

**BATAVIA DEVELOPMENT CORPORATION (BDC)**  
**Meeting Minutes June 27, 2019**

**Attendance**

BDC Attendees: Pier Cipollone, Wesley Bedford, Nate Varland, Martin Moore, Steve Pies, Jake Whiting, Rebecca Cohen and Rachael Tabelski (Director of Economic Development)

Excused: Chris Fix, Lori Aratari

Guest/Media: Brian Quinn- The Batavia Daily News, Lauren Leone- The Batavian

**Call to Order**

At 8:32 a.m. P. Cipollone, President of the BDC, called the meeting to order in the Community Room, 2<sup>nd</sup> floor of City Hall.

**Enter Executive Session**

S. Pies made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:35 a.m. for the following reasons:

- 1.The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion discipline, suspension, dismissal or removal of a particular person or corporation.
2. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by W. Bedford and approved by all members present.

8:55 a.m. Jake whiting left the meeting.

**Enter Public Session**

S. Pies made a motion to enter back into public session at 9:09 a.m.; seconded by N. Varland and approved by all members present.

**Chairman's Report**

P. Cipollone presented the meeting minutes from the May 23, 2019 meeting. W. Bedford made a motion to approve the meeting minutes as presented; seconded by P. Cipollone and approved by all members present.

P. Cipollone announced the next scheduled meeting for the BDC will be held on July 25th, 2019 at City Hall at 8:30 a.m.

**Presentation**

Gregory Hallock, GO ART! Executive Director, presented to the board. GO ART! is seeking an approval of a \$50,000 loan commitment to show local funding capacity in an effort to secure grant funds. GO ART! will be applying for the Finger Lakes Regional Economic Development Council Consolidated Funding Application for Arts & Cultural Facilities (NYSCA) Improvement Program - Midsized Capital Project Fund through the New York State Council on the Arts. The application is due July 26th. The loan would be an interest only, grant back, construction loan to aid improvements at Seymour Place.

GO ART! applied to the DRI, however the project was not selected by the state review committee for funding. GO ART! needs to make immediate exterior improvements to Seymour Place and is looking to add an elevator for accessibility.

GO ART! has also applied to the Batavia DRI- Building Improvement Fund and scored 65 out of 100 points. There is still an opportunity for GO ART! to access grant funds from this program as the first eight projects finalize their scopes and

project costs. Go ART! also has other building improvement grant applications under consideration at this time from different regional sources.

To apply for the NYSCA Arts & Cultural Facilities Improvement Program - Midsized Capital Project Fund GO ART! must show their ability, including financing, to complete a capital project. GO ART! currently has access to a \$40,000 line of credit to assist with any potential project, and would like the BDC to approve, and issue a letter of commitment for a \$50,000 loan commitment to show the local match capacity. GO ART!'s finances are in order and they are capable of making payments on the loan until grant reimbursement fully pays off the loan.

## **Committee Reports**

### **Governance**

#### **Resolution to Amend and File Certificate of Incorporation and Adopt Updated By-Laws**

RESOLUTION APPROVING OF AND AUTHORIZING THE BATAVIA DEVELOPMENT CORPORATION TO: (i) EXECUTE AND FILE A CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION PURSUANT TO SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW; AND (ii) AMEND THE BY-LAWS OF THE BATAVIA DEVELOPMENT CORPORATION

**WHEREAS**, the Batavia Development Corporation (the "BDC") was established as a not-for-profit local development corporation of the State of New York organized under Section 1411 of the New York State Not-For-Profit Corporation Law ("NPCL") and is a corporation as defined in sub-paragraph (a)(5) of Section 102 of said law, for which a Certificate of Incorporation was filed on August 15, 1994 (the "Certificate"); and

**WHEREAS**, by a determination letter issued by the Internal Revenue Service (the "IRS") on or about August 22, 2011, the BDC was recognized as, and still is, a tax exempt corporation under § 501(c)(4) of the Internal Revenue Code ("IRC"), as a result of which donors may not deduct contributions made to it; and

**WHEREAS**, the BDC is in the process of filing an application with the IRS for tax exempt designation as a § 501(c)(3) charitable corporation; and

**WHEREAS**, two important requirements of the tax exemption status application as an IRC § 501(c)(3) charitable corporation are that a corporation's certificate of incorporation properly limit its charitable purpose to the scope of IRC § 501(c)(3) and provide for a standard dissolution clause. As is, BDC's Certificate, filed 1994, does not meet these requirements; and

**WHEREAS**, in furtherance of making the IRC § 501(c)(3) application and in order to receive a favorable determination from the IRS, BDC desires to adopt a resolution to authorize the execution and delivery of a Certificate of Amendment (the "Certificate of Amendment") to amend the Certificate in accordance with IRS guidance materials for tax exemption under IRC § 501(c)(3); and

**WHEREAS**, pursuant to Article VII of BDC's By-Laws, revised September, 2012, the By-Laws may be adopted, amended or repealed only by two-third (2/3) vote of the entire Board of Directors of BDC; and

**WHEREAS**, the BDC also desires to adopt a resolution authorizing amendment to its By-Laws.

**NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF THE BATAVIA DEVELOPMENT CORPORATION AS FOLLOWS:**

Section 1. Pursuant to and in accordance with NPCL § 803, the BDC hereby approves and authorizes the execution of a Certificate of Amendment substantially in the form attached as **Exhibit A**, hereto. The BDC hereby further authorizes the filing of said Certificate of Amendment with the New York State Department of State.

Section 2. Pursuant to and in accordance with Article VII of the BDC's By-Laws, the BDC hereby amends and restates its By-Laws, a copy of which is attached hereto as **Exhibit B** and as annexed to the minutes of this meeting and made a part hereof. The Amended and Restated By-laws of the BDC are hereby adopted.

Section 3. The directors, officers, employees and agents of the BDC are hereby authorized and directed for and in the name and on behalf of BDC to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the director, officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by BDC with all of the terms, covenants and provisions of the documents executed for and on behalf of BDC.

Section 4. BDC hereby ratifies, confirms, and approves any and all prior actions and approvals heretofore undertaken in connection with the foregoing.

Section 5. This Resolution shall take effect immediately. Dated: June 27, 2019

R. Cohen made a motion to approve the resolution; seconded by M. Moore and approved by all members present.

#### **Audit and Finance**

2018-19 BDC Audit- P. Cipollone presented the BDC's 2018-19 Audit. The BDC Audit & Finance Committee met with Nicole Ryan and Laura Landers CPA's with Freed Maxick on June 19<sup>th</sup> to review the agency audit. The BDC Board engaged Freed Maxick, a certified public accounting firm, to perform an independent audit of the 2018-19 financial statements. The Audit & Finance committee reported that Freed Maxick, affirmed that no material deficiencies in internal controls were identified during the audit. The firm also affirmed that, in their opinion, the audited financial statements present fairly, in all material respects, the financial position of the BDC as of March 31, 2019, in accordance with generally accepted accounting principles. The Audit can be found on the BDC website.

W. Bedford made a motion to approve the BDC 2018-19 Audit as presented; seconded by R. Cohen and approved by all members present.

2018-19 Annual Report- The BDC board reviewed the BDC's Annual Report. A few minor changes were suggested and R. Tabelski confirmed she would make the changes. The Annual Report can be found on the BDC website.

W. Bedford made a motion to approve the BDC 2018-19 Annual Report as presented; seconded by R. Cohen and approved by all members present.

2018-19 Paris Report- The BDC board reviewed the agency's Paris Report that is required to be filed annually per The Public Authorities Reform Act of 2009 (Chapter 506 of the Laws of 2009). R. Tabelski noted some minor changes that needed to be made and that the report would be filed Friday June 28<sup>th</sup> prior to the New York State Authority Budget Office (ABO) deadline. The PARIS report can be found on the BDC website.

R. Cohen made a motion to approve the BDC 2018-19 Paris Report as presented; seconded by N. Varland and approved by all members present.

Investment Report the BDC reviewed the Investment Report and letter from Freed Maxick certifying that the agency has complied with the Investment Guidelines based on the criteria referred to under New York State Comptroller's Investment Guidelines for Public Authorities and Section 2925 of the New York State Public Authorities Law.

S. Pies made a motion to approve the BDC 2018-19 Investment Report as presented; seconded by W. Bedford and approved by all members present.

Procurement Report- The BDC reviewed the Procurement Report prepared as part of the Annual Report. There were no transactions that were non-contract procurement, such as purchase orders, that resulted in a cumulative payment of \$5,000 or more to a single vendor during the fiscal year. The authority did have one contract that was competitively bid for architectural and administrative services related to the Batavia DRI-Building Improvement Fund. The contract totaled \$45,000 and was awarded on January 23, 2019.

N. Varland made a motion to approve the BDC 2018-19 Procurement Report as presented; seconded by R. Cohen and approved by all members present.

9:50 a.m. W. Bedford left the meeting.

Financial Statements- The May 2019 financial statements were reviewed with the board, and a brief overview was given. R. Tabelski reported that the only activity in the month of May was a \$495 referral fee payment from the GCEDC and salary expenses related to the Director of Economic Development.

S. Pies made a motion to approve the May 2019 financial statements; seconded by R. Cohen and approved by all members present.

Directors & Officers Liability Insurance Extension- R. Tabelski reported that in an effort to align the BDC's insurance renewals to coincide with the beginning of the fiscal year the BDC requested an extension of their current Directors & Officers Liability insurance. The extension will run from August 1, 2019 until April 1, 2020. The additional premium for this extension is \$966. The agency budgeted \$900 for Directors and Officers Liability Insurance in the 2019-20 budget. The policy has \$1 Million in liability coverage, \$1 Million in employment practices, \$ 1 Million in aggregate insurance. There is a \$2,500 deductible for each claim.

N. Varland made a motion to approve the extension of the Directors & Officers Liability Insurance extension; seconded by R. Cohen and approved by all members present.

### **Real Estate/ BOA**

Ellicott Station- The owners of the Ellicott Station site, Savarino Companies, continue to work on pre-development activities including brownfield testing, permitting, exploring phasing opportunities, and finalizing financing. The BDC, the City of Batavia and the GCEDC continue to work with the developer to help finalize the project.

Batavia DRI- Project Updates- R. Tabelski and Insite Architecture continue to work with project owners finalizing their budgets, scope of work and on environmental and State Historic Preservation Office submissions. After initial discussions some projects will increase in investment as the architects work to finalize upper-floor apartment renderings and cost estimates. Others projects have looked to reduce their scope as they had expectations of a more robust grant award.

City RLF Grant Policy- On June 24<sup>th</sup> the City of Batavia City Council discussed and advanced a policy document to their Business meeting (July 8<sup>th</sup>). The Policy will provide framework for the RLF fund to distribute grants for City economic development initiatives, BOA, and for small building improvement fund grants. Specifically, the policy it outlines when grants may be considered and how much of the fund must remain for revolving loans for small business, and how much

can be used for grants. The BDC is responsible for making decisions on the loans, reporting on the balance of the fund and overall administration. The City council will be the decision maker on any grant requests that come forward.

Genesee Dental CBDG Grant- On June 24th the City of Batavia City Council discussed and set a Public Hearing (July 8<sup>th</sup>) for the application of Genesee Dental Community Development Block Grant, through the 2019 New York State Consolidated Funding Application. The Community Development Block Grant program will allow the City of Batavia to assist Genesee Dental PC to redevelop a vacant commercial building at 215 East Main Street into a modern, state-of-the-art dental facility to better serve patients throughout the City of Batavia, Genesee County, and beyond. The community will benefit significantly from the completion of this project because it will add 15-20 well-paying jobs in the City of Batavia; increase the accessibility of quality dental health services for the community; and advance the revitalization of Batavia's downtown by redeveloping a vacant storefront. The total capital investment on the project is approximately \$1.3 Million.

BOA Pre-Development CFA Grant Application- R. Tabelski said that the City of Batavia City Council and City Manager are looking into a funding opportunity in the 2019 Consolidated Funding Application (CFA) for a pre-development grant that could be used at designated BOA sites. Services such as environmental investigation, legal real estate services fees associated with land assembly, design and engineering services or infrastructure and buildings, building condition studies, public engagement and marketing are allowed under the grant. In the final BOA plan issued by the City, a list of "next steps" was identified to re-develop the sites and many of these services can be funded under this new grant program.

#### **Small Business**

The GO-ART! loan request was discussed. Members of the board felt that supporting GO ART! and their building was important and they wanted to assist the organization. The board discussed the importance of arts and culture downtown and the historic building that is worthy of preservation. They asked R. Tabelski to get the sources and uses review of the programs that GO ART! is pursuing at this time. The board members agreed to approve a Conditional Offer of a \$50,000 interest only loan with fixed payments that will expire on September 30, 2019. The Conditional Offer can be extended by board approval. The board will hear from GO ART! again at their August meeting to determine if the conditional offer will need to be extended.

**Old Business**- nothing at this time.

**New Business** nothing at this time.

#### **Adjournment**

S. Pies made a motion to adjourn the meeting; seconded by R. Cohen and approved by all member present. The meeting stood adjourned at 10:06 a.m.

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF**

**BATAVIA DEVELOPMENT CORPORATION**

**UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

I, the undersigned, do hereby certify:

**FIRST:** The name of the corporation is Batavia Development Corporation.

**SECOND:** The Certificate of incorporation was filed by the Department of State on August 15, 1994.

**THIRD:** The law under which the Corporation was formed is: Section 1411 of the Not-For-Profit Corporation Law of the State of New York.

**FOURTH:** The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

**FIFTH:** The certificate of incorporation is amended as follows:

I. Paragraph **SECOND** of the Certificate of Incorporation relating to the purposes and powers of the Corporation is hereby amended to read in its entirety as follows:

**SECOND:** The Corporation shall be a non-profit local development corporation under Section 1411 of the New York Not-For-Profit Corporations Law, organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding the territory in which its operations are principally to be conducted by attracting new businesses to such territory or by encouraging the development of, or retention of, said business in said territory, and lessening the burdens of government and acting in the public interest. In furtherance of said purposes, the corporation shall have the following powers:

a. To construct, acquire, rehabilitate and improve for use by others retail, industrial, commercial, recreation and manufacturing plants and facilities in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants and facilities for others in such territory; to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto;

b. To acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein;

c. To borrow money and to issue negotiable bonds, notes and other obligations therefore;

d. Without leave of the court, 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;

e. In connection with loans from New York State and United States government agencies, to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of retail, industrial, commercial, recreational or manufacturing facilities in the territory in which the operations of such corporation are principally to be conducted, and

f. To do all and everything suitable for the accomplishment of any of the foregoing purposes.

II. The TENTH Paragraph of the Certificate of Incorporation relating to the dissolution clause is hereby amended to read in its entirety as follows:

TENTH: Upon the dissolution of the Corporation, after the payment of all debts and liabilities of the Corporation of whatsoever kind and nature, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by a court of competent jurisdiction in the county in which the principal office of the organization is then located, exclusively for such purposes or to such

organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

**SIXTH:** The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: Batavia Development Corporation, 1 Batavia City Center, Batavia, New York 14020.

**SEVENTH:** The Corporation has no members. This Certificate of Amendment was authorized by a majority of the Corporation's Board of Directors entitled to vote thereon at a meeting of the Board of Directors in which majority of the Board was present.

[REST OF PAGE LEFT BLANK INTENTIONALLY]



IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 27 day of June, 2019.

By: Pierluigi Cipollone  
Pierluigi Cipollone, President

State of New York

SS:

County of Genesee

Pierluigi Cipollone being duly sworn deposes and says that he is the President of Batavia Development Corporation and the person who signed the foregoing Certificate of Amendment and knows the contents thereof and that the same is true to her knowledge.

Pierluigi Cipollone  
Pierluigi Cipollone

Sworn to before me this 27 day of June 2019.

ROBERT G. MURRAY  
NOTARY PUBLIC, State of New York  
Qualified in Erie County  
Commission Expires 03-04-20 22

Robert G. Murray  
Notary Public

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BATAVIA DEVELOPMENT CORPORATION  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

**FILER:**

**Robert G. Murray, Esq.  
HARRIS BEACH PLLC  
726 Exchange Street, Suite 1000  
Buffalo, New York 14210**

**AMENDED AND RESTATED**  
**BY-LAWS**  
**of the**  
**BATAVIA DEVELOPMENT CORPORATION**

**AS OF June 27, 2019**

**ARTICLE I – THE CORPORATION**

**SECTION 1 NAME**

The Corporation shall be known as “Batavia Development Corporation” (hereinafter, the “Corporation”).

**SECTION 2 OFFICES**

The principal office of the Corporation shall be in the City of Batavia, County of Genesee, State of New York. The corporation may also have offices at such other places within or 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 PURPOSES**

The Corporation shall have such purposes as are now or hereafter set forth in its Certificate of Corporation, as amended (hereinafter, the “Certificate”). The Batavia Development Corporation was organized by the City of Batavia and is responsible for the economic development activities and is a steward for the City’s economic development funds. The Corporation is to operate exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, and lessen the burden of government and act in the public interest. Furthermore, the Corporation was formed to:

- (a) foster job creation;
- (b) construct, acquire, rehabilitate and improve for use by others, facilities in the City of Batavia, to assist financially in such construction, acquisition, rehabilitation and improvement to maintain and furnish advice, technical assistance and liaison with federal, state and local authorities;
- (c) To acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein;

(d) To apply for loans and borrow money without limit as to amount; to make, draw, accept, endorse, execute and issue negotiable bonds, debentures, notes and other obligations therefor;

(e) To sell, lease, mortgage or otherwise dispose of or encumber any such facilities or any of its real or personal property or any interest therein upon such terms as it may determine;

(f) To enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of facilities and related businesses in the territory in which the operations of such Corporation are principally to be conducted;

(g) To apply for and make grants and loans and to execute any and all documents necessary in connection therewith;

(h) 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, officers or any private person;

(i) Without leave of the court, 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;

(j) In connection with loans from New York State and United States government agencies, to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of retail, industrial, commercial, recreational or manufacturing facilities in the territory in which the operations of such corporation are principally to be conducted;

(k) To do all and everything suitable for the accomplishment of any of the foregoing purposes; including but not limited to retail loans and assistance to retail businesses; and

(l) In general, to perform any and all acts and things, and exercise 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.

## **ARTICLE II – BOARD OF DIRECTORS**

### **SECTION 1 POWER OF THE BOARD OF DIRECTORS**

The corporation shall be managed by its Board of Directors (hereinafter, the “Board”), which shall establish all general policies governing its operations.

SECTION 2 NUMBER, ELECTION, AND TERM OF DIRECTORS

(a) The number of voting Directors shall be at least five (5) and not more than a total of nine (9) voting Directors. Directors shall be appointed by the Board. Whenever the number of voting Directors is less than five (5), there shall be a special meeting of the Board in which more voting Directors shall be appointed to maintain a total of at least five (5). The term of each Director shall be three (3) years. No Director shall be elected to the Board for more than three (3) consecutive terms. Up to an additional ten (10) individuals may be appointed as non-voting Directors of the Board, who shall serve for one-year term and act in advisory capacity only to the voting Directors. The appointed non-voting Directors shall enjoy the benefits of any indemnification of voting Directors as determined herein or as determined from time to time. The Directors shall exercise all rights of Directors as described herein and in the Certificate of Incorporation or any applicable resolution. Any subsequent increase or decrease in the size of the Board of Directors shall require an amendment of the Certificate and the approval of Board by the affirmative vote of a majority of voting Directors at a duly convened meeting of the Board at which a quorum is present. As used in these By-laws, "the entire Board of Directors" means the total number of voting Directors that the Corporation would have if there were no vacancies on the Board.

(b) The President/Chief Executive Officer, as defined herein, may serve on the Board of Directors of the Corporation; provided, however, in such event, shall not participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of President/Chief Executive Officer.

(c) All Directors of the Board shall participate in training approved by the State of New York regarding their legal, fiduciary, financial and ethical responsibilities as Directors within one (1) year of appointment to the Board. Thereafter, the Directors shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of the Corporation and the adhere to the highest standards of responsible governance.

(d) As soon as practicable and in compliance with Section 2825 of the Public Authorities Law, the majority of the voting Directors shall be Independent Directors, as such term is defined in paragraph (e) below.

(e) Independence. For the purposes of these By-Laws, an Independent Director means any person who:

(i) is not, and in the past two (2) years has not been, employed by the Corporation or another corporate body having the same ownership and control of the Corporation in an executive capacity;

(ii) is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars (\$15,000.00) for goods and services provided to the Corporation or received any other form of financial assistance valued at more than fifteen thousand dollars (\$15,000.00) from the Corporation;

(iii) is not a relative of an executive officer or employee in an executive position of the Corporation or another corporate body having the same ownership and control of the Corporation; and

(iv) is not, and in the past two (2) years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Corporation or another corporate body having the same ownership and control of the Corporation.

(f) Board Offices. A Chairperson and Vice-Chairperson shall be elected from among the Directors at the annual meetings of the Board of Directors. The term of office for the Chairperson and Vice-Chairperson shall extend for one year after his or her election and until a successor is elected. Subject to the provision of paragraph (a) of this section, the Chairperson and Vice-Chairperson shall be eligible to serve an unlimited number of consecutive terms.

### SECTION 3 RESIGNATION AND REMOVAL OF DIRECTORS

(a) Any Director of the Corporation may resign at any time by giving written notice to the Chairperson, with a copy provided to the Secretary. Such resignation shall take effect at the time specified therein or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

(b) Any Director may be removed from the Board with or without cause by a majority vote of voting Directors provided there is a quorum of not less than a majority of the entire Board present.

### SECTION 4 NEWLY CREATED DIRECTORSHIPS AND VACANCIES

Newly created directorships resulting from an increase in the number of directors, and vacancies occurring for any reason, shall be filled by the Board of Directors as soon as practicable but in no event later than sixty (60) days after the increase or vacancy occurs. A Director elected to fill a vacancy caused by resignation, death, disability or removal shall hold office for the unexpired term of his or her predecessor in office and until a successor is elected and takes office.

### SECTION 5 ANNUAL MEETING

The Annual Meeting of the Board of Directors shall be held within six months after the end of each fiscal year at a convenient time and location designated by the Board. Written notice of the annual meeting shall be mailed, emailed or delivered to each Director of the Corporation prior to the meeting.

## SECTION 6 ANNUAL REPORT

At the annual meeting of the Board, a Director designated by the Board or the President and/or the Treasurer of the Corporation shall present an annual report showing:

- (a) A complete audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation; and
- (b) A summary of the activities of the Corporation during the preceding year.

The annual report of the Corporation shall be filed every year, together with the PARIS report, with the New York State Public Authority's Budget Office.

## SECTION 7 SPECIAL MEETING AND NOTICE

Special meetings of the Board of Directors may be called at any time by a majority of Directors or by the President/Chief Executive Officer or any other officer of the Corporation. Written notice shall be mailed or delivered to each Director of the Corporation prior to the meeting. Said notice shall state the purposes, time and place of the special meeting and that no business other than that specified in the notice may be transacted; provided, however, if by unanimous consent all of the Directors present at such meeting elect to transact business not previously described in the aforementioned notice, then the Directors may transact such other business.

## SECTION 8 WAIVERS OF NOTICE

Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

## SECTION 9 PLACE OF MEETING

The Board of Directors may hold its meetings at such place or places within or outside the State of New York as the voting Directors may from time to time by resolution determine.

## SECTION 10 OPEN MEETINGS

The Corporation is subject to Open Meetings Law. The Corporation shall comply with the Open Meetings Law of the State of New York, as set forth within Article 7 of the Public Officers Law.

## SECTION 11 FREEDOM OF INFORMATION

The Corporation is subject to Freedom of Information Law. The Corporation shall comply with the Freedom of Information Law of the State of New York, as set forth within Article 6 of the Public Officers Law.

## SECTION 12 PUBLIC AUTHORITIES ACCOUNTABILITY ACT

The Corporation is subject to the Public Authorities Accountability Act of 2005, as amended by Chapter 506 of the Laws of 2009 (collectively, the "PAAA") and shall comply with the PAAA, as set forth within the New York State Public Authorities Law.

## SECTION 13 QUORUM AND ADJOURNED MEETINGS

(a) A majority of the voting Directors shall constitute a quorum for the transaction of business at meetings of the Board. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any Director(s).

(b) A majority of the voting Directors present, whether or not a quorum is present, may adjourn the Board meeting to another time and place. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. Notice of the adjourned meeting shall be given to all Directors.

## SECTION 14 ACTION BY THE BOARD OF DIRECTORS

Any corporate action to be taken by the Board of Directors means action at a meeting of the Board. Each voting Director shall have one vote regarding any corporate action to be taken by the Board. Except as otherwise provided by law or these By-Laws, the vote of a majority of the voting Directors present at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board of Directors. All reference to actions of the Board of Directors herein and in the Certificate shall mean the affirmative vote of a majority of the voting Directors present at the time of the vote at a duly convened meeting at which a quorum is present.

## SECTION 15 ORGANIZATION

At each meeting of the Board of Directors, the Chairperson, or, in his or her absence, the Vice-Chairperson shall preside. The Secretary, or in his or her absence, a person chosen by a majority of the voting Directors present, shall keep complete and accurate minutes of the meeting.

## SECTION 16 ATTENDANCE AT MEETINGS

Attendance at each meeting of the Board shall be recorded by the Secretary in the minutes thereof.

## SECTION 17 COMPENSATION

The Directors shall serve in their capacity as Directors of the Corporation without compensation. All Directors may be reimbursed for reasonable expenses incurred in the performance of corporate duties.



## SECTION 18 ANNUAL INDEPENDENT AUDIT

The Audit Committee shall present to the Board upon its completion, the annual independent audit report performed in accordance with the requirements of the PAAA and generally accepted government auditing standards certified by a firm of independent public accountants. The certified independent public accounting firm that performs the annual independent audit shall timely report to the Audit Committee the following:

- (i) the assets and liabilities, including the status of reserve, depreciation, special or other funds including the receipts and payments of such funds, of the Corporation as of the end of the fiscal year;
- (ii) the principal changes in assets and liabilities, including trust funds, during said fiscal period;
- (iii) the revenue or receipts of the Corporation, both unrestricted and restricted, to particular purposes during said fiscal period;
- (iv) the expenses or disbursements of the Corporation for both general and restricted purposes, during said fiscal period; and
- (v) a schedule of the bonds and notes of the Corporation outstanding during said fiscal period, including all refinancings, calls, refundings, defeasements, and interest rate exchange or other such agreements, and for any debt issued during the fiscal period, together with a statement of the amounts redeemed and incurred during such fiscal period as a part of a schedule of debt issuance that include the date of issuance, term, amount, interest rate, means of repayment and cost of issuance.

Furthermore, the certified independent public accounting firm that performs the annual independent audit shall timely report to the Audit Committee the following:

- (i) all critical accounting policies and practices to be used;
- (ii) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with the management of the Corporation, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm;
- (iii) other material written communications between the certified independent public accounting firm and the management of the Corporation, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

## SECTION 19 PROPERTY RIGHTS

No Director of the corporation shall, by reason of that position, have any rights to or interest in the property or assets of the Corporation.

## ARTICLE III - COMMITTEES

### SECTION 1 STANDING COMMITTEES

(a) The Standing Committees of the Board shall be as described in subparagraph (b) below. Except as otherwise provided by these By-Laws, each Standing Committee shall consist of at least three Directors. No Standing Committee shall have authority as to the following matters:

- (i) The filling of vacancies on the Board of Directors or any committee;
- (ii) The amendment or repeal of these By-laws or the adoption of new By-Laws; or
- (iii) The amendment or repeal of any resolution of the Board which by its terms is not so amendable or repealable.

(b) Until changed by amendment of these By-Laws, the Corporation shall have the following Standing Committees:

Audit and Finance Committee. There shall be an Audit and Finance Committee consisting of at least a majority of Independent members, who shall be elected by a plurality of the votes cast by the voting Directors of the Corporation at each annual meeting of the Board and shall serve until the next annual meeting. To the extent practicable, members of the Audit and Finance Committee should be familiar with corporate financial and accounting practices. The Audit and Finance Committee shall recommend to the Board the hiring of a certified independent accounting firm in compliance with the PAAA to conduct the annual independent audit, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the annual independent audit. The Audit and Finance Committee shall have the responsibility to review proposals for the issuance of debt by the Corporation and its subsidiaries, if any, and make recommendations.

Governance Committee. There shall be a Governance Committee consisting of at least a majority of Independent members, who shall be elected by a plurality of the votes cast by the voting Directors of the Corporation at each annual meeting of the Directors and shall serve until the next annual meeting. The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, update the Corporation's corporate governance principles, and advise the Directors on the skills and experience required of potential Directors.

## SECTION 2 SPECIAL COMMITTEES

The Board of Directors, by resolution adopted by a majority of the voting Directors, may create Special Committees, which shall have only the powers specifically delegated to them and shall in no case have powers which are not authorized for Standing Committees. The members of Special Committees shall be appointed by a plurality of the votes cast by the voting Directors of the Corporation.

## SECTION 3 MEETINGS

Meetings of committees shall be held at such times and places as shall be fixed by the respective committee chairpersons, or by vote of a majority of all of the members of the committee. Written notice shall be mailed (via regular or electronic mail) or delivered to all members of the committee prior to each meeting. Written minutes of the proceedings shall be kept at all committee meetings and shall be submitted at the next meeting of the Board. The President/Chief Executive Officer and Chairperson of the Board of Directors of the Corporation, or their respective designees, may attend all committee meetings, but will not possess any voting rights.

## SECTION 4 QUORUM

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.

## SECTION 5 MANNER OF ACTING

Any corporate action to be taken by a committee shall mean such action to be taken at a meeting of the committee. Action by a committee shall be taken by majority vote at a duly convened meeting of the members of the committee.

# ARTICLE IV - OFFICERS

## SECTION 1 PRESIDENT/CEO; TREASURER/CFO; SECRETARY; OTHER OFFICERS

The Corporation shall have a President/Chief Executive Officer, a Vice President, a Treasurer/Chief Financial Officer, a Secretary, and other officers and assistant officers as the Board of Directors may determine. The offices of president and secretary shall not be held by the same person. The officers shall have such duties as may be prescribed by these By-Laws and the Board of Directors.

## SECTION 2 TERMS OF OFFICERS

The officers shall be appointed by the Board of Directors at its annual meeting. The term of office of each officer shall be three (3) years, and each officer shall hold office until a successor is appointed and qualified. No officer shall be re-appointed after serving two (2) consecutive terms.

### SECTION 3 ADDITIONAL OFFICERS

Additional officers may be appointed 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. Such positions may include a Chief Operating Officer, an Executive Director, and any other position established by the Board of Directors from time to time.

### SECTION 4 REMOVAL OF OFFICERS

Any officer may be removed by a majority vote of voting Directors, with or without cause, at any time, provided there is a quorum of not less than a majority of the entire Board of Directors present at the meeting at which such action is taken.

### SECTION 5 RESIGNATION

Any officer may resign at any time by giving written notice to the Board of Directors, the President/Chief Executive Officer or the Secretary; provided, however, the President/Chief Executive Officer must provide written notice of his or her intent to resign to the Board of Directors and the Secretary must provide written notice of his or her intent to resign to the President or the Board of Directors. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

### SECTION 6 VACANCIES

A vacancy in any office of the Corporation shall be filled by a majority vote of voting Directors.

### SECTION 7 PRESIDENT/CHIEF EXECUTIVE OFFICER

The Board of Directors shall appoint the President/Chief Executive Officer by resolution, which resolution shall set the President/Chief Executive Officer's annual compensation. The President/Chief Executive Officer shall generally supervise all affairs of the Corporation. The President/Chief Executive Officer shall perform such other duties as may be assigned to him or her from time to time by the Board of Directors.

### SECTION 8 VICE PRESIDENT

The Board of Directors may appoint a Vice-President. The Vice-President shall perform the duties of the President in the absence of the President and such other duties as may be assigned to him or her from time to time by the Board or the President.

### SECTION 9 SECRETARY

It shall be the duty of the Secretary to supervise the preparation of minutes of all meetings of the Board of Directors and its committees, the giving of all notices required to be given by the

Corporation, and the keeping of a current list of the Corporation's Directors and officers and their residence addresses. The Secretary shall be responsible for supervising the preparation and maintenance of the books and records of the Corporation. The Secretary shall attend to such correspondence as may be assigned to him or her and perform all the duties customarily incidental to that office and such other duties as may be assigned to him or her by the Board of Directors or the President/Chief Executive Officer. From time to time, the Board of Directors employ or contract with an appointed Acting Secretary to whom the Board of Directors may designate certain duties of the Secretary and other such duties as may be assigned to him or her.

#### SECTION 10 TREASURER/CHIEF FINANCIAL OFFICER

The Board of Directors shall appoint the Treasurer/Chief Financial Officer by resolution, which resolution shall set the Treasurer/Chief Financial Officer's annual compensation. It shall be the duty of the Treasurer/Chief Financial Officer of the Corporation to oversee the financial affairs of the Corporation, report at each regular meeting of the Board of Directors, and participate in preparing the annual report of the Corporation and the filing of all required tax returns and other regulatory reports. The Treasurer/Chief Financial Officer shall perform such other duties as may be assigned to him or her by the Board of Directors or the President/Chief Executive Officer. From time to time, the Board of Directors may employ or contract with an appointed Acting Treasurer/Chief Financial Officer to whom the Board of Directors may designate certain duties of the Treasurer/Chief Financial Officer and other such duties as may be assigned to him or her.

### **ARTICLE V - CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS**

#### SECTION 1 EXECUTION OF CONTRACTS

The Board of Directors may, except as these By-Laws otherwise provide, authorize any officer or officers, agent or agents, employee or employees, 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 By-Laws, 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, must be signed on behalf of the Corporation by two of the following persons: the President/Chief Executive Officer, the Treasurer/Chief Financial Officer or the Chairperson of the Board.

#### 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 Treasurer may recommend and the Board of Directors approve.

#### SECTION 5 INVESTMENTS

The Board of Directors may authorize the Corporation to contract with an investment advisor and custodian to manage its investments in accordance with an investment policy established by the Board.

### ARTICLE VI - GENERAL

#### SECTION 1 SEAL

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal, New York." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

#### SECTION 2 BOOKS AND RECORDS

There shall be kept by the Corporation: (1) correct and complete books and records of account; (2) minutes of the proceedings of the Board of Directors and its committees; (3) a current list of the Directors and officers of the Corporation and their residence addresses; (4) a copy of the Certificate of Incorporation; and (6) a copy of these By-laws. The foregoing items shall be subject to inspection and/or audit at any time by or at the direction of the Board of Directors.

#### SECTION 3 INDEMNIFICATION

The Corporation shall indemnify each Director, each officer, and, to the extent authorized by the Board of Directors, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under the Not-For-Profit Corporation Law.

#### SECTION 4 INTERESTED DIRECTORS AND OFFICERS

The Board of Directors shall adopt a policy regarding conflicts of interest which shall apply to all directors and officers.

#### SECTION 5 LOANS TO DIRECTORS AND OFFICERS

The Corporation, either directly or indirectly, including through any subsidiary, is prohibited from extending or maintaining credit, arranging for the extension of credit or renewing any extension of credit, in the form of a personal loan to or for any Director, or Officer, or to any other company, corporation, firm, association or other entity in which one or more of the

Directors or Officers of the Corporation are members, director or officers or hold a substantial financial interest.

#### **ARTICLE VII - FISCAL YEAR**

The fiscal year of the Corporation shall commence on the first day of April of each year and end on the last day of March.

#### **ARTICLE IX - RULES OF ORDER AND BYLAW CHANGES**

##### **SECTION 1 RULES OF ORDER**

The Chairperson shall preside at all meetings of the Corporation.

##### **SECTION 2 BYLAW CHANGES**

These By-laws may be amended, repealed or adopted only by a majority of the Board of Directors of the Corporation.