

**CERTIFICATE OF INCORPORATION
OF
THREE FALLS LOCAL DEVELOPMENT CORPORATION**
Under Section 1411 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation shall be “THREE FALLS LOCAL DEVELOPMENT CORPORATION” (hereinafter referred to as the “Corporation”).

SECOND: The Corporation will be a corporation as defined in subparagraph a(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York. The Corporation, being created by joint action of the Town of Ulysses and/or the Town of Covert and/or the Village of Trumansburg, is also a local authority as that term is defined in subparagraph 2 of Section 2 of the Public Authorities Law.

THIRD: The purposes for which this corporation is formed include the following: relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding 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 lessening the burdens of government and acting in the public interest. In furtherance of said purposes, the Corporation’s powers shall include, but not be limited, as follows:

- a) To foster the creation, retention and expansion of jobs and economic opportunities for the benefit of the Town(s) and Village, New York State and local economies;
- b) To construct, acquire, rehabilitate and improve for use by others, facilities in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain and/or lease such facilities on its behalf or for others in such territory; to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto;
- c) To acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein;
- d) To apply for loans and borrow money without limit as to amount; to make, draw, accept, endorse, execute and issue negotiable bonds, debentures, notes and other obligations therefor;
- e) To sell, lease, mortgage or otherwise dispose of or encumber any such facilities or any of its real or personal property or any interest therein upon such terms as it may determine;
- f) To enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of facilities and related businesses in the territory in which the operations of the Corporation are principally to be conducted;
- g) To apply for and make grants and loans and to execute any and all documents necessary in connection therewith;

- h) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, Directors, Officers or any private person; and
- i) In general, to perform any and all acts and things, and exercise any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

FOURTH: The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of a state official, department, board, agency or other body. The Corporation is formed as a local development corporation pursuant to Section 1411 of the Not-for-Profit Corporation Law. Annexed to this Certificate of Incorporation are certified copies of resolutions of the Town of Ulysses and/or the Town of Covert and/or the Village of Trumansburg authorizing formation of the Corporation.

FIFTH: The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law and Section 1411 of said law.

SIXTH: The office of the Corporation is to be located in the County of Tompkins, State of New York

SEVENTH: The Corporation shall be managed by a Board of Directors consisting of not less than three (3) Directors. Increases or decreases in the number of Directors shall require the unanimous approval of the Corporation's Members and the affirmative vote of a majority of the Directors. The names and addresses of the initial Directors of the Corporation are as follows:

Name:
Address:

Name:
Address:

Name:
Address:

Name:
Address:

Name:
Address:

Name:
Address:

Commented [BC1]: "Voting Members"?

Commented [BC2R1]: Also, does this mean that an official board action would be required to "vote"? How is approval conveyed.

EIGHTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is: 10 Elm St., Trumansburg, NY 14886

NINTH: The following language 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 paragraph THIRD.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, Officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in paragraph Third hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

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

- a) All income and earnings of the Corporation shall be used exclusively for its corporate purposes or accrue and be paid to the New York job development authority;
- b) No part of the income or earnings of the Corporation shall inure to the benefit or profit of, nor shall any distribution of its property or assets be made to any member or private person, corporate or individual, or any other private interest, except that repayment of loans and contributions (other than dues) to the local development corporation may be made, but only if and to the extent that any such contribution may not be allowable as a deduction in computing taxable income under the internal revenue code of nineteen hundred fifty-four; and
- c) If the Corporation accepts a mortgage loan or loans from the New York job development authority, the Corporation shall be dissolved in accordance with the provisions of paragraph (g) of Section 1411 of the Not-for-Profit Corporation Law upon the repayment or other discharge in full by the Corporation of all such loans

Commented [BC3]: Cannot repay initial muni investments

Commented [BC4]: Initial muni investments could be loans with 0% interest

ELEVENTH: The duration of the corporation is perpetual.

TWELFTH: The types or classes of Membership in the Corporation and the number of Members of the Corporation shall be as set forth in the Corporation's Bylaws, as the same may be amended from time to time.

THIRTEENTH: Pursuant to the authority of Section 722 of the Not-for-Profit Corporation Law, the Directors and Officers of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by law, but not in any manner not permitted by, nor prohibited by, applicable law. More specifically, but not in limitation of the foregoing:

- a) **General Rights and Duties of Defense and Indemnity.** No Director, Officer, or member of the Corporation shall be personally liable to the Corporation or its members for damages for any breach of duty in such capacity unless said breach of duty, whether an act or omission, is found by judgment of a court of competent jurisdiction (or by other adjudication) to have been committed in bad faith or to have involved intentional misconduct or knowing violation of the law, or that the person charged personally gained a financial profit or other advantage to which such person was not legally entitled, or that the such person's act(s) or omission(s) materially or criminally violated the Not-for-Profit Corporation Law of the State of New York. Each person who serves as a Director, Officer, or member of the Corporation while this Article is in effect shall be deemed to be doing so in reliance on the provisions of this Article, and neither the amendment or repeal of this Article, nor the adoption of any By-law inconsistent with this Article, shall apply to or have any effect on the liability or alleged liability of any such Director, Officer, or member for, arising out of, based upon, or in connection with any acts or omissions of such person occurring prior to the amendment, repeal, or adoption of any inconsistent provision. The provisions of this Article are cumulative and shall be in addition to and independent of any and all other limitations upon, or eliminations of, the liabilities of Directors, Officers, and members of the Corporation, as such, whether such limitations or eliminations arise under or are created by any law, rule, regulation, by-law, agreement, vote of members or disinterested Directors, or otherwise. The Corporation shall also indemnify, to the fullest extent now or hereafter provided for or permitted by law, each person involved in or made or threatened to be made a party to any action, suit, claim, proceeding, arbitration, alternative dispute resolution mechanism, investigation, administrative or legislative hearing, or any other actual, threatened, pending or completed proceeding, whether civil, administrative, or criminal, or whether formal or informal, and including an action by or in the right of the Corporation or any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, whether profit or non-profit (any such entity, other than the Corporation, being hereinafter referred to as an "Enterprise"), and further including all appeals therein (any such process and all appeals being hereafter referred to as a "Proceeding"), by reason of the fact that such person, or such person's testator or intestate, is or was a Director, Officer, or member of the Corporation, or while so serving such person acted in an official capacity as a Director, Officer, or member in any other Enterprise, as against any and all judgments, fines, costs, penalties, amounts paid in settlement and expenses, including attorneys' fees, as are actually and reasonably incurred

as a result of or in connection with any Proceeding, except as may be limited or otherwise so provided in below.

- b) **Specific Rules for Derivative Actions.** The Corporation, by virtue of § 722 of the Not-for-Profit Corporation law, shall indemnify any person made party to an action by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person, or such person's testator or intestate, is or was a Director, Officer, or member of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by any such person in connection with the defense of such action, or in connection with an appeal therein, except in relation to matters as to which such Director, Officer, or member is adjudged to have breached such person's duty to the Corporation under § 717 of the Not-for Profit Corporation Law. Such indemnification shall in no case include amounts paid in settling or otherwise disposing of a threatened action, or a pending action with or without court approval, or expenses incurred in defending a threatened action, or a pending action which is settled or otherwise disposed of without court approval.
- c) **Interpretations and Intent of Provisions.** Whenever a defense or indemnity is claimed by any person and this Certificate of Incorporation references a breach of duty, commission of a breach in bad faith, intentional misconduct, a knowing violation of law, or a personal gain for which there was no legal entitlement, it shall be a defense by the claimant that while a Director, Officer, or member, such person acted in good faith for a purpose that such person reasonably believed to be in the best interests of the Corporation or that such person had no reasonable cause to believe that their conduct was unlawful. The termination of any action or proceeding by judgment, settlement, conviction, or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such Director, Officer, or member did not act in good faith or for a purpose that was reasonably believed to be in the best interests of the Corporation, or that such person had reasonable cause to believe that the applicable conduct was unlawful. It is the intent of this Article to require the Corporation to indemnify the persons referred to herein for the aforementioned judgments, fines, penalties, amounts paid in settlement, etc., whenever such indemnification could lawfully be permitted by express provisions of a Certificate of Incorporation, and the indemnification required by this Article shall not be limited by the absence of an express recital of such circumstances. In making any determination regarding any person's entitlement to indemnification hereunder it shall be presumed that such person is entitled to indemnification and the Corporation shall have the burden of proving the contrary.
- d) **Insurance and Agreements.** The Corporation may, with the approval of the Board of Directors, enter into an agreement with any person who is, or is about to become, a Director, Officer, member, employee, or agent of the Corporation, or who is serving, or is about to serve at the request of the Corporation as such in any Enterprise, and such agreement may provide for indemnification of such person and advancement of expenses to such person upon terms, and to the extent, not prohibited by law. The failure to enter into any such agreement shall not affect or limit the rights of any such person under this Article.
- e) **Nonexclusively.** The provisions of this Article shall not be exclusive and shall include, by implication, any and all rights and remedies available to the Corporation, the Directors, Officers, and members by statute or otherwise, including but not limited to the purchase

and maintenance of insurance to fund the aforementioned indemnification pursuant to § 726 of the Not-for-Profit Corporation law.

- f) **Limitations and Procedure.** In limitation of the foregoing, no act or omission of any Director, Officer, or member, to the extent it provides any benefit to said Director, Officer, or member, shall be defended or indemnified by or at the expense of the Corporation whenever the limitations and restrictions of the Not-for-Profit Corporation Law or § 501(c)(3) of the Code shall prohibit such defense or indemnity. Further, no indemnification shall be made to or on behalf of any such person if a judgment or other final adjudication adverse to such person establishes that such person's acts were material to the cause of action so adjudicated and: (i) committed in bad faith; or (ii) the result of active and deliberate dishonesty; or (iii) such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled. In addition, no indemnification shall be made with respect to any Proceeding initiated by any person against the Corporation or any other Director, Officer, or member thereof, other than to enforce the terms of this Article, unless such Proceeding was authorized by the Board of Directors. Further, no indemnification shall be made with respect to any settlement or compromise of any Proceeding unless and until the Corporation has consented to such settlement or compromise. Written notice of any Proceeding for which indemnification may be sought by any person shall be given to the Corporation as soon as practicable; however, an individual's failure to provide such notice shall not relieve the Corporation of its indemnification obligations hereunder, except to the extent that the Corporation has been prejudiced by its failure to receive such notice in a timely manner. The Corporation shall then be permitted (but not required) to participate in the defense of any such proceeding or, unless conflicts of interest or position exist between such person and the Corporation in the conduct of such defense, to assume such defense. In the event that the Corporation assumes the defense of any such Proceeding, the legal counsel selected by the Corporation shall be deemed acceptable to such person, and after such an assumption the Corporation shall not be liable to such person for any legal or other expenses subsequently incurred unless such expenses have been expressly authorized by the Corporation. In the event that the Corporation participates in but does not assume the defense in a Proceeding, the person claiming indemnity may select counsel, subject to such person's duty to cooperate in good faith with the Corporation in respect of any common defense or common use of counsels, unless doing so would be inappropriate due to actual or potential differing interests between or among such parties.

IN WITNESS WHEREOF, this certificate has been subscribed by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

DATED: _____

TOWN OF ULYSSES

TOWN OF COVERT

NAME, TITLE

NAME, TITLE

VILLAGE OF TRUMANSBURG

NAME, TITLE

DRAFT