

RESOLUTION DIRECTING THE FORMATION OF A LOCAL DEVELOPMENT CORPORATION BY OFFICIALS OF THE ALLEGANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY ON BEHALF OF THE COUNTY OF ALLEGANY

Offered by: Planning & Economic Development Committee

WHEREAS, the Allegany County Industrial Development Agency (the "Agency") was established by the State Legislature for the benefit of the County of Allegany and the inhabitants thereof as set forth in Section 906-a of the General Municipal Law (the "GML"); and

WHEREAS, the Agency is endowed with certain purposes and powers by the State Legislature in GML Section 858, and among the Agency's powers includes the following: (1) "[t]o acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes..."; (2) "to make contracts and leases, and to execute all instruments necessary or convenient to or with any person, firm, partnership or corporation, either public or private..."; (3) "[t]o acquire, construct, reconstruct, lease, improve, maintain, equip, or furnish one or more projects"; (4) "[t]o accept gifts, grants, loans, or contributions from, and enter into contracts or other transitions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity," and (5) "[t]o do all things necessary or convenient to carry out its purpose and exercise the powers expressly given [in GML Section 858]"; and

WHEREAS, the Agency, in exercising its powers to acquire real property, to make contracts, and to enter into projects, has communicated its need and desire to the County Board of Legislators to structure transactions appropriately to mitigate risk to the Agency, and utilize powers available to local development corporation that are not available to the Agency; and

WHEREAS, local development corporations formed under Section 1411 of the Not-For-Profit Corporation Law (the "NFPCL") are created to assist, among others, not-for-profit corporations that are undertaking projects that further any of the following purposes for which local development corporations are created: (1) relieving and reducing unemployment; (2) promoting and providing for additional and maximum employment; (3) bettering and maintaining job opportunities; (4) instructing or training individuals to improve or develop their capabilities for such jobs; (5) carrying on scientific research for the purpose of aiding a community or geographical areas by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and (6) lessening the burdens of government and acting in the public interest; and

WHEREAS, in furtherance of the public purposes set forth above, a local development corporation formed under the NFPCL is empowered to take the following actions: (1) to construct, acquire, rehabilitate, and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted; (2) to assist financially in such construction, acquisition, rehabilitation and improvement, and to maintain such plants for others in such territory; (3) to disseminate information and furnish advice, technical assistance,

and liaison with federal, state, and local authorities with respect thereto; (4) to acquire by purchase, lease, gift, bequest, devise, or otherwise real or personal property or interest therein; (5) to borrow money and to issue negotiable bonds, notes, and other obligations therefore, and (6) to sell, lease, mortgage, or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine to be suitable; and

WHEREAS, a local government corporation formed under the NFPCL on the County's behalf will be performing an essential government function; and

WHEREAS, pursuant to Section 1411(a) of the NFPCL, the County directs that the Agency form a local development corporation on the County's behalf to be known as the Allegany County Local Development Corporation; now, therefore, be it

RESOLVED:

1. That the Board of Legislators directs the Agency and its officers forming a local development corporation in accordance with Section 1411 of the NFPCL to create a local development corporation to be known as the Allegany County Local Development Corporation.

2. That the Board of Legislators approves the form and substance of the Certificate of Incorporation of the Allegany County Local Development Corporation, which is attached hereto as Schedule A, all in substantially the form thereof presented.

3. That this resolution shall take effect immediately.

I, Brenda Rigby Riehle, Clerk of the Board of Legislators of the County of Allegany, State of New York, do hereby certify that the foregoing constitutes a correct copy of the original on file in my office and the whole thereof of a resolution passed by said Board on the **9th day of October 2024**.

Brenda Rigby Riehle Dated at Belmont, New York, this 9th day of October 2024
Clerk, Board of Legislators, Allegany County

Moved by: **Root** Seconded by: **Hanchett** VOTE: Ayes: **11** Noes: **0** Absent: **4** Voice:
Absent: Cyr, Ricci, Ricketts-Swales, Rumfelt

SCHEDULE "A"

PROPOSED CERTIFICATE OF INCORPORATION

[SEE ATTACHED]

CERTIFICATE OF INCORPORATION
of
ALLEGANY COUNTY LOCAL DEVELOPMENT CORPORATION

A Not-For-Profit Local Development Corporation
Under Section 402 and 1411 of the Not-For-Profit
Corporation Law of the State of New York

THE UNDERSIGNED, being over the age of eighteen years, for the purpose of forming a not-for-profit local development corporation pursuant to Section 1411 of the Not For Profit Corporation Law of the State of New York (the "N-PCL"), hereby certifies as follows:

FIRST: The name of the corporation is Allegany County Local Development Corporation (hereinafter referred to as the "Corporation").

SECOND: The Corporation will be a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and, as provided in Section 1411(b) of the N-PCL, will be a Type C Corporation as defined in Section 201 of the N-PCL.

THIRD: The purpose for which the Corporation is to be formed and operated exclusively for charitable purposes of:

(a) promoting community and economic development and the creation of jobs for the citizens of Allegany County, New York (the "County") by, among other things, facilitating the purchase of real property; and

(b) undertaking projects and activities within the County for the purpose of relieving and reducing unemployment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the County by attracting new industry to the County or by encouraging the development of, or retention of, an industry in the County, and lessening the burdens of government and acting in the public interest.

By means of engaging in the following activities:

(a) entering into contracts with any other economic development organizations to help achieve the purposes described in paragraph (a) and (b) above; and

(b) in general, performing any and all acts and things, and exercise and any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

FOURTH: The activities referred to in subparagraph (a) of paragraph THIRD above will achieve the lawful public objective of lessening the burdens of government, the carrying out of such purposes and the exercise of the powers conferred on the Corporation being the performance of an essential governmental function, it being understood that the performance of such activities will assist the County in reducing unemployment and promoting additional job growth and economic development.

FIFTH: The operations of the Corporation will be conducted within the territory of the County. Notwithstanding any other provision of this Certificate of Incorporation, the by-laws and any provision of law, so long as any Obligations remain outstanding, the Corporation will not do any of the following:

(a) engage in any business or activity other than as set forth in paragraph THIRD;

(b) without the consent of the Allegany County Industrial Development Agency and the affirmative vote of two thirds of the members of the Board of Directors of the Corporation, (i) dissolve or liquidate, in whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or a substantial part of its property, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability to pay its debts generally as they become due or (vii) take any corporate action in furtherance of the actions set forth in clauses (i) through (vi) of this paragraph; or

(c) without the consent of the Allegany County Industrial Development Agency and the affirmative vote of two thirds of the members of the Board of Directors of the Corporation, merge or consolidate with any other corporation, company or entity or, except to the extent contemplated by paragraph THIRD hereof, sell all or substantially all of its assets or acquire all or substantially all of the assets or capital stock or other ownership interest of any other corporation, company or entity.

SIXTH: Pursuant to the requirements of Section 1411(e) of the Not-For-Profit Corporation Law:

(a) All income and earnings of the Corporation will be used exclusively for its corporate purposes or accrue and, subject to the Corporation's responsibilities under the Obligations, be paid to the New York Job Development Authority.

(b) No part of the income or earnings of the Corporation will inure to the benefit or profit of, nor will any distribution of its property or assets be made to, any member, director or officer of the Corporation, or private person, corporate or individual, or to any other private interest, except that the Corporation may repay loans made to it and may repay contributions (other than dues) made to it to the extent that any such contribution may not be allowable as a deduction in computing taxable income under the Internal Revenue Code of 1986, as amended.

(c) If the Corporation accepts a mortgage loan or loans from the New York Job Development Authority, the Corporation will dissolve in accordance with the provisions of paragraph (g) of Section 1411 of the N-PCL upon the repayment or other discharge in full by the Corporation or all such loans.

SEVENTH: (a) The Corporation will not attempt to influence legislation by propaganda or otherwise, or participate in or intervene, directly or indirectly, any political campaign on behalf of or in opposition to any candidate for public office.

(b) The Corporation will not engage in any activities not permitted to be carried on by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(c) The Corporation will not accept a mortgage loan or loans from the New York Job Development Authority.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors will, after paying or making provision for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets and property of the Corporation to the Allegany County Industrial Development Agency, so that the Allegany County Industrial Development Agency can use such assets and property to accomplish the purposes set forth in Section 1411(a) of the N-PCL. Any of such assets not so disposed of will be disposed of by order of the Supreme Court of the State of New York pursuant to Section 1008 of the N-PCL.

NINTH: The office of the Corporation will be located in Allegany County, New York.

(a) The Corporation will, upon request by the Allegany County Industrial Development Agency, make available any and all books and records of the Corporation for inspection by the Members of the Allegany County Industrial Development Agency.

(b) The Corporation will submit to the Allegany County Industrial Development Agency an annual financial report together with a report of the operations and accomplishments of the Corporation for such annual period.

(c) The governing body of the Allegany County Industrial Development Agency will have the right to conduct an annual audit of the books and records of the Corporation.

TENTH: The Allegany County Industrial Development Agency is the sole member of the Corporation.

ELEVENTH: The Corporation will be managed by a Board of Directors, who are to be comprised of those persons named in paragraph TWELFTH hereof (the "Directors"). Each of the Directors will serve at the pleasure of the Allegany County Industrial Development Agency and continue to hold office until his successor is appointed by the Allegany County Industrial Development Agency.

The Corporation is deemed to be a public body (as such term is defined in the Open Meetings Law) and, as such, each meeting of the Board of Directors of the Corporation will be conducted in the manner prescribed by the Open Meetings Law. The Directors will not receive compensation for services provided to or on behalf of the Corporation.

TWELFTH: The Corporation will consist of not less than three nor more than seven Directors. The Directors will be appointed by the Allegany County Industrial Development Agency.

- (a) The names and addresses of the initial Directors of the Corporation are as follows:
 - (i) Judith Hopkins, Filmore, NY
 - (ii) Randy Shayler Wellsville NY
 - (iii) Richard Ewell, Wellsville, NY
 - (iv) Douglas Frank, Cuba, NY
 - (v) John Ricci, Cuba, NY

THIRTEENTH: The Corporation will be subject to the Public Authorities Accountability Act of 2005 (the "Act"). As such, the Corporation will be required to, among other things: (1) undergo annual independent audits and submit the results of such audits to the County and the New York State Authority Budget Office, (2) prepare and submit its annual budget to the County and the New York State Authority Budget Office, (3) adopt the various ethical, reporting, property disposition and disclosure policies required by the Act, and (4) form governance and audit committees to ensure the Corporation is in compliance with the Act and any other applicable laws.

FOURTEENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State will mail a copy of any process against the Corporation served upon him or her is Allegany Local Development Corporation, 420 East German Street, Suite 101A, Allegany, New York 13350.

FIFTEENTH: The By-laws of the Corporation may be adopted, amended or repealed by a majority of the Directors of the Corporation upon 10 days notice to all of the Directors, provided, however, that the Corporation will not amend, alter, change or repeal any provision of the adopted By-laws without the consent of the Chairman of the Allegany County Industrial Development Agency.

SIXTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in any manner now or hereafter provided herein or by statute; provided, however, that (1) the Corporation will not amend, alter, change or repeal any provision of this Certificate of Incorporation without the affirmative vote of two-thirds of the members of the Board of Directors of the Corporation and the consent of the Chairman of the Allegany County Industrial

Development Agency, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Chairman of the Allegany County Industrial Development Agency and the Directors with 10 days advance notice of any proposed amendment, alteration, change or repeal.

IN WITNESS WHEREOF, this certificate has been subscribed by the undersigned this _____ day of _____, 2024.

Daniel A. Spitzer, Incorporator
Hodgson Russ LLP
677 Broadway, Suite 401
Albany, New York 12207