

EMPIRE STATE NEW MARKET CORPORATION (ESNMC)

I. **Legal Name, Address and Contact Information**

Empire State New Market Corporation
633 Third Avenue
New York, NY 10017

Contact: Jonevan Hornsby, President
(212) 803-3646
Jonevan.Hornsby@esd.ny.gov

II. **Names and Titles of Directors and Officers**

Board of Directors:

Kenneth Adams
Sam Hoyt
Mehul Patel

Officers:

Jonevan Hornsby, President
Brendan Healey, Vice President
Elizabeth R. Fine, General Counsel
Maria Cassidy, Deputy General Counsel
Margaret A. Tobin, Chief Financial Officer
Kathleen Mize, Controller
Robert Godley, Treasurer
Debbie Royce, Secretary

III. **Report of Purpose, Operations and Mission and Projects, Statement of Justification**

A. **Purpose and Mission:**

The primary purpose for which ESNMC was formed is to serve, and to provide investment capital and capital assistance for and to the benefit of, low income communities and persons with an intention of carrying out such purposes in order to relieve and reduce unemployment, promote and provide for additional and maximum employment, to foster better job opportunities, to maintain such job opportunities, and to generally act in the interests of low income communities and person.

With that primary purpose in mind, ESNMC was formally incorporated in 2004 for the purpose of applying for an allocation of New Markets Tax Credits ("NMTCs") from the Community

Development Financial Institutions (“CDFI”) Fund of the U.S. Department of Treasury. ESNMC received notice of its first allocation of NMTCs in May 2009.

B. Projects:

In September 2011, ESNMC closed its first NMTC transaction, an \$18 million Qualified Equity Investment (“QEI”) for Agro-Farma, maker of Chobani Greek-style yogurt; in September 2012, ESNMC closed its second NMTC transaction, a \$12 million QEI for Brooklyn Navy Yard Development Corporation. The two transactions accounted for ESNMC’s entire \$30 million allocation of NMTCs.

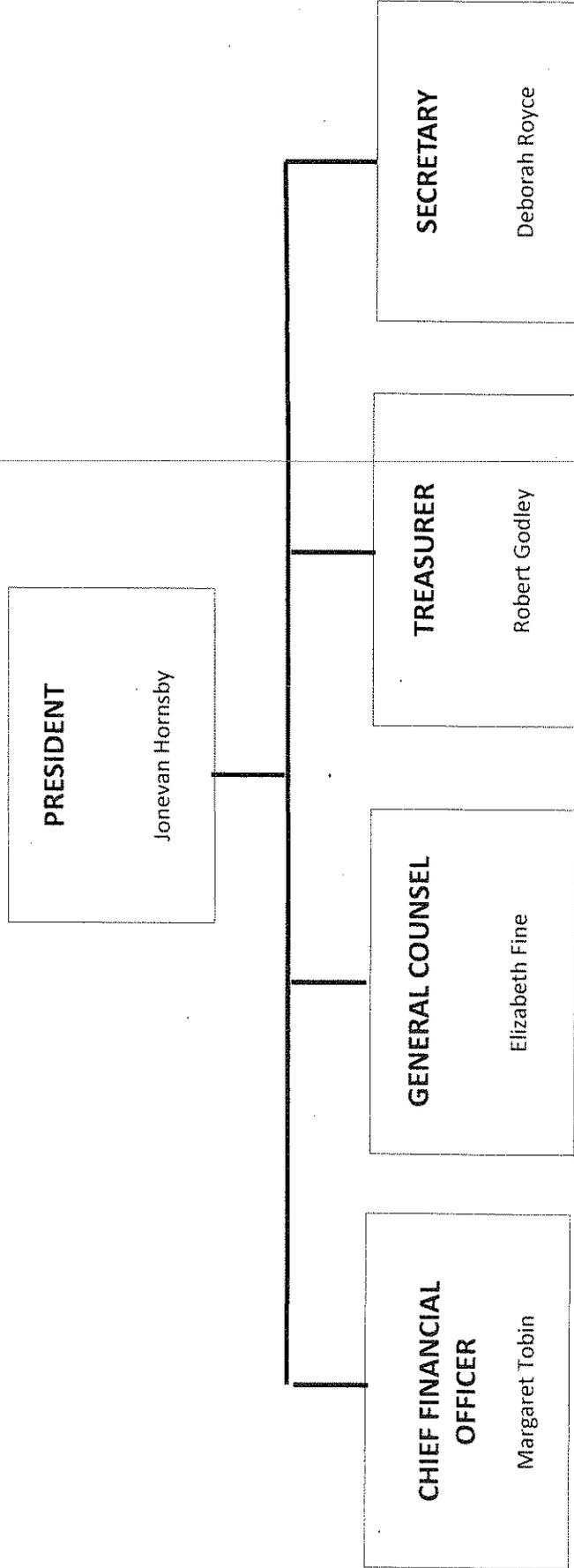
C. Statement of Justification:

ESNMC is the sole New York State entity created for and authorized to apply for New York State’s potential allocation of Federal New Market Tax Credits. Without this Corporation, New York State would currently be unable to have applied for the 2014 and future rounds of New Market Tax Credits.

IV. By-Laws and Organizational Documents (Attached)

ORGANIZATIONAL CHART

**EMPIRE STATE NEW MARKET CORPORATION
ORGANIZATIONAL CHART
NOVEMBER 2014**



BY-LAWS

By-Laws

September 3, 2004

EMPIRE STATE NEW MARKET CORPORATION

BYLAWS

September 3, 2004

Article I

SHAREHOLDERS

1.1 Sole Shareholder. The New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"), as specified in the Certificate of Incorporation of the EMPIRE STATE NEW MARKET CORPORATION ("Corporation"), is the sole shareholder ("Shareholder") of the Corporation. As specified in the Corporation's Certificate of Incorporation, the aggregate number of capital shares which the Corporation shall have authority to issue is one hundred (100) shares of Common Stock, of one class only, with a par value of one cent (\$0.01) per share.

1.2 Annual Meetings. The annual meeting of the Shareholders of Corporation for the election of Directors and for the transaction of such other business as may come before the meeting shall be held on the 15th day of December in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding day not a legal holiday, at such time as shall be designated by the Board or the President. If the annual meeting shall not be held on the day hereinabove provided for, the Board shall call a special meeting for the election of Directors, which meeting shall be held within two (2) months after said day. At the annual meeting of the Shareholders, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(a) An 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;

(b) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting; and

(c) A copy of each annual or other periodic report or documentation required to be filed with the U.S. Secretary of the Treasury and/or to the Community Development Financial Institutions Fund, as is or may be required or necessary under the NMTC Program or otherwise in connection with the Corporation's certification as a CDE under the NMTC Program.

1.2 Special Meetings. Special meetings of the Shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, or in his absence by any Vice President, or by a majority of the Board of Directors and shall be called at any time by the President, or any Vice President, or the Secretary or the Treasurer, upon the

request of any Shareholder entitled to vote at such meeting. Business transacted at all special meetings shall be confined to the purposes stated in the call.

1.3 Action Without a Meeting. The Shareholder may take any action which could be taken at a meeting without a meeting pursuant to provisions of the New York Business Corporation Law of the State of New York.

1.4 Notice of Meetings. Notice of the place, date and time of the holding of each annual and special meeting of the Shareholders and, in the case of a special meeting, the purpose or purposes thereof, shall be given personally or by certified mail, return receipt requested, to each Shareholder entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, and, if mailed, it shall be directed to such Shareholder at his address as it appears on the records of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices to him be mailed to some other address. Notice of any meeting of Shareholders shall not be required to be given to any Shareholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy. Unless the Shareholders shall fix after the adjournment a new record date for an adjourned meeting, notice of such adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken. At the adjourned meeting, provided a quorum is present, the Shareholders may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Shareholder of record entitled to vote at the meeting.

1.5 Place of Meetings. Meetings of the Shareholders may be held at such place, within or without the State of New York, as the Board or the officer who called the meeting shall specify in the notice of such meeting, or in a duly executed waiver of notice thereof.

1.6 Quorum. The presence, in person or by proxy, of the holders of all of the issued and outstanding shares entitled to vote shall be necessary to constitute a quorum for the transaction of any business. In the absence of a quorum, the holders of a majority of the votes of the shares of stock present in person or by proxy and entitled to vote, or if no Shareholder entitled to vote is present, then any officer of the Corporation may adjourn the meeting to a time thereby established. At such adjourned meeting, provided that a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

1.7 Meeting by Conference Telephone. One or more Shareholders may participate in any meeting of the Shareholders by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. In any such case the minutes of the meeting shall indicate which Shareholders participated in the meeting by such means.

1.8 Order of Business. At each meeting of the Shareholders, the President, or in his absence or inability to act, a Vice-President, or in his absence, any person chosen by a majority of those Shareholders present, shall act as Chairman of the meeting. The Secretary, or, in his absence, any person appointed by the Chairman of the meeting, shall act as Secretary of the meeting and keep the minutes thereof. The order of business at all meetings of the Shareholders shall be as determined by the Chairman of the meeting.

1.9 Voting.

(a) Except as otherwise provided by statute or in the Certificate of Incorporation, at each meeting of Shareholders, each holder of record of shares of stock of the Corporation having voting power shall be entitled to one vote for every share of such stock standing in his name on the record of Shareholders of the Corporation, or if such record date shall not have been so fixed, then at the close of business on the day immediately preceding the day on which notice of such meeting shall be given, or if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held.

(b) Each Shareholder entitled to vote at any meeting of Shareholders may authorize another person or persons to act for him by proxy signed by such Shareholder or his attorney-in-fact. Any such proxy shall be delivered to the Secretary of such meeting at or prior to the time designated in the order of business for so delivering such proxies. No proxy shall be valid after the expiration of eleven (11) months from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Shareholder executing it, except in those cases where an irrevocable proxy is permitted by law.

(c) Except as otherwise provided by statute, these Bylaws or the Certificate of Incorporation, any corporate action to be taken by vote of the Shareholders shall be authorized by a majority of the total votes cast at a meeting of Shareholders where a quorum is present by the holders of shares present in person or represented by proxy and entitled to vote on such action. Unless required by statute, or determined by the Chairman of the meeting, the vote on any question need not be by written ballot. On a vote by written ballot, each ballot shall be signed by the Shareholder voting, or by his proxy, and shall state the number of shares voted.

1.10 List of Shareholders. The Secretary of the Corporation shall prepare and maintain a complete list of the Shareholders entitled to vote at meetings of the Shareholders, arranged in alphabetical order, and showing the address of each Shareholder and the number of shares registered in the name of each Shareholder. Such list shall be open to the examination of any Shareholder for any purpose germane to Shareholders' meetings, during ordinary business hours, at a place within the city where meetings are held, which place shall be specified in the notices of the meetings or at the Corporation's principal place of business. The list shall be available for inspection at the time and place of meetings during the whole time thereof.

1.11 Inspectors. In advance of any meeting of Shareholders, the Board may appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors are not so appointed or if any of them fails to appear or act, the Chairman of the meeting may, and on the request of any Shareholder entitled to vote thereat shall, appoint inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully

to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote, with fairness to all Shareholders. On request of the Chairman of the meeting or any Shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them.

1.12 Consent of Shareholders in Lieu of Meeting. Whenever the vote of Shareholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of Shareholders can be dispensed with if all of the Shareholders who would have been entitled to vote upon such action, if such meeting were held, consent in writing to such corporate action being taken.

Article II

BOARD OF DIRECTORS

2.1 Number of Directors. The Corporation shall be managed by its Board of Directors (the "Board"), which shall consist of five (5) directors, which number may be changed from time to time as determined by a vote of the all of the Shareholders at any meeting of the Shareholders; provided, that the composition of the Board of Directors shall at all times maintain compliance with the NMTC Program. All of the directors shall be of full age. Directors need not be Shareholders. Except as otherwise provided by statute or these Bylaws, the directors shall be elected at the annual meeting of the Shareholders at which a quorum is present, and the persons receiving a majority of the votes cast at such election shall be elected. Except as provided pursuant to Section 2.12 of this Article II, each director shall hold office until the next annual meeting of Shareholders and until his successor shall have been duly elected and qualified, or until his death, or until he shall have resigned, or have been removed, as hereinafter provided in these Bylaws, or as otherwise provided by statute or the Certificate of Incorporation.

2.2 Power of Board of Directors. The Board shall have the management and control of the business affairs and property of the Corporation and may exercise any and all of the powers possessed by it under its Certificate of Incorporation and By-Laws and under the laws of the State of New York as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the Shareholders. The Board shall establish all general policies governing the Corporation's operations, provided that the Board shall govern in a manner which ensures compliance with the provisions of the Corporation's Certificate of Incorporation, including compliance with Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the New Markets Tax Credit Program ("NMTC Program"), and of the Community Development Financial Institutions Fund as a New Market certified community development entity ("CDE").

2.3 Chairman. The Chairman of the Board shall be designated by the Shareholder(s) on the written advice of the Governor and shall preside at all meetings of the Board. At each meeting of the Board, the Chairman, or, in his absence or inability to act, the President, shall act as Chairman of the meeting and preside thereat. The Secretary or, in his absence or inability to act, any person appointed by the Chairman, shall act as Secretary of the meeting and keep the minutes thereof.

2.4 Meetings of the Board.

(a) First Meeting. The first meeting of each newly elected Board shall be held as soon as practicable after the adjournment the Shareholders first meeting, at such place and time as shall be fixed by the consent in writing of all the directors.

(b) Regular Annual Meetings. Regular annual meetings of the Board may be held, except as may otherwise be provided by law, without notice to the Board, at such time and place as shall from time to time be determined by the Board. At the annual meeting of the Corporation, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(1) An 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;

(2) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting; and

(3) A copy of each annual or other periodic report or documentation required to be filed with the U.S. Secretary of the Treasury and/or to the Community Development Financial Institutions Fund, as is or may be required or necessary under the NMTC Program or otherwise in connection with the Corporation's certification as a CDE under the NMTC Program.

(c) Special Meetings. Special meetings of the Board may be called at any time by the Secretary at the request in writing of either the Chairman of the Board, the President, or one or more members of the Board. Such request shall state the purpose or purposes of the proposed meeting. Such meetings may be held at any place. Notice of each such meeting, specifying the time and place thereof, shall be given by the Secretary by causing the same to be delivered to each director at least five (5) days before the meeting or mailed to each director at least seven (7) days before the meeting. No such notice of any meeting need be given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her or who files a written waiver of notice thereof with the Secretary, either before or after the meeting.

(d) Meeting by Conference Telephone. One or more members of the Board or of any committee thereof may participate in any meeting of the Board or of such committee by

means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. In any such case the minutes of the meeting shall indicate which members of the Board or of such committee participated in the meeting by such means.

2.5 Quorum of Directors. Except as otherwise provided in the Certificate of Incorporation of the Corporation, a quorum for the transaction of business at meetings of the Board shall consist of not less than sixty percent (60%) of the total members of the Board then in office. In the absence of a quorum at any duly scheduled or duly called meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present, at which time any business may be transacted which might have been transacted at the meeting as originally scheduled.

2.6 Manner of Acting. Except as otherwise expressly required by statute or the Certificate of Incorporation, the act of a majority of the directors at any meeting at which a quorum is present shall be the act of the Board.

2.7 Term and Vacancies. Unless prior thereto a director resigns, dies, is removed or otherwise ceases to serve, each director shall continue to hold office until his or her successor has been elected and has qualified. Any vacancy in the Board caused by the death, resignation or removal of a director shall be filled by the Shareholders; provided, that, any vacancy so filled shall ensure that the composition of the Board shall at all times maintain compliance with the NMTC Program.

2.8 Resignations. Resignations of directors must be in writing and shall be effective upon the date of receipt thereof by the Secretary or upon an effective date specified therein, whichever date is later; provided, any such resignation shall not take effect if such resignation shall result in non-compliance with the NMTC Program relating to accountability of the Board to low income communities.

2.9 Removal of Directors. Any director may be removed at any time, with or without cause, by the Shareholder, and the vacancy caused thereby shall be filled pursuant to the provisions of Section 2.7, above.

2.10 Compensation of Directors. No director or officer of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument from the Corporation, except as provided by the Board; provided, that directors may be reimbursed for reasonable expenses incurred in the performance of their services as such. Serving as a director shall not preclude any director from serving the Corporation in any other capacity and receiving compensation therefor, provided the terms of such other service are on commercially reasonable terms and at arm's length. [END OF ARTICLE II].

Article III

COMMITTEES; ADVISORY BOARDS

3.1 Executive and Other Committees; Advisory Boards. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees or advisory boards, each such committee or advisory board may consist of at least one (1) or more of the directors of the Corporation and at all times include at least twenty (20%) of its members being persons representative of low income communities within the Corporation's service area as designated in Corporation's Certification Application as a community development company as filed with the Community Development Financial Institutions Fund (its "Territory" or "service area"). The Board may designate one or more directors as alternate members of any such committee or advisory board, and shall replace any absent or disqualified member of any such committee or advisory board.

3.2 Multiple Service Areas. To the extent the Territory of the Corporation encompasses multiple service areas, the Corporation may maintain an advisory board in each such service area, each such advisory board to consist of at least one (1) or more of the directors of the Corporation and at all times at least twenty (20%) of its members shall be persons representative of low income communities in each of the local service areas within its Territory. Each advisory board shall have such duties and responsibilities as are assigned to it by the Board of Directors as to business and affairs originating in or relevant to the local service area that each such advisory board is representative of within the Territory.

3.3 Manner of Acting. The Board shall refer to its advisory board(s) any matter originating in or relevant to its service area. After a meeting(s) properly called and upon completion of review by the advisory board as to such referred matters, the decisions and resolutions adopted by the advisory board shall be referred to the Board. The advisory board shall also conduct, at least annually, a public community meeting before residents and business owners in the low income communities within the service area for the purpose of soliciting from such residents and businesses issue of concern within that service area. The advisory board shall review such information so gathered and refer to the Board its findings, recommendations and proposals. The advisory board shall also refer to the Board any other decision or resolution it adopts at any other meeting of the advisory board properly called for such purpose. The resolution or decision of an advisory board shall not be authorized unless it is ratified by the Board of Directors, in whole, in part or with amendment, as evidenced by appropriate resolution of the Board of Directors. Upon such ratification, such decision or resolution shall be carried out by the Board of Directors in the proper performance of such Board's duties in its management of the business and affairs of the Corporation as set forth in and consistent with the terms of these Bylaws.

3.4 Minutes of Meeting. Each advisory board shall keep written minutes of its proceedings and shall report such minutes to the Board of Directors. No committee or advisory board shall have the authority to amend these Bylaws or any resolution of the Board of Directors previously adopted.

3.5 General. The Board shall have the power at any time to fill vacancies in, or to change the membership of any committee or advisory board. Nothing contained herein shall be deemed to prevent the Board from appointing one or more committees or advisory boards consisting in whole or in part of persons who are not directors of the Corporation. The President, and any member of the Board of Directors, or their designee, may attend any committee or advisory board meeting.

Article IV

OFFICERS

4.1 Number, Election and Compensation. The principal officers of the Corporation shall be the President, one or more Vice Presidents, a Secretary and a Treasurer and such other officers as may be elected by the Board of Directors from time to time. All officers of the Corporation shall be elected by the Board. Any two or more offices may be held by the same person except the offices of President and Secretary.

4.2 Term and Removal. Unless he or she resigns, dies or is removed prior thereto, each officer of the Corporation shall hold office until his or her successor has been elected and has qualified. Any person elected or appointed by the Board may be removed at any time, with or without cause, and all vacancies (however arising) may be filled at any time, in each case by the affirmative vote of the Board. Any other employee of the Corporation may be removed at any time, with or without cause, by the President or by any superior of such employee to whom the power of removal has been delegated by the President.

4.3 President. The President shall have general supervision and direction of the business of the Corporation, shall see that all orders and resolutions of the Board are carried into effect, and shall be a member of all committees appointed by the Board. The President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

4.4 Vice Presidents. Each Vice President shall have such powers and perform such duties as may be prescribed from time to time by the Board or the President. In the absence or disability of the President, a Vice President designated by the Board shall be vested with all the powers and authority to perform all the duties of said officer.

4.5 Secretary. The Secretary shall attend all sessions of the Board and all meetings of the shareholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board when notice is required by these Bylaws. The Secretary shall have custody of the seal of the Corporation, and, when authorized by the Board or when any instrument requiring the corporate seal to be affixed shall first have been signed by the Chairman of the Board, the President or a Vice President, shall affix the seal to the instrument and shall attest the same by his or her signature. The Secretary shall have such other powers and perform such other duties as may be prescribed from time to time by the Board or the President.

4.6 Assistant Secretaries. Each Assistant Secretary, if one or more are appointed, shall be vested with all the powers and authorized, in the absence or disability of the Secretary to perform all the duties of the Secretary. Each Assistant Secretary shall perform such other duties as may be prescribed from time to time by the Board, the President or the Secretary.

4.7 Treasurer. The Treasurer shall be the chief financial officer of the Corporation. The Treasurer shall have custody of the corporate funds and securities of the Corporation, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation, taking proper vouchers for meetings of the Board or whenever any of them may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board, or the President.

4.8 Duties of Officers May be Delegated. In case of the absence of any officer of the Corporation, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director.

4.9 Resignations. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Board, to the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. The acceptance of such resignation shall not be necessary to make it effective.

4.10 Removal. Any officer or agent of the Corporation may be removed, with cause, at any time, by the vote of the Board at any meeting of the Board. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed.

4.11 Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause, may be filled for the unexpired portion of the term of the office in the manner prescribed by these Bylaws for the regular election or appointment of such office.

4.12 Officers' Bonds or Other Security. No officer of the Corporation, unless otherwise specified by law or by the Board of Directors, shall be required to furnish a bond or other security for the faithful performance of his duties hereunder. If such bond or security is required by the Board of Directors, it shall be in such amount and with such surety or sureties as the Board may require.

4.13 Compensation. The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by the Board, but nothing contained herein shall require the Board to compensate an officer for his or her duties as such. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation.

Article V

CAPITAL STOCK

5.1 Stock Certificates. Each holder of stock of the Corporation shall be entitled to have a certificate, in such form as shall be approved by the Board, certifying the number of shares of stock of the Corporation owned by him. The certificates representing shares of stock shall be signed in the name of the Corporation by the President and by the Secretary, and sealed with the seal of the Corporation (which seal may be a facsimile, engraved or printed). In case any officer who shall have signed such certificates shall have ceased to be such officer before such certificates shall be issued, they may nevertheless be issued by the Corporation with the same effect as if such officer were still in office at the date of their issue.

5.2 Books of Account and Record of Stockholders. The books and records of the Corporation may be kept at such place as the Board of Directors may from time to time determine. The stock record books and the blank stock certificate books shall be kept by the Secretary or by any other officer or agent designated by the Board of Directors.

5.3 Transfer of Shares. The transfer of shares of stock of the Corporation shall be made on the stock records of the Corporation only upon authorization by the registered holder thereof, or by his attorney, authorized by power of attorney duly executed and filed with a transfer agent or transfer clerk, and upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of all taxes thereon. Except as otherwise provided by law, the Corporation shall be entitled to recognize the exclusive right of a person in whose name any share or shares stand on the record of stockholders as the owner of such share or shares for all purposes, including, without limitation, the rights to receive dividends or other distributions, and to vote as such owner. The Corporation may hold any such stockholder of record liable for calls and assessments and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in any such share or shares on the part of any other person whether or not it shall have express or other notice thereof. A stockholder shall not assign shares as security.

5.4 Regulations. The Board may make such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may acquire all certificates for shares of stock to bear the signature or signatures of any of them.

5.5 Lost, Destroyed or Mutilated Certificates. The holder of any certificate representing shares of stock of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of such certificate, and the Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it which the owner thereof shall attest and verify in such form acceptable to the Board to have been lost, stolen, or destroyed or which shall have been mutilated. In such event the Board may, in its discretion, require such owner or his legal representatives to give to the Corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties as the Board, in its absolute

discretion shall determine to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate, or the issuance of a new certificate.

5.6 Closing of Transfer Books, Fixing Record Dates. The Board of Directors shall have power to close the stock transfer books of the Corporation for a period not exceeding fifty (50) days preceding the date of any meeting of stockholders, the date of payment of any dividend, the date for the allotment of rights, the date when any change or conversion or exchange of capital stock shall go into effect, or for a period not exceeding fifty (50) days in connection with obtaining the consent of stockholders for any purpose. In lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of stockholders, the date for the payment of any dividend, the date for the allotment of rights, the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of stockholders entitled to notice of and to vote at any such meeting, and any adjournment thereof, entitled to receive payment of any such dividend, to any such allotment of rights, to exercise the rights in respect of any such change, conversion, or exchange of capital stock, or to give such consent. In such case only, such stockholders as shall be stockholders of record on the date so fixed, shall be entitled to such notice of and to vote at such meeting, and any adjournment thereof, to receive payment of such dividend, to receive such allotment of rights, to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

5.7 Stock Offering. The Board of Directors may offer all or any portion of the authorized capital stock of the Corporation at any time and from time to time as it shall determine, subject to the limitations, and/or authorizations set forth in the Certificate of Incorporation.

Article VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

6.1 (a) General Scope of Indemnification. The provisions of this Article for indemnification shall be in addition to and shall not supplant any indemnification by the State of New York heretofore or hereafter conferred upon any Director, officer or employee by a statute, by Sections 17, 18 and 19 of the Public Officers law, or otherwise. This Article is to be construed liberally in favor of each Director, officer and employee of the Corporation to the fullest extent permitted by law, and any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Director, officer or employee. The provisions of this Article shall inure only to the Directors, officers or employees of the Corporation or of its subsidiaries, and to their estates, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(b) Directors, Officers and Employees. Other than as provided in Section 4.4 of these Bylaws, the Corporation shall to the fullest extent permitted by law save harmless and indemnify any person (or his or her estate) who shall have served as a director, officer or employee of the Corporation or of a subsidiary of the Corporation against financial loss or reasonable litigation expense incurred in connection with any claim, demand, suit, action or proceedings, whether civil or criminal, or the defense thereof, and arising out of (a) any transaction of the Corporation or of a subsidiary of the Corporation, or (b) any act or failure to act by any such director, officer or employee while engaged in the discharge of his or her duties on behalf of the Corporation or its subsidiaries.

6.2 Conditions Precedent and Representation of Persons Indemnified. Except in a criminal proceeding, the right to indemnification shall be conditioned on (a) the prompt delivery to the Corporation of a copy of the summons, complaint, process, notice, demand or pleading commencing any such claim, demand, suit, action or proceeding, (b) a contemporaneous offer to name counsel to the Corporation as counsel to the director, officer or employee in the defense of such claim, demand, suit, action or proceeding, and (c) the full cooperation of the director, officer or employee, in the event the offer is accepted, in the making of such defense. The Corporation may, either by its own staff counsel or by outside counsel of its choice, accept the offer and assume the representation of any person who becomes a party to the claim, demand, suit, action or proceeding, except in situations in which (a) choice of counsel is governed by statute, or (b) the Corporation's counsel determines that it is inappropriate or inadvisable for such person to be represented by counsel chosen by the Corporation. In the event the Corporation does not assume such representation, such person shall have the right to engage private counsel of his or her choice and the Corporation shall have the obligation of indemnification for the reasonable fees and expenses of such private counsel as provided in this Article and, to the extent applicable, Article Seven of the Business Corporation Law; provided, however, that the Corporation as a condition to such indemnification by the State of New York pursuant to statute shall require appropriate groups of person to be represented by the same counsel.

6.3 Advances of Expenses.

(a) Directors and Officers. A Director or officer who becomes a party to an action or proceeding may request that the Corporation advance expenses pending the final disposition of such action or proceeding. Such advancement shall be made in the manner delineated by Section 723 of the Business Corporation Law.

(b) Employees. Reasonable litigation expenses incurred by an employee who becomes a party to an action or proceeding may be paid by the Corporation from time to time pending the final disposition of such action or proceeding without necessity for any authorization, findings, or other action by the directors prior to the making of such advances; provided, however, that such advancement shall be made in the manner delineated by Section 723 of the Business Corporation Law, and that the directors (i) may make a preliminary finding at any time prior to the final disposition of such action or proceeding that it then appears that an employee has clearly not acted, in good faith, for a purpose reasonably believed to be in the best interests of the Corporation or of its subsidiaries and, in criminal actions or proceedings, in addition, that the employee clearly had not had reasonable cause to believe that his or her

conduct was lawful, or may seek an opinion in writing of outside legal counsel with respect to that issue, and if such a preliminary finding shall be made or a negative opinion on the issue shall be given, no further advances under this paragraph shall be made with respect to expenses of such employee, and (ii) may determine, or provide for the determination of, the reasonableness of expenses sought to be advanced.

6.4 Directors' Liability. No director of the Corporation shall be personally liable to the Corporation or its shareholders for damages for any breach of duty as a director, unless a judgment or other final adjudication adverse to the director establishes that, in connection with any such breach of duty (i) the acts or omissions of the director were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) the acts of the director violated Section 719 of the Business Corporation Law.

Article VII

CONDUCT OF BUSINESS

7.1 Powers of Execution; Deposits.

(a) All checks and other demands for money and notes and other instruments for the payment of money shall be signed on behalf of the Corporation by such officer or officers or by such other person or persons as the Board may from time to time designate.

(b) All contracts, deeds and other instruments to which the seal of the Corporation is affixed shall be signed on behalf of the Corporation by the President, or such other person or persons as the Board may from time to time designate and shall be attested by the Secretary or an Assistant Secretary.

(c) All other contracts, deeds and instruments shall be signed on behalf of the Corporation by the President or such other person or persons as the Board or the President may from time to time designate.

(d) No loans or advances at any time to the Corporation from any bank, trust company or other institution, or from any firm, corporation or individual shall be made, executed or delivered, nor shall promissory notes, bonds or other certificates be issued in connection therewith, unless specifically authorized by the Board and shall otherwise be in such form and of such substance as is required in order to maintain compliance with the NMTC Program. No promissory notes, bonds or other certificates or evidences of indebtedness of the Corporation shall be executed or delivered unless specifically authorized by the Board. No mortgage, pledge, hypothecation or transfer of any securities or other property of the Corporation shall be given unless specifically authorized by the Board.

(e) 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 may from time to time designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer or agent of the Corporation, or in such other manner as the Board may determine by resolution.

(f) The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient. The Board may authorize the Corporation to contract with an investment advisor or other custodian to manage its investments in accordance with investment policy established by the Board.

7.2 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."

7.3 Fiscal Year. The fiscal year of the Corporation shall end on March 31.

ARTICLE VIII

BOOKS AND RECORDS

8.1 Maintenance of Books. There shall be kept by the Corporation (i) correct and complete books and records of account, (ii) minutes of the proceedings of the Board of directors and its committees, (iii) minutes of the proceedings of the Shareholders, (iv) a current list of Directors and their residence addresses, (v) a current list of Shareholders and their residence addresses, (vi) a copy of the Certificate of Incorporation of the Corporation and all amendments thereto, and (vii) a copy of these Bylaws and all amendments thereto.

ARTICLE IX

AMENDMENTS

9.1 Amendments. These Bylaws may be amended, repealed or new Bylaws adopted at any annual or special meeting only by the affirmative vote of the Board, provided that a written notice shall have been sent to each member of the Board at least ten days before such annual or special meeting. Such notice shall state the alterations, amendments, additions or changes which are proposed to be made in such Bylaws. Only such changes shall be made as have been specified in the notice, and only if such changes will not result in any non-compliance with the provisions of the Corporation's Certificate of Incorporation, including compliance with Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to

the new markets tax credit program, and of the Community Development Financial Institutions Fund as a New Market certified community development entity.

ARTICLE X

RULES AND REGULATIONS

10.1 BCL and UDC Act, NMTC Program. This Corporation is organized under and pursuant to the New York State Urban Development Corporation Act of 1968, as amended, and the Business Corporation Law of the State of New York. All functions of this Corporation are subject to the provisions of such laws and such other rules, regulations, policies, procedures and guidelines as are now or may hereafter apply to or be adopted by Corporation, including the NMTC Program rules, regulations, policies, procedures and guidelines.

Amendment to By-Laws

October 22, 2009

Empire State New Market Corporation

FOR CONSIDERATION

October 22, 2009

TO: The Directors
FROM: Kevin I. McLaughlin
SUBJECT: By-Laws
REQUEST FOR: Amendment of September 3, 2004 By-Laws

Background

The ESNMC By-Laws currently in effect are dated September 3, 2004. These By-Laws appear to require that at least twenty percent (20%) of the members of any ESNMC Committee or Advisory Board be individuals who are representative of low income communities. The Community Development Financial Institutions Fund ("Fund"), a division of the U.S. Department of Treasury overseeing the Program, only requires that a single advisory board consist of representatives of these low income communities. Staff intends to recommend other committees or advisory boards be formed that do not consist of these low income representatives, including an Investment Committee consisting entirely of staff members of the New York State Urban Development Corporation, d/b/a Empire State Development Corporation.

Additionally, the September 3, 2004 By-Laws do not indicate the frequency with which the Advisory Board will meet.

Requested Action

The Directors are requested to amend the By-Laws to limit the requirement that twenty percent of each ESNMC Committee be individuals who are representative of low income communities to Advisory Boards. Additionally, the Directors are requested to amend the By-Laws to indicate that the Advisory Board will meet quarterly.

Attachment

Resolutions

Empire State New Market Corporation
c/o Empire State Development Corporation - 633 Third Avenue, NY, NY 10017-6754

October 22, 2009

EMPIRE STATE NEW MARKET CORPORATION – Amendment of September 3, 2004
By-Laws

RESOLVED, that the Corporation hereby replaces Article III, Section 1 of the September 3, 2004 By-Laws with the following text:

3.1 Executive and Other Committees; Advisory Boards. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees or advisory boards, each such committee or advisory board may include one (1) or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any such committee or advisory board, and shall replace any absent or disqualified member of any such committee or advisory board. Each advisory board shall at all times include at least twenty (20%) of its members being persons representative of low income communities within the Corporation's service area as designated in Corporation's application to the Community Development Financial Institutions Fund for certification as a Community Development Entity.

; and be it further

RESOLVED, that Corporation hereby replaces Article III, Section 3 of the September 3, 2004 By-Laws with the following text:

3.3 Manner of Acting. The Board shall refer to its advisory board(s) any matter originating in or relevant to its service area. After a meeting(s) properly called and upon completion of review by the advisory board as to such referred matters, the decisions and resolutions adopted by the advisory board shall be referred to the Board. The advisory board shall meet quarterly. The advisory board shall also conduct, at least annually, a public community meeting before residents and business owners in the low income communities within the service area for the purpose of soliciting from such residents and businesses issue of concern within that service area. The advisory board shall review such information so gathered and refer to the Board its findings, recommendations and proposals. The advisory board shall also refer to the Board any other decision or resolution it adopts at any other meeting of the advisory board properly called for such purpose. The resolution or decision of an advisory board shall not be authorized unless it is ratified by the Board of Directors, in whole, in part or with amendment, as evidenced by appropriate resolution of the Board of Directors. Upon such ratification, such decision or resolution shall be carried out by the Board of Directors in the proper performance of such Board's duties in its management of the business and affairs of the Corporation as set forth in and consistent with the terms of these Bylaws.

* * *

CERTIFICATE
OF
INCORPORATION

CERTIFICATE OF INCORPORATION
OF
EMPIRE STATE NEW MARKET CORPORATION

Under Section 402 of the Business Corporation Law

Filed By: New York State Urban Development Corporation
d/b/a Empire State Development Corporation
633 Third Avenue – 37th Floor
New York, New York 10017
Att: Jonathan Beyer, Esq.

CERTIFICATE OF INCORPORATION
OF
EMPIRE STATE NEW MARKET CORPORATION

UNDER SECTION 402 OF THE BUSINESS CORPORATION LAW

THE UNDERSIGNED, being a natural person of the age of eighteen years or over, for the purpose of forming a corporation pursuant to Section 402 of the Business Corporation Law of the State of New York, does hereby certify:

FIRST: The name of the corporation is EMPIRE STATE NEW MARKET CORPORATION (the "Corporation");

SECOND: The Corporation is to be a subsidiary of the New York State Urban Development Corporation ("UDC"), as authorized by Section 12 of the New York State Urban Development Corporation Act, as amended (the "UDC Act");

THIRD: Subject to the terms of this Article THIRD; the purposes for which the Corporation is formed are to facilitate performance of all purposes, powers and functions entrusted to UDC by the UDC Act. The Corporation shall have all powers conferred upon a business corporation by the laws of the State of New York. In addition to and notwithstanding the foregoing, the primary purpose for which the Corporation is formed is to serve, and to provide investment capital and capital assistance for and to the benefit of, low income communities and persons within its service area, as designated upon Corporation's certification as a community development entity under the New Markets Tax Credit Program ("Territory"), with an intention of carrying out such purposes in order to relieve and reduce unemployment, promote and provide for additional and maximum employment, to foster better job opportunities, to maintain such job opportunities, and to generally act in the interests of low income communities and persons within its Territory. The Corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained. In furtherance of said purposes, the Corporation's powers shall include the following, which shall be exercised and implemented such that substantially all of the Corporation's activities shall be involved in the carrying out of such powers:

(a) To plan, develop, and administer its business activities to foster the creation, retention and expansion of jobs and economic opportunities for low income communities and persons within its Territory; and

(b) To assist businesses located within low income communities within its Territory or owned by low income persons through capital investments, loans or through the furnishing of advice, technical assistance, information dissemination or as a liaison with federal,

state and local authorities, and the general business community, within its Territory with respect thereto;

(c) To assist low income persons and residents of low income communities within its Territory through capital investments, loans or through the furnishing of advice, technical assistance, information dissemination or as a liaison with federal, state and local authorities, and the general business community, within its Territory with respect thereto;

(d) To assist other organizations, entities or persons engaged in activities which promote community or economic development within low income communities within its Territory through capital investments, loans or through the furnishing of advice, technical assistance, information dissemination or as a liaison with federal, state and local authorities, and the general business community, within its Territory with respect thereto;

(e) To form and establish subsidiary entities as the Board of Directors of Corporation deems necessary or required in order to carry out its corporate purposes;

(f) To enter into agreements, contracts and arrangements, and to comply with all the terms, conditions and provisions thereof, required in order to carry out its corporate purposes, to foster and encourage the location or expansion of commercial facilities and businesses within low income communities within its Territory, and otherwise foster community or economic development within its Territory;

(g) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof;

(h) To do all things required of Corporation to ensure maintenance and compliance with respect to its operations under all statutes, regulations and rules applicable to the Corporation, including but not limited Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the New Markets Tax Credit program (the "NMTC Program"), and of the Community Development Financial Institutions Fund, as a New Market certified community development entity; and

(i) Generally, 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.

FOURTH: The office of the Corporation is to be located in the City of Albany, County of Albany and State of New York.

FIFTH: In addition to any other requirement under the laws of the State of New York applicable to the Corporation as to its operations and powers, the Corporation at all times shall:

(a) Ensure that it maintains accountability in the composition of its Board pursuant to and in compliance with the NMTC Program;

(b) Be managed by its Board of Directors, which shall consist of that number of Directors as set forth in its Bylaws; and

(c) Ensure that it at all times maintains and causes its operations to be in compliance with all statutes, regulations and rules applicable to the Corporation, including but not limited Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the new markets tax credit program, and of the Community Development Financial Institutions Fund as a New Market certified community development entity.

SIXTH: The aggregate number of shares which the Corporation shall have authority to issue is 100 hundred shares of Common Stock, of one class only, with a par value of one cent (\$0.01) per share. The shares without par value shall be issued and sold for such consideration as from time to time may be fixed by the Board of Directors.

SEVENTH: The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary is:

EMPIRE STATE NEW MARKET CORPORATION
c/o New York State Urban Development Corporation
d/b/a Empire State Development Corporation
633 Third Avenue - 37th Floor
New York, New York 10017

Attn: Senior Vice President - Legal

EIGHTH:

(a) The proportion of shares the holders of which shall be present in person or by proxy at any meeting of shareholders in order to constitute a quorum for the transaction of any business shall be all of the issued and outstanding shares of the Corporation.

(b) The proportion of votes of the holders of shares that shall be necessary at any meeting of shareholders for the transaction of any business, including amendments to the Certificate of Incorporation, shall be the votes of all of the issued and outstanding shares of the Corporation.

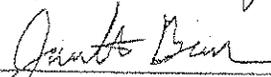
NINTH: The proportion of directors that shall constitute a quorum for the transaction of business shall be not less than a majority of the board then in office.

TENTH: No director of the Corporation shall be personally liable to the Corporation or its shareholders for damages for any breach of duty as a director, unless a judgment or other final adjudication adverse to the director establishes that, in connection with any such breach of duty (i) the acts or omissions of the director were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) the acts of the director violated Section 719 of the Business Corporation Law.

ELEVENTH: Under the provisions of Section 22 of the UDC Act, the Corporation is exempt from payment of the franchise tax on business corporations imposed by Article 9-A of the Tax Law of the State of New York.

TWELFTH: The duration of the Corporation shall be perpetual.

IN WITNESS WHEREOF, I have executed and subscribed this Certificate and do affirm the foregoing as true under the penalties of perjury this 26 day of August, 2004.



Jonathan Beyer, Incorporator
c/o New York State Urban Development
Corporation
633 Third Avenue, 37th Floor
New York, New York 10017