

## **RESOLUTION NO. 356**

### **APPROVING THE CERTIFICATE OF INCORPORATION AND CONSENTING TO THE FORMATION OF THE ALBANY COUNTY CAPITAL RESOURCE CORPORATION**

Introduced: 9/8/14

By Messrs. Domalewicz, Morse, Commisso and Ward:

BE IT ENACTED by the County Legislature of Albany County, New York (the "County Legislature"), as follows:

WHEREAS, On January 31, 2008, subsection (13) of Section 854 of the General Municipal Law, commonly referred to as the Civic Facilities Legislation, (the "Law") expired and, since the expiration of the Law, industrial development agencies have not been able to provide financial assistance to projects owned or operated by not-for-profit corporations (hereinafter referred to as "Civic Facility Projects"), and

WHEREAS, The ability to finance Civic Facility Projects with tax-exempt bonds has been a very important tool for the Albany County Industrial Development Agency (the "Agency"), as the Civic Facility Projects undertaken by the Agency have increased employment opportunities for residents of Albany County and allowed local not-for-profit corporations to upgrade their facilities at the lowest possible cost, and

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

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

territory, (3) to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, (4) to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, (5) to borrow money and to issue negotiable bonds, notes and other obligations therefor, and (6) to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine to be suitable, and

WHEREAS, Under the laws of the State of New York and Private Letter Ruling No. 200936012, capital resource corporations are permitted to issue tax-exempt bonds for the benefit of qualifying Civic Facility Projects, and

WHEREAS, In accordance with Section 1411(a) of the NFPCL and Private Letter Ruling No. 200936012, prior to forming a capital resource corporation for the benefit of the County, the Agency must obtain from the County Legislature, as the governing body of the County, the approval of the certificate of incorporation that will be used to form the local development corporation, and

WHEREAS, The Agency has prepared a proposed certificate of incorporation for review by the County Legislature and a copy of such proposed certificate of incorporation is attached hereto as Schedule A, and

NOW, THEREFORE, BE IT RESOLVED by the County Legislature of Albany County, New York as follows:

Section 1. The County Legislature authorizes the Agency to form a capital resource corporation in accordance with Section 1411 of the NFPCL; provided, however, that any obligations issued by the local development corporation, and the premium (if any) and interest thereon, shall be special obligations of the capital resource corporation and shall never be a debt of the State of New York, Albany County, New York or any political subdivision thereof (other than the capital resource corporation), and neither the State of New York, Albany County, New York nor any political subdivision thereof (other than the capital resource corporation) shall be liable thereon.

Section 2. The County Legislature approves the form and substance of the certificate of incorporation presented at this meeting and attached hereto as Schedule A, all in substantially the form thereof presented to this meeting, with such ministerial changes, variations, omissions and insertions as the Chair of the County Legislature shall approve.

Section 3. This resolution shall take effect immediately and the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

*Adopted by voice vote. 9/8/14*

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on September 16, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

140915000518

**CERTIFICATE OF INCORPORATION**

**Of**

**ALBANY COUNTY CAPITAL RESOURCE CORPORATION**

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

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

**FIRST:** The name of the corporation is Albany County Capital Resource Corporation (hereinafter referred to as the "Corporation").

**SECOND:** The Corporation will be a corporation as defined in subparagraph (a)(5) of Section 102 of the NFPCL and will be a charitable Corporation as defined in Section 201 of the NFPCL. The Corporation is a public instrumentality of, but separate and apart from, Albany County (the "County").

**THIRD:** The purpose for which the Corporation is to be formed and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, is to lessen the burdens of government by fulfilling the purposes now or hereafter referred to in Section 1411(a) of the NFPCL by means of engaging in the following activities:

(a) promoting community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of the County by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access low interest tax-exempt and non-tax-exempt financing for their eligible projects;

(b) issuing and selling one or more series or classes of bonds, notes and other obligations (the "Obligations") through public letting, private placement, or negotiated underwriting to finance activities referred to in subparagraph (a) above, on a secured or unsecured basis;

(c) engaging the services of one or more underwriters, placement agents, consultants, attorneys, financial advisors and other persons whose services may be appropriate or desirable in connection with the acquisition and financing referred to above;

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

(e) entering into contracts with any other economic development organizations sponsored by the County to help achieve the purposes described in paragraph (d) above; and

(f) in general, performing any and all acts and things, and exercise and any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the

laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

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

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

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

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

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

**SIXTH:** The following language in this Article SIXTH relates to the Corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in Article THIRD. Notwithstanding any other provision of this certificate, and pursuant to the requirements of Section 1411(e) of the Not-For-Profit Corporation Law:

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

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

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

**SEVENTH:** The following language in this Article SEVENTH relates to the Corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in Article THIRD. Notwithstanding any other provision of this certificate:

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

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

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

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

**NINTH:** The office of the Corporation will be located in Albany County, New York. At all times:

(a) The Corporation will, upon request by the County, make available any and all books and records of the Corporation for inspection by the Chair of the County Legislature of the County (the "County Legislature") and his or her staff.

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

(c) The governing body of the County, the New York State Authorities Budget Office, and the New York State Comptroller will have the right to conduct an annual audit of the books and records of the Corporation.

**TENTH:** The County is the sole member of the Corporation.

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

The Corporation is deemed to be a public body (as such term is defined in the Open Meetings Law) and, as such, each meeting of the Board of Directors of the Corporation will be conducted in the

manner prescribed by the Open Meetings Law. The Directors will not receive compensation for services provided to or on behalf of the Corporation.

The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body. No consent or approval is required.

**TWELFTH:** The Corporation will consist of not less than three nor more than seven Directors. The Directors will be appointed by the governing body of the County and will include (a) the Chairman of Albany County Industrial Development Agency, (b) the Vice-Chairman of Albany County Industrial Development Agency, (c) the Treasurer of Albany County Industrial Development Agency, and (d) any additional members of Albany County Industrial Development Agency so appointed as Directors.

(a) The names and addresses of the initial Directors of the Corporation are as follows:

- |       |                      |   |
|-------|----------------------|---|
| (i)   | Hon. Gary Domalewicz | Albany County Capital Resource Corporation<br>112 State Street Rm 740, Albany, New York 12207 |
| (ii)  | Michael Paparian     | Albany County Capital Resource Corporation<br>112 State Street Rm 740, Albany, New York 12207 |
| (iii) | Theresa M. Ries      | Albany County Capital Resource Corporation<br>112 State Street Rm 740, Albany, New York 12207 |
| (iv)  | Maclain Berhaupt     | Albany County Capital Resource Corporation<br>112 State Street Rm 740, Albany, New York 12207 |
| (v)   | Hon. William M. Clay | Albany County Capital Resource Corporation<br>112 State Street Rm 740, Albany, New York 12207 |
| (vi)  | Gene Messercola      | Albany County Capital Resource Corporation<br>112 State Street Rm 740, Albany, New York 12207 |

It is acknowledged that the Directors hold comparable positions with Albany County Industrial Development Agency established by Chapter 178 of the 1975 Laws of the State of New York, as amended. By reason of the shared public purposes of the Corporation and the Albany County Industrial Development Agency, none of the Directors of the Corporation will be deemed to have a conflict of interest solely due to such person's position with the Albany County Industrial Development Agency.

The powers of the Corporation set forth in paragraph **THIRD** hereof will be subject to the following limitations:

(A) The Corporation will only undertake projects that are not authorized by Article 18A of the New York State General Municipal Law (the "New York State Industrial Development Agency Act") unless the Corporation receives a written request from Albany County Industrial Development Agency asking the Corporation to consider undertaking such project.

(B) The bonds or notes and other obligations of the Corporation will not be a debt of the State of New York or Albany County, and neither the State of New York nor Albany County will be liable thereon, nor will they be payable out of any funds other than those of the Corporation.

(C) The Corporation will hold a public hearing on any financial assistance in excess of \$100,000 proposed to be provided by the Corporation to a project at which interested parties will be

provided with reasonable opportunity, both orally and in writing, to present their views with respect to the project. The Corporation will give the same notice of such hearing as the Albany County Industrial Development Agency would be required to give pursuant to the provisions of Section 859-a and b of the General Municipal Law of the State of New York as if such hearing was a public hearing of the Albany County Industrial Development Agency with respect to a project.

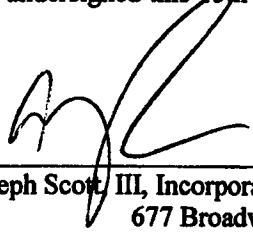
THIRTEENTH: The Corporation will be subject to the Public Authorities Accountability Act of 2005 (the "Act"), as amended. As such, the Corporation will be required to, among other things: (1) undergo annual independent audits and submit the results of such audits to the County and the New York State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

FOURTEENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State will mail a copy of any process against the Corporation served upon him or her is Albany County Capital Resource Corporation, 112 State Street Rm 740, Albany, New York 12207. Attn: Chairman.

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

SIXTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in any manner now or hereafter provided herein or by statute; provided, however, that (1) the Corporation will not amend, alter, change or repeal any provision of this Certificate of Incorporation without the affirmative vote of two-thirds of the members of the Board of Directors of the Corporation and the consent of the Chair of the County Legislature, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Chair of the County Legislature and the Directors with 10 days' advance notice of any proposed amendment, alteration, change or repeal.

IN WITNESS WHEREOF, this certificate has been subscribed by the undersigned this 15th day of September, 2014.

  
\_\_\_\_\_  
A. Joseph Scott III, Incorporator  
677 Broadway  
Albany, New York 12207



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**Certificate of Incorporation**

**Of**

Albany County Capital Resource  
Corporation

Under Section 402 and 1411 of the Not-For-Profit Corporation Law

**FILED**

2014 SEP 15 PM 12:11

Filed by: A. Joseph Scott, III  
Hodgson Russ LLP  
677 Broadway  
Albany, New York 12207

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DEPARTMENT OF STATE

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**BY-LAWS**  
**OF**  
**ALBANY COUNTY CAPITAL RESOURCE CORPORATION**

**ARTICLE I**  
**THE CORPORATION**

**Section 1. Name.** The name of the Corporation is "Albany County Capital Resource Corporation."

**Section 2. Seal of Corporation.** The seal of the Corporation will be in the form of a circle and will bear the name of the Corporation and the year of its organization.

**Section 3. Office of Corporation.** The office of the Corporation will be in Albany County, New York.

**Section 4. Execution of Instruments.** Except as otherwise provided in these by-laws, instruments and documents of the Corporation may be signed or countersigned, executed, verified or acknowledged by such officer or officers or other person or persons as the Corporation may designate by resolution.

**ARTICLE II**  
**MEMBERS, DIRECTORS, OFFICERS AND COMMITTEES**

**Section 1. Sole Member.** Albany County (the "County") is the sole member of the Corporation.

**Section 2. Board of Directors.** (A) The Corporation will consist of not less than three nor more than seven Directors. The Directors will be appointed by the governing body of the County from among the members of the Albany County Industrial Development Agency and will include (a) the Chairman of Albany County Industrial Development Agency, (b) the Vice-Chairman of Albany County Industrial Development Agency, (c) the Treasurer of Albany County Industrial Development Agency, and (d) any additional members of the Albany County Industrial Development Agency so appointed by the governing body of the County as a Director of the Corporation. It is acknowledged that the members of the Albany County Industrial Development Agency are appointed by and serve at the pleasure of the County Legislature of Albany County, New York.

(B) Except for Directors who serve as Directors by virtue of holding a civil office of the State, the majority of the remaining Directors appointed after January 13, 2006 will be "Independent Directors."

(C) For purposes of these by-laws, the term "Independent Director" means a Director one who: (1) is not, and in the past two years has not been, employed by the Corporation (or an "Affiliate" of the Corporation) in an executive capacity; (2) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the Corporation or received any other form of financial assistance valued at more than \$15,000 from the Corporation; (3) is not a relative of an executive officer or

employee in an executive position of the Corporation (or an “Affiliate” of the Corporation); and (4) is not, and in the past two 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 an “Affiliate” of the Corporation).

(D) For purposes of these by-laws, the term “Affiliate” means a corporate body having substantially the same ownership or control as the Corporation.

(E) For purposes of these by-laws, the term “Relative” means an individual’s spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the individual or of the individual’s spouse.

**Section 3. Term of Service.** Directors are not subject to term limits. Each Director is appointed by and serves at the pleasure of the County Legislature of Albany County, New York. Accordingly, a Director may be removed as a Director of the Corporation without cause by the County Legislature of Albany County, New York at any time for any reason. Removal of a Director of the Corporation as a Director of the Corporation shall not affect the status of such Director as a member of the Albany County Industrial Development Agency.

**Section 4. Filling of Vacancies.** Should any Director position become vacant, the Corporation will take steps to recommend to the County Legislature of Albany County, New York one or more nominee members of the Albany County Industrial Development Agency to fill the vacancy. The decision to appoint a particular member of the Albany County Industrial Development Agency as a Director rests solely with the County Legislature of Albany County, New York.

**Section 5. Responsibilities of Directors; Training Requirement.** (A) The Directors of the Corporation constitute the governing body of the Corporation (the “Board”), and will have and will responsibly exercise all of the powers prescribed by Section 1411 of the New York State Not-for-Profit Corporation Law and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York, as amended (the “PAAA”).

(B) The Board will appoint a Chief Executive Officer and a Chief Financial Officer of the Corporation, neither of whom will be a Director of the Corporation.

(C) Every annual financial report of the Corporation must be approved by the Board and provided to the County.

(D) The Directors of the Corporation will: (1) execute direct oversight of the Chief Executive Officer of the Corporation and other senior management of the Corporation in the effective and ethical management of the Corporation; and (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Corporation.

(E) The Board will not, directly or indirectly, including through a subsidiary, extend or maintain credit or arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, Director or employee (or equivalent thereof) of the Corporation.

(F) Directors of the Corporation will file annual financial disclosure statements with the Board of Ethics of Albany County, New York.

(G) Individuals newly appointed to the Board of the Corporation must participate in state approved training regarding their legal, fiduciary, financial, and ethical responsibilities within one year of appointment to such Board. Directors who have already completed state approved training will 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 public authorities and to adhere to the highest standards of responsible governance.

**Section 6. Officers of the Board.** (A) The officers of the Board will be elected by a majority of the Directors and will consist of a Chairman, a Vice Chairman, a Secretary, and a Treasurer.

(B) The officers of the Board will perform the duties and functions specified in these by-laws and such other duties and functions as may from time to time be authorized by resolution of the Board of the Corporation or required to effect the statutory purposes of the Corporation.

(C) Should any office of the Board become vacant, the Corporation will appoint a successor from among its Directors at the next regular meeting, and such appointment will be for the unexpired term of said office.

**Section 7. Chairman.** The Chairman will be a Director of the Corporation and preside at all meetings of the Corporation. The Chairman will sign all agreements, contracts, deeds and any other instruments on behalf of the Corporation, except as otherwise authorized or directed by resolution of the Corporation. The Chairman will submit his recommendations and such information as he has deemed pertinent concerning the business, affairs, and policies of the Corporation, at each meeting.

**Section 8. Vice Chairman.** The Vice Chairman will be a Director of the Corporation and perform the duties of the Chairman in the absence or incapacity of the Chairman. In the event of the resignation or death of the Chairman, the Vice Chairman will become acting Chairman and perform the duties of the Chairman until such time as the Corporation appoints a new Chairman.

**Section 9. Secretary.** The Secretary will be a Director of the Corporation. The Secretary will keep all records of the Corporation, will act as secretary at the meetings of the Corporation, will keep a record of all votes thereat. The Secretary will record the proceedings of the Corporation in a journal of proceedings to be kept for such purpose. The Secretary will perform all duties incident to this office. The Secretary will have custody of the seal of the Corporation, and will have the power to affix such seal to all contracts and other instruments authorized by the Corporation to be executed.

**Section 10. Treasurer.** The Treasurer will be a Director of the Corporation. Except as otherwise authorized by resolution of the Board, the Treasurer of the Corporation is authorized, along with any other Director, to sign all checks for the payment of money of the Corporation; and will pay out and disburse such moneys under the direction of the Board. Except as otherwise authorized by resolution of the Board, all such checks will be countersigned by any other Director of the Corporation or the Chief Executive Officer of the Corporation. The Treasurer, in coordination with the Corporation's chief financial officer, will render to the Corporation at each regular meeting an account of the financial transactions and the current financial condition of the Corporation.

**Section 11. Governance Committee.** (A) The Chairman will appoint a Governance Committee, the membership of which shall be comprised of not less than three Independent Directors of the Corporation, who shall constitute a majority on the Governance Committee, and who shall possess the necessary skills to understand the duties and functions of the Governance Committee; provided, however, that in the event that the Board has less than three Independent Directors, the Board may appoint non-

independent members to the Governance Committee, provided that the Independent Directors must constitute a majority of the members of the Governance Committee.

(B) The Governance Committee will: (1) keep the Board informed of current best governance practices; (2) review corporate governance trends; (3) update the Corporation's corporate governance principles; and (4) advise the Board on the skills and experiences required of potential Directors of the Board.

**Section 12. Audit Committee.** (A) The Chairman will appoint an Audit Committee, the membership of which shall be comprised of not less than three Independent Directors of the Corporation, who shall constitute a majority on the Audit Committee, and who shall possess the necessary skills to understand the duties and functions of the Audit Committee; provided, however, that in the event that the Board has less than three Independent Directors, the Board may appoint non-independent members to the Audit Committee, provided that the Independent Directors must constitute a majority of the members of the Audit Committee.

(B) To the extent practicable, members of the Audit Committee should be familiar with corporate financial and accounting practices.

(C) The Audit Committee will ensure that the Corporation arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required under the laws of New York State.

(D) The Audit Committee will recommend to the Board the hiring of a certified independent public accounting firm for the Corporation, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee will not recommend the hiring of a certified independent public accounting firm to provide audit services to the Corporation if the Chief Executive Officer, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Corporation was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Corporation during the one year period preceding the date of the initiation of the audit.

(E) If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public accounting firm proposing to provide an annual independent audit for the Corporation, or the audit partner responsible for reviewing the audit, has performed audit services for the Corporation in each of the five previous fiscal years of the Corporation, the Audit Committee will prohibit such certified independent public accounting firm from providing an annual independent audit for the Corporation.

(F) The Audit Committee will require that each certified independent public accounting firm that performs for the Corporation an audit required by law will timely report to the Audit Committee: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Corporation, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (3) 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.

(G) The Audit Committee will prohibit the certified independent public accounting firm providing an annual independent audit for the Corporation from performing any non-audit services to the Corporation contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including: (1) bookkeeping or other services related to the accounting records or financial statements of the Corporation; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions, (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit.

**Section 13. Finance Committee.** (A) The Chairman will appoint a Finance Committee, the membership of which shall be comprised of not less than three Independent Directors of the Corporation, who shall constitute a majority on the Finance Committee, and who shall possess the necessary skills to understand the duties and functions of the Finance Committee; provided, however, that in the event that the Board has less than three Independent Directors, the Board may appoint non-independent members to the Finance Committee, provided that the Independent Directors must constitute a majority of the members of the Finance Committee.

(B) The Finance Committee shall review proposals for the issuance of debt by the Corporation and its subsidiaries and make recommendations on the issuance of such debt.

**Section 14. Additional Duties.** The officers of the Corporation will perform such other duties and functions as may from time to time be required by the Corporation, by its by-laws, or by its rules and regulations.

**Section 15. Appointment of Officers.** All officers of the Corporation except the first Chairman will be appointed at the annual meeting of the Corporation. Officers will hold office for one year or until their successors are appointed. If the term of a Corporation Director should terminate, the term of office of such Director as an officer of the Corporation will also terminate.

## ARTICLE III

### MEETINGS

**Section 1. Annual Meeting.** The annual meeting of the Corporation will be held during the month of January on a date, time, and place determined by the Corporation.

**Section 2. Regular Meetings.** Regular meetings of the Corporation may be held at such times and places as from time to time may be determined by the Corporation.

**Section 3. Special Meetings.** The Chairman of the Corporation may, when he deems it desirable, and will upon the written request of two Directors of the Corporation, call a special meeting of the Corporation for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each Director of the Corporation or may be mailed to the business or home address of each Director of the Corporation at least two days prior to the date of such special meeting. Waivers of notice may be signed by any Director failing to receive a proper notice. At such special meeting, no business will be considered other than as designated in the call, but if all Directors of the Corporation are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.

**Section 4. Executive Sessions.** When determined by the Corporation that any matter pending before it is confidential in nature, it may, upon its own motion, establish an executive session in accordance with the New York State Open Meetings Law and exclude non-Directors from such sessions.

**Section 5. Quorum.** At all meetings of the Corporation, a majority of the Corporation will constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained.

**Section 6. Order of Business.** At the regular meetings of the Corporation, the following will be the order of business:

1. Roll Call.
2. Reading and approval of the minutes of the previous meeting.
3. Report of the Treasurer.
4. Bills and communications.
5. Reports of Committees.
6. Resolutions and motions.
7. Unfinished business.
8. New business.
9. Adjournment.

**Section 7. Manner of Voting.** The voting on all questions coming before the Corporation concerning financial commitments, expenditures, personnel matters, appointments, litigation, legal indebtedness, contracts, and agreements will be by roll call, all other questions may be by voice vote, and yeas and nays will be entered on the minutes of such meeting, except in the case of appointments when the vote may also be by ballot. The Corporation's attorney will decide which questions coming before the Corporation require a roll call vote. Any action of the Corporation will be binding upon determination by a majority vote of the Directors of the Corporation.

## **ARTICLE IV**

### **EXECUTIVE OFFICERS AND EMPLOYEES**

**Section 1. Chief Executive Officer.** (A) The Chief Executive Officer will be appointed by the Board, and will be the chief executive officer of the Corporation.

(B) The Chief Executive Officer will have general supervision over the administration of the business and affairs of the Corporation, subject to the direction of the Board. Whenever possible, the Chief Executive Officer will attend each meeting of the Board, and will submit such recommendations and information to the Board as the Chief Executive Officer may consider proper concerning the business, affairs, and policies of the Corporation.

(C) The Chief Executive Officer will be charged with the management of all projects of the Corporation.

(D) The Chief Executive Officer will also serve as the Contracting Officer (as such term is defined in the PAAA) of the Corporation, and, as such, be responsible for (1) the disposition of property of the Corporation, and (2) the Corporation's compliance with the Corporation's property use and disposition guidelines.

(E) Every annual financial report of the Corporation must be certified in writing by the Chief Executive Officer that based on the Chief Executive Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the financial statements.

**Section 2. Chief Financial Officer.** (A) The Chief Financial Officer will have the care and custody of all funds of the Corporation and will deposit the same in the name of the Corporation in such bank or banks as the Board may select or, if the Board has not so selected a bank or banks, which the Chief Financial Officer selects.

(B) The Chief Financial Officer will keep regular books of accounts showing receipts and expenditures, and will render to the Audit Committee at each regular meeting thereof an account of such transactions and also of the financial condition of the Corporation.

(C) The Chief Financial Officer will give such bond for the faithful performance of his duties as the Corporation may determine.

(D) Every annual financial report of the Corporation must be certified in writing by the Chief Financial Officer that based on the Chief Financial Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the financial statements.

**Section 3. Additional Personnel.** The Corporation may from time to time employ such personnel as it deems necessary to exercise its power, duties, and functions as prescribed by the New York State Not-for-Profit Corporation Law and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel including the Chief Executive Officer will be determined by the Corporation subject to the laws of the State of New York. The Corporation may from time to time employ such personnel as it deems necessary to exercise its statutory powers, duties, and functions. The selection and compensation of all personnel will be determined by the Corporation.

**Section 4. Financial Disclosure.** Officers and employees of the Corporation will file annual financial disclosure statements at the times and places as the applicable New York law requires members and employees of the Albany County Industrial Development Agency to make such filings.

## ARTICLE V

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

**Section 1. Right of Indemnification.** Each Director and officer of the Corporation, whether or not then in office, and any person whose testator or intestate was such a Director or officer, will be indemnified by the Corporation for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Section 18 of the Public



Officers Law of the State of New York or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Corporation will provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Director or officer only if such action or proceeding (or part thereof) was authorized by the Board.

**Section 2. Advancement of Expenses.** (A) Expenses incurred by a Director or officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article V **may** be paid by the corporation in advance of the final disposition of such action or proceeding upon (1) the receipt of an undertaking by or on behalf of such Director or officer to repay such advancement in case such Director or officer is ultimately found not to be entitled to indemnification as authorized by this Article V and (2) approval by the Board.

(B) To the extent permitted by law, the Board will not be required to find that the Director or officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Corporation makes any advance payment of expenses hereunder.

**Section 3. Availability and Interpretation.** To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article V (A) will be available with **respect** to events occurring prior to the adoption of this Article V, (B) will continue to exist after any rescission or restrictive amendment of this Article V with respect to events occurring prior to such rescission or amendment, (C) will be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Director or officer (or, if applicable, at the sole discretion of the testator or intestate of such Director or officer seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (D) will be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the Director or officer for whom such rights are sought were parties to a separate written agreement.

**Section 4. Other Rights.** The rights of indemnification and to the advancement of expenses provided in this Article V will not be deemed exclusive of any other rights to which any Director or officer of the Corporation or other person may now or hereafter be otherwise entitled, whether contained in these by-laws, a resolution of the Board or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article V will not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Director or officer of the Corporation or other person in any action or proceeding to have assessed or allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

**Section 5. Severability.** If this Article V or any part hereof is held unenforceable in any respect by a court of competent jurisdiction, it is deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article V will remain fully enforceable. Any payments made pursuant to this Article V will be made only out of funds legally available therefor.

## ARTICLE VI

### POLICIES & PROCEDURES

**Section 1. Projects.** It is the policy of this Corporation that the Corporation will only undertake projects that are not authorized by Article 18A of the New York State General Municipal Law (the "New York State Industrial Development Agency Act") unless the Corporation receives a written request from Albany County Industrial Development Agency asking the Corporation to consider undertaking such project.

**Section 2. Miscellaneous.** (A) The Corporation will not approve any project to be located on a site or within an area which does not conform to or has not been granted a variance from any applicable zoning laws of the State, county, town, or village.

(B) The Corporation will not approve any project which would be in violation of New York State Environmental Quality Review Act.

(C) The Corporation will not approve any project which would be or is in violation of the health, labor or other laws of the State of New York or the United States or of the local laws of Albany County, New York and any city, town or village in Albany County, New York.

**Section 3. Audit of Records and Accounts.** (A) The Corporation will annually secure a certified audit of its financial records and accounts and will file a copy of such certified audit with the County Legislature of Albany County, New York within ninety days after the close of the Corporation's fiscal year.

(B) The Corporation may require any other operating statements that it determines are required for daily operation.

**Section 4. Conveyance of Property.** The Corporation may insert in a contract for a project that upon the payment in full of all notes, bonds and indebtedness incurred in connection with a project that the Corporation will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract and that the additional consideration for such conveyance may be nominal.

**Section 5. Additional Policies.** The Corporation by resolution may adopt such rules, regulations, policies, and procedures as it may deem necessary and appropriate to the operation so long as the same is not contrary to these by-laws as they may be amended from time to time.

## **ARTICLE VII**

### **AMENDMENTS**

**Section 1. Amendments to By-laws.** The by-laws of the Corporation may be amended with the consent of the Chairman of the County Legislature of Albany County, New York and the approval of a majority of all the Directors of the Corporation at a regular meeting or at a special meeting called for that purpose; but no such amendment will be adopted unless at least ten days written notice thereof has been previously given to all Directors of the Corporation and to the Chairman of the County Legislature of Albany County, New York.

In effect as of September 17, 2014.

Date of this notice: 09-11-2014

Employer Identification Number:  
47-1806168

Form: SS-4

Number of this notice: CP 575 E

ALBANY COUNTY CAPITAL RESOURCE  
CORPORATION  
112 STATE ST STE 740  
ALBANY, NY 12207

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

**WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER**

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 47-1806168. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it's very important that you use your EIN along with your complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information shown above isn't correct, please send us the correction using the attached tear-off stub.

**Annual filing requirements**

Most organizations with an EIN have an annual filing requirement, even if they engage in minimal or no activity.

A. If you are tax exempt, you may be required to file one of the following returns or notices:

Form 990, Return of Organization Exempt From Income Tax  
Form 990-EZ, Short Form Return of Organization Exempt From Income Tax  
Form 990-PF, Return of Private Foundation  
Form 990-N, e-Postcard (available online only)

Additionally, you may be required to file your annual return electronically.

If an organization required to file a Form 990, Form 990-PF, Form 990-EZ, or Form 990-N does not do so for three consecutive years, its tax-exempt status is automatically revoked as of the due date of the third return or notice.

Please refer to [www.irs.gov/990filing](http://www.irs.gov/990filing) for the most current information on your filing requirements.

B. If you are not tax-exempt, you may be required to file one of the following returns:

Form 1120, U.S. Corporation Income Tax Return  
Form 1041, U.S. Income Tax Return for Estates and Trusts  
Form 1065, U.S. Return of Partnership Income

Please refer to Publication 1635, Understanding Your EIN, for more information about which forms you may be required to file.