

As Amended January 29, 1981

## BY-LAWS

of

### NEW YORK STATE URBAN DEVELOPMENT CORPORATION

#### ARTICLE I

##### The Corporation

Section 1.1. Description. The New York State Urban Development Corporation (the “Corporation”) is a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation, created by and having the powers and functions set forth in the New York State Urban Development Corporation Act as amended (the “Act”).

Section 1.2. Membership. The membership of the Corporation shall consist of nine Directors, who shall be selected and shall hold office as provided in the Act.

Section 1.3. Offices. The principal office and corporate offices of the Corporation shall be located in the city, County and State of New York. The Corporation may also have other offices at such places within the State of New York as the President may from time to time determine to be necessary or appropriate for the conduct of the affairs of the Corporation.

Section 1.4. Seal. The official seal of the Corporation shall be in the form of two concentric circles between which shall be inscribed the name of the Corporation and in the center of which shall be inscribed the words “Established 1968”. Such seal may also include such other insignia as may be approved by the Corporation.

Section 1.5. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of April in each calendar year and shall end at the close of business on the thirty-first day of March in the following calendar year.

#### ARTICLE II

##### Meetings

Section 2.1. Annual Meeting. The Annual Meeting of the Corporation shall be held on the second Wednesday in October of each year, or on such earlier or later date in each calendar year as may be designated in the notice or waiver of notice of such meeting.

Section 2.2. Other Meetings. Other meetings of the Corporation may be called by the Chairman or the President and shall be called by the President upon the written request of a majority of the Directors.

Section 2.3. Notice. Notice of the time and place of each meeting of the Corporation shall be given to each Director by mail at least five calendar days before such meeting or personally or by telegram or cable at least twenty-four hours before such meeting. Except as otherwise provided in Article IV, relating to the amendment of these By-Laws, such notice need not specify the matters to be considered at the meeting. Notices by mail shall be deemed to have been given when mailed to each Director at his address appearing on the records of the Corporation, and notices by telegram or cable shall be deemed to have been given when presented for transmission to an office of the telegraph or cable company, addressed as in the case of notices by mail.

Section 2.4. Waiver of Notice. Notice of any meeting of the Corporation need not be given to a Director if waived in writing by him either before or after such meeting, or if he shall be present at such meeting. No notice need be given of any meeting if all the Directors then in office shall be present thereat. Notice of an adjourned meeting need not be given to any Director present at the time of the adjournment.

Section 2.5. Quorum and Voting. Except as otherwise required by the Act, a majority of the Directors then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the Corporation and any act taken by vote of a majority of the Directors present at the time of a vote, if a quorum is present at such time, shall be the act of the Corporation. A Majority of the Directors present at any meeting may adjourn the meeting to another time and place. If the president shall not be a Director, he shall nevertheless be entitled, by virtue of his office, to attend and participate, without vote, in all meetings of the Corporation.

Section 2.6. Matters Considered. Except as otherwise provided in Article IV, relating to the amendment of these By-Laws, any and all matters may be considered and acted upon at any meeting of the Corporation at which a quorum is present, whether or not such matters were specified in the notice of the meeting.

Section 2.7. Interested Directors. Unless otherwise provided by law, no contract or other transaction between the Corporation and any other corporation, firm or association or other entity in which one or more of its Directors or officers are directors or officers or have a substantial financial interest, or between the Corporation and any state instrumentality, including any state agency, trust fund or public benefit corporation other than the Corporation with which one or more of its Director are affiliated as a state officer or employee, shall be either void or voidable for this reason alone or by reason alone that such Director or Directors are present at the meeting of Directors which approves such contract or transaction:

1. If the material facts as to such Directors' interest in such contract or transaction and as to any such common directorship, officership, financial interest or affiliation are disclosed in good faith or known to the Directors; and
2. If the Directors approve such contract or transaction by a vote sufficient for such purpose or if the votes of the disinterested Directors are

insufficient to constitute an act of the Corporation as defined in Section 2.5 of the By-Laws, by unanimous vote of the disinterested Directors.

Common, interested or affiliated Directors may be counted in determining the presence of a quorum at a meeting of the Directors which authorizes such contract or transaction. Common, interested or affiliated Directors may not participate in any decision of the Corporation approving or affecting such contract or transaction.

Section 2.8. Participation in Meeting by Telephone. Notwithstanding anything elsewhere contained in these By-Laws, any one or more Directors may participate in a meeting of the Corporation by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting of the Corporation.

### ARTICLE III

#### Officers

Section 3.1. Appointment. The officers of the Corporation shall be the Chairman, who shall be a Director and shall be designated as Chairman by the Governor of the State of New York as provided in the Act, the President, who need not be a Director and who shall be appointed by the Governor of the State of New York as provided in the Act, the President and Chief Executive Officer Designate, who in the event of a vacancy in the office of President shall be proposed to the Corporation by the Governor of the State of New York and appointed by the Corporation, the Executive Vice President, one or more Vice Presidents, the Chief Financial Officer, one or more Deputy Chief Financial Officers, the Treasurer, one or more Assistant Treasurers, the Controller, the General Counsel, the Secretary, one or more Assistant Secretaries, and such other officers as may from time to time be appointed by the Corporation upon the recommendation of the President. A vacancy in any office shall be filled in the manner prescribed for appointment to such office. Each of the foregoing officers is hereby designated as an “officer” of the Corporation within the meaning of that term as defined in Section 5.1(4) of these By-Laws.

Section 3.2. Terms of Office. The Chairman and the President shall serve as such at the pleasure of the Governor of the State of New York as provided in the Act. The President and Chief Executive Officer Designate shall serve as such only so long as the office of President is vacant, or until his earlier removal, with or without cause, by the Corporation. All other officers of the Corporation shall hold office at the pleasure of the Corporation and may be removed, with or without cause, at any time by the Corporation.

Section 3.3 Chairman. The Chairman shall preside at all meetings of the Corporation and shall have such other powers and duties pertaining to the office of Chairman as are prescribed by law or in these By-Laws. The Chairman shall serve as such without salary.

Section 3.4. President. The President shall be the chief executive officer of the Corporation and, subject to the policies established by the Corporation, shall have general responsibility for the conduct of the affairs of the Corporation, including the initiation, planning and carrying out of the projects, programs and other activities of the Corporation pursuant to the Act. The President shall have the power to delegate authority and assign duties to employees of the Corporation. The President shall have such other powers and duties pertaining to his office as are prescribed by law or in these By-Laws or as may be assigned to him from time to time by the Corporation.

Section 3.5. President and Chief Executive Office Designate. The President and Chief Executive Office Designate shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restriction upon, the President. The performance of any such duty by the President and Chief Executive Officer Designate shall be conclusive evidence of the power to act. The President and Chief Executive Officer Designate shall have such powers and perform such duties as from time to time may be assigned to him by these By- Laws or by the Corporation.

Section 3.6. Executive Vice President. In the event of the absence or disability of the President, and a vacancy in the office of, or the absence or disability of, the President and Chief Executive Officer Designate, the Executive Vice President shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The performance of any such duty by the Executive Vice President shall be conclusive evidence of the power to act. The Executive Vice President shall have such powers and perform such duties as from time to time may be assigned to him by these By-Laws or by the Corporation or by the President.

Section 3.7. Vice President. In the event of the absence or disability of the President and a vacancy in the office of, or the absence or disability of, the President and Chief Executive Officer Designate and the absence or disability of the Executive Vice President, the Vice President or, if there be more than one Vice President, the Vice President previously designated in writing by the President, shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The performance of any such duty by a Vice President shall be conclusive evidence of the power to act. Each Vice president shall have such powers and perform such duties as from time to time may be assigned to him by these By-Laws or by the Corporation or by the President.

Section 3.8. Other Officers. The Officers of the Corporation other than the Chairman, the President, the President and Chief Executive Officer Designate, the Executive Vice President and any Vice Presidents, shall perform such duties pertaining to their respective offices as may be assigned to them from time to time by the Corporation or the President.

Section 3.9. Certification of Instruments. Each officer of the Corporation shall have the authority, when necessary or appropriate, to certify the records, proceedings, rules and regulations and other instruments of the Corporation and to affix and attest to the official seal of the Corporation on contracts and other instruments of the Corporation.

## ARTICLE IV

### By-Laws

Section 4.1. Amendments. These By-Laws may be amended, supplemented or repealed by majority vote of the Directors then in office at any meeting of the Corporation if either all the Directors then in office are present at such meeting or notice of the proposed amendment, supplement or repeal shall have been included in the notice or waiver of notice of such meeting.

## ARTICLE V

### Indemnification

Section 5.1 Purpose and Definition. The purpose of this Article is to provide for and regulate indemnification of Directors, officers and employees of the Corporation. In this Article, the following terms shall have the meanings indicated below, except where the context clearly requires otherwise—

(1) “action or proceedings” means any civil action or other civil judicial proceeding, any proceeding by or before an administrative agency or official investigatory body, any appeal from or judicial review of actions taken in any of the foregoing proceedings, and includes any such proceeding which is threatened, but does not include any criminal action or proceeding;

(2) “party to an action or proceeding” means a person made, or threatened to be made, a defendant or respondent or otherwise a party in an action or proceeding, and includes a person called upon, voluntarily or by subpoena, to give testimony, produce documents or respond to interrogatories in connection with an action of proceeding;

(3) “Director” means each Director of the Corporation appointed or servicing ex officio pursuant to the Act, including the Chairman of the Corporation;

(4) “officer” means the President of the Corporation and each person who has held or who holds from time to time any of the following positions in the Corporation: President and Chief Executive Officer Designate, Executive Vice President, General Counsel, Chief Financial Officer, Vice President of Operations, Director of Finance, General Manager, Director of Program Development or any other position expressly designated by the Directors to be thereafter treated as that of an officer for the purpose of this Article;

(5) “employee” means each employee of the Corporation who is not also a Director or officer;

(6) “subsidiary or affiliate” includes each subsidiary of the Corporation created pursuant to the Act (whether or not such entity has ceased to be a “subsidiary

corporation: under Section 12 of the Act), the Corporation for Urban Development and Research of New York, each subsidiary thereof, and the Urban Development Guarantee Fund of New York;

(7) “Director”, “officer”, and “employee” of the Corporation each includes persons who formerly served in such capacity and the estates of deceased person who had served in such capacity; and each such term includes persons serving or who formerly served ex officio pursuant to the Act or by designation of the Corporation as a Director, officer or employee of any subsidiary or affiliate of the Corporation, and the estates of deceased persons who had served in such capacity, provided that insofar as this Article distinguishes between Directors or officers of the Corporation, on the one hand, and employees, on the other, the status with respect to indemnification of a person who served in any capacity with a subsidiary of affiliate and who concurrently was a Director or officer of the Corporation shall be that of a Director or officer, and the status of all other such persons shall be that of an employee of the Corporation; and

(8) “applicable standard of conduct” means –

(i) with respect to an action or proceeding in which it is alleged that physical harm was caused to the person or property of a complainant or any harm was caused to his reputation, that such harm did not result from the willful and wrongful act or gross negligence of the Director, officer or employee seeking to be indemnified hereunder, or

(ii) with respect to any other action or proceeding, that the Director, officer or employee seeking to be indemnified hereunder acted in good faith for a purpose which he reasonably believed to be in the best interests of the Corporation and had reasonable cause to believe his conduct was lawful.

Section 5.2. General Scope of Indemnification. The Corporation shall, to the fullest extent permitted by law, indemnify any person who becomes a party to an action or proceeding by reason of the fact that he is or was a Director, officer or employee of the Corporation against judgments, penalties, amounts paid in settlement and reasonable expenses, including attorney’s fees, actually and necessarily incurred as a result thereof, unless the conduct of such Director, officer or employee in the matters at issue in such action or proceeding is found, in the manner prescribed in the Article, not to have met the applicable standard of conduct.

Section 5.3. Representation of Person Indemnified. The Corporation may, either by its own staff counsel or by outside counsel of its choice, assume the representation of any persons who becomes a party to an action or proceeding, except in situations in which (i) choice of counsel is governed by Section 4(3-a) of the Act, or (ii) 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 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; provided, however, that the Corporation as a condition to such indemnification for the cost of private counsel may, and where the Attorney General has so required as a condition to indemnification by the State of New York pursuant to Section 4(3-a) of the Act shall, require appropriate groups of persons to be represented by the same counsel.

Section 5.4. Advances of Expenses.

(a) A Director or officer who becomes a party to an action or proceeding may request that the Directors authorize the Corporation to advance expenses pending the final disposition of such action or proceeding. Upon such request: (i) If there is a quorum of Directors who are not parties to such action or proceeding, the Directors shall make a tentative finding as to whether it then appears that the requesting Director or officer has met the applicable standard of conduct; or (ii) if such a quorum of Directors is not obtainable with due diligence, the Directors shall obtain an opinion in writing of outside legal counsel as to whether it then appears that such standard of conduct has been met by the requesting Director or officer. If a quorum of Directors makes such finding or outside legal counsel gives such opinion, the Directors shall authorize the Corporation to pay, and the Corporation shall pay, from time to time in advance of the final disposition of the action or proceeding, reasonable expenses as described in Section 5.2 incurred by such Director or officer in connection with such action or proceeding.

(b) Reasonable expenses as described in Section 5.2 incurred by an employee who becomes a party to an action or proceeding shall 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 the Directors (i) may make a tentative finding at any time prior to the final disposition of such action or proceeding that it then appears that an employee has clearly not met the applicable standard or conduct, or may seek an opinion in writing of outside legal counsel with respect to that issue, and if such a tentative finding shall be made or a negative opinion on that 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.

(c) The Corporation shall require each person receiving amounts advanced under paragraph (a) or (b) of this Section 5.4 to agree in writing that the same shall be repaid if the person receiving such advances is ultimately found not to be entitled to indemnification, or to the extent the expenses so advanced by the Corporation exceed the indemnification to which he is ultimately found to be entitled.

Section 5.5 Indemnification on Final Disposition.

(a) A person who has been wholly successful, on the merits or otherwise, in the defense of an action or proceeding shall be entitled to indemnification against reasonable expenses as described in Section 5.2, and the Corporation shall make such indemnification without necessity for any authorization, findings or other action by the Directors prior to such indemnification, except that the Directors may determine, or provide for the determination of, the reasonableness of such expenses.

(b) A Director or officer who has not been wholly successful in the defense of an action or proceeding, or who was a party to an action or proceeding without being a defendant or respondent therein, may request indemnification from the Corporation. Upon such request: (i) If there is a quorum of Directors who are not and were not parties to such action or proceeding, the Directors shall make a finding as to whether the requesting Director or officer has met the applicable standard of conduct; or (ii) if such a quorum of Directors is not obtainable with due diligence, the Directors shall obtain an opinion in writing of outside legal counsel as to whether such standard of conduct has been met by the requesting Director or officer. If a quorum of Directors makes such finding or outside legal counsel gives such opinion, the Directors shall authorize, and the Corporation shall make, indemnification as provided in Section 5.2, upon a determination by the Directors (or a person or body designated by the Directors) that expenses sought to be indemnified were reasonable and actually and necessarily incurred as a result of the action or proceeding, and that any amounts paid in settlement (unless approved by the Directors prior to such settlement) were reasonable in the circumstances.

(c) An employee who has not been wholly successful in the defense of an action or proceeding, or who was a party to an action or proceeding without being a defendant or respondent therein, may request indemnification from the Corporation. Upon such request: The President shall notify the Directors in writing of such request and of the particulars submitted by such employee in support of it, and the President may submit to the Directors any further information or comments he thinks appropriate. Within two weeks after the next meeting of the Directors following such submission, the Corporation shall make indemnification as provided in Section 5.2, unless the Directors shall have found that such employee has not met the applicable standard of conduct, or shall have decided to seek an opinion in writing of outside legal counsel with respect to that issue (in which event indemnification shall be made within six weeks after such meeting unless a negative opinion on that issue shall have been given), or unless and to the extent that the Directors (or a person or body designated by the Directors) shall have determined that expenses sought to be indemnified were not reasonable or not actually and necessarily incurred as a result of the action or proceeding, or that amounts paid in settlement (unless approved by the Directors prior to such settlement) were not reasonable in the circumstances.

Section 5.6. Insurance. The Corporation may, to the fullest extent permitted by law, purchase and maintain insurance on behalf of any Director, officer or employee of the Corporation to indemnify such person in instances in which he has the right of indemnification by the Corporation under the provisions of this Article.

Section 5.7. Applicability of this Article.

(a) The provisions of this Article shall inure only to Directors, officers and employees of the Corporation, as defined herein, shall not enlarge or diminish the rights of any other party to an action or proceeding, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance. This Article is to be construed liberally in favor of each Director, officer or employee, 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.



(b) The provisions of this Article shall be in addition to and shall not supplant any indemnification by the State heretofore or hereafter conferred upon any Director, officer or employee by Section 4(3-a) of the Act, by Section 17 of the Public Officers Law, or otherwise; provided, however, that the Corporation recognizes that its obligation to provide indemnification in accordance with this Article is primary and any obligation of the State to provide indemnification is secondary, in circumstances where both may be applicable.

(c) This Article shall be applicable, to the fullest extent permitted by law, to any claim for indemnification made after its adoption as a By-Law of the Corporation, whether the action or proceeding to which such claim relates commenced, or the matters at issue therein occurred, before or after the adoption of this Article. It is contemplated that no subsequent amendment, supplement or repeal of this Article which deprives a Director, officer or employee of any substantial right or benefit conferred herein will be made applicable with respect to any claim for indemnification arising out of conduct of such Director, officer or employee occurring or alleged to have occurred after the adoption of this Article and prior to such amendment, supplement or repeal.

(d) Unless and until this Article shall be amended, supplemented or repealed in accordance with Article IV, the provisions of this Article shall constitute a contract between the Corporation and each Director, officer or employee for indemnification in accordance with the provisions of this Article. In the event that any Director, officer or employee shall be aggrieved by a determination of the Corporation or the Directors or outside counsel made under this Article, or by a failure of the Corporation or the Directors to act as provided herein, he shall be entitled to seek appropriate relief against the Corporation in any court of competent jurisdiction within the State of New York in accordance with the standards for indemnification set forth herein.