive Committee or of any standing committee of the Board, who may replace any absent member or members at any meeting of such committee.

## **ARTICLE VII CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS**

Section 1. Execution of Contracts. The Board of Directors, except as otherwise provided in these bylaws, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Directors, or expressly authorized by these bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Directors.

Section 3. Checks, Drafts, etc. All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

## **ARTICLE VIII** MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 2. Notice. Whenever under the provisions of these Bylaws notice is required to be given to a director, officer, or committee member, such notice shall be given in writing by first-class mail or overnight delivery service with postage prepaid to such person at his or her address as it appears on the records of the Corporation. Such notice shall be deemed to have been given when deposited in the mail or the delivery service. Notice may also be given by facsimile, electronic communication, or hand delivery, and will be deemed given when received.

Section 3. Books and Records. There shall be kept at the office of the Corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the Board of Directors and the Executive Committee, (3) a current list of the Directors and officers of the Corporation and their residence addresses, (4) a copy of these bylaws, (5) a copy of the Corporation's application for recognition of exemption with the Internal Revenue Service, (6) a copy of the Corporation's Certificate of Incorporation, and (6) copies of the past three years information returns to the Internal Revenue Service.

Section 4. Loans to Directors and Officers. No loans other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest except as allowed by law.

## **ARTICLE IX** INDEMNIFICATION

Section 1. Authorized Indemnification. Unless clearly prohibited by law or Section 2 of this Article IX, the Corporation shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Corporation, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this Section, (a) is or was a director or officer of the Corporation, or (b) in addition is serving or served, in any capacity, at the request of the Corporation, as a director or officer of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Corporation shall have consented to such



settlement) and reasonable expenses, including attorneys' fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

Section 2. Prohibited Indemnification. The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 3. Advancement of Expenses. The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or Section 2 of this Article IX. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

Section 4. Indemnification of Others. Unless clearly prohibited by law or Section 2 of this Article IX, the Board of Directors may approve Corporation indemnification as set forth in Section 1 of this Article IX or advancement of expenses as set forth in Section 3 of this Article IX, to a person (or the testator or intestate of a person) who is or was employed by the Corporation or who is or was a volunteer for the Corporation, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Corporation in any capacity for any other corporation, partnership, joint venture, trust employee benefit plan or other enterprise.

Section 5. Determination of Indemnification. Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court the Board of Directors shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these by-laws. Before indemnification can occur the Board of Directors must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article IX. No director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested directors is not obtainable, the Board of Directors shall act only

after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these bylaws.

Section 6. Binding Effect. Any person entitled to indemnification under these bylaws has a legally enforceable right to indemnification which cannot be abridged by amendment of these bylaws with respect to any event, action or omission occurring prior to the date of such amendment.

Section 7. Insurance. The Corporation is not required to purchase Directors and Officers' liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Directors. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article IX or operation of law and it may insure directly the directors, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article IX as well as for liabilities against which they are not entitled to be indemnified by the Corporation.

Section 8. Nonexclusive Rights. The provisions of this Article IX shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Directors is authorized to enter into agreements on behalf of the Corporation with any director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article IX, subject in all cases to the limitations of Section 2 of this Article IX.

## **ARTICLE X**

### **AMENDMENTS TO BYLAWS**

Section 1. Amendments. Proposed amendments to these Bylaws shall be submitted in writing to the Directors at least three (3) business days in advance of the Board meeting at which they will be considered for adoption. The vote of a majority of the Directors then in office or the unanimous written consent of the Directors shall be required to adopt a Bylaw amendment.

Section 2. Reconsideration. The Board shall reconsider these bylaws every five (5) years.