

CERTIFICATE OF INCORPORATION
OF
NIAGARA COUNTY
BROWNFIELD DEVELOPMENT CORPORATION

UNDER §402 OF THE NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, for the purpose of forming a not-for-profit local development corporation pursuant to §1411 of the Not-For-Profit Corporation Law of the State of New York, do hereby certify:

FIRST: The name of the corporation shall be Niagara County Brownfield Development Corporation.

SECOND: The corporation is a corporation as defined in New York Not-For-Profit Corporations Law §102(a)(5), as provided in §1411 of the Not-For-Profit Corporation Law.

THIRD: The Corporation is formed exclusively for the purposes set forth in §1411(a) of the Not-For-Profit Corporation Law. The Corporation is to be formed and operated as an entity described in §501(c)(3) of the Internal Revenue Code of 1986, as amended, to lessen the burdens of government and to act in the public interest by engaging solely in the following activities:

(a) Establishing and operating the Niagara County Brownfield Cleanup Revolving Loan Fund Program (BCRLF) to assist eligible entities in remediating brownfield sites throughout Niagara County;

(b) Engaging the services of one or more underwriters, placement agents, consultants, attorneys, financial advisors and other persons whose services shall be necessary or desirable in connection with the operation of the BCRLF;

(c) Revitalizing and returning to productive use brownfield sites to create jobs, contribute to the tax base, and eliminate potential risk to public health and the environment;

(d) Improving the quality of life for all residents in Niagara County, particularly residents in the neighborhoods that surround brownfield sites;

(e) Leveraging private and public funds to redevelop brownfield sites, create jobs, and revitalize neighborhoods in Niagara County;

(f) Acquiring from the County of Niagara, the State of New York, and the City of Niagara Falls the rights, title, and interest in grants awarded by the United States Environmental Protection Agency or any other government agency to assist in the remediation of brownfield sites; and,

(g) In general, performing any and all acts and things, and exercise any and all power, 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.

The objective of each and every purpose enumerated above is to promote the general and public welfare of the people of the County of Niagara. In furtherance of the aforesaid purposes, the corporation shall have all the powers conferred by paragraph (c) of New York Not-For-Profit Corporations Law §1411. The corporation may do any other act or thing incidental to or connected with the foregoing purposes or in the advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under New York State Not-For-Profit Corporations Law Articles 5, 14 and New York Public Authorities Law Article 8.

Nothing herein contained shall authorize the corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in New York Not-For-Profit Corporations Law §404 or §460-a of the Social Services Law. Nothing herein contained shall authorize or empower the corporation, directly or indirectly, to engage in or include among its purposes, any activity prohibited by New York General Business Law §340 or any other New York anti-monopoly law, and the corporation is not authorized so to engage.

FOURTH: Notwithstanding any other provision of this Certificate of Incorporation, the bylaws and any provision of law, so long as any obligations remain outstanding, the Corporation shall not do any of the following:

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

(b) without the unanimous affirmative vote of the entire Board of Directors of the Corporation and the affirmative vote of all of the Corporation's Members:

- (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 consenting 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;

(c) 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; or,

(d) incur or assume any indebtedness for borrowed money other than as set forth in paragraph THIRD hereof or except as expressly permitted in the indenture or indentures pursuant to which obligations shall be issued.

(e) attempt to influence legislation by propaganda or otherwise, or participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

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

When voting on whether the Corporation will take any action described in paragraph (b), above, each Director shall owe his or her primary fiduciary duty or other obligation to the Corporation (including, without limitation, the Corporation's creditors) and not to the members of the Corporation (except as may specifically be required by the Not-For-Profit Corporation Law). Every member of the Corporation shall be deemed to have consented to the foregoing by virtue of such member's appointment as member of the Corporation.

FIFTH: Pursuant to the requirements of §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 shall accrue and be paid to the New York Job Development Authority.

(b) The property of the Corporation is irrevocably dedicated to charitable purposes. 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, 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 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.

(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 §1411 of the Not-For-Profit Corporation Law upon the repayment or other discharge in full by the Corporation of all such loans. The Corporation shall not accept a mortgage loan or loans from the New York Job Development Authority.

SIXTH: This local development corporation is a type “C” corporation under §201 of the Not-For-Profit Corporations Law.

SEVENTH: The office of the corporation shall be located in the County of Niagara, State of New York. Such office shall be functionally separate from those of the County of Niagara and the City of Niagara Falls, although such office may be in a facility leased from the County of Niagara or City of Niagara Falls on arms-length terms. The Corporation at all times shall:

(a) maintain separate accounting records and other records from those of the County of Niagara and the City of Niagara Falls;

(b) not divert the Corporation's funds to any other person or for other than the use of the Corporation and not commingle any of the Corporation's assets with those of the County of Niagara or the City of Niagara Falls;

(c) pay any employee, consultant or agent of the Corporation, or any other operating expense incurred by the Corporation, from the assets of the Corporation and not from the assets of the County of Niagara or the City of Niagara Falls;

(d) maintain its own deposit account or accounts, separate from those of the County of Niagara and the City of Niagara Falls, with commercial banking institutions and/or trust companies;

(e) to the extent that the Corporation contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other person, the costs incurred in so doing shall be fairly allocated to or among the Corporation and such persons for whose benefit the goods and services are provided, and the Corporation and each such person shall bear its fair share of such costs;

(f) conduct its business in its own name and conduct all material transactions between the Corporation and the County of Niagara and the City of Niagara Falls only on an arm's-length basis;

(g) observe all necessary, appropriate and customary corporate formalities, including, but not limited to, holding all regular and special members' and directors' meetings appropriate to authorize all corporate action, including, at a minimum, annual regular members' and directors' meetings, keeping separate and accurate minutes of such meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records, and accounts, including, but not limited to, intercompany transaction accounts;

(h) ensure that decisions with respect to its business and daily operations shall be independently made by the Corporation (although the officer making any particular decision also may be an employee, officer or director of the County of Niagara and the City of Niagara Falls);

(i) act solely in its own corporate name and through its own authorized officers and agents, and use its own stationery and maintain its own telephone lines;

(j) other than as expressly provided herein, pay all expenses, indebtedness and other obligations incurred by it;

(k) not enter into any guaranty, or otherwise become liable, with respect to any obligation of any member.

(l) cause any financial reports required of the Corporation to be prepared in accordance with generally accepted accounting principles and be audited annually and be issued separately from, although they may be consolidated with, any reports prepared for the County of Niagara and the City of Niagara Falls; and,

(m) ensure that at all times it is adequately capitalized to engage in the transactions contemplated herein.

EIGHTH: The incorporators of the corporation shall be the directors until the first annual meeting. The number of directors of the corporation shall not be less than three. The names and addresses of the initial directors are as follows:

Name	Public Office	Address
William Ross	Chairman of the Board of Legislators, Niagara County	175 Hawley Street Lockport, NY 14094
Sam Ferraro	Executive Director, Niagara County Industrial Development Agency	6311 Inducon Corporate Drive Sanborn, NY 14132
Paul Dyster	Mayor, City of Niagara Falls	745 Main St. P.O. Box 69 Niagara Falls, NY 14302

NINTH: The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Niagara County Brownfield Development Corporation, 6311 Inducon Corporate Drive, Sanborn, NY 14132.

TENTH: In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all debts and liabilities of the Corporation of whatsoever kind or nature, distribute all of the remaining assets and property of the Corporation to the County of Niagara and the City of Niagara Falls for furtherance of the purposes set forth in paragraph (a) of §1411 of the Not-For-Profit Corporation Law. Any of such assets not so disposed of shall be disposed of by order of the Supreme Court of the State of New York pursuant to §100 of the Not-For-Profit Corporation Law.

ELEVENTH: The types or classes of Membership in the Corporation and the number of Members of the Corporation shall be described in the Bylaws. The Bylaws of the Corporation may be adopted, amended or repealed by the affirmative vote of a majority of the entire Board of Directors of the Corporation.

TWELFTH: The duration of the Corporation shall be perpetual.

THIRTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation by the affirmative vote of all Members of the Corporation and the affirmative vote of a majority of the entire Board of Directors of the Corporation provided however, that:

- (i) the Corporation shall not amend or change any provision of any Article so as to be inconsistent with the Restricted Articles; designated as the THIRD, FOURTH, SEVENTH, ELEVENTH and THIRTEENTH (the “Restricted Articles”).
- (ii) no amendment to any of the Restricted Articles shall be made except by the unanimous affirmative vote of the entire Board of Directors of the Corporation; and,
- (iii) no amendment to this Certificate of Incorporation or to the Bylaws of the Corporation shall be made without:
 - (a) prior written notice to all securities rating agencies which, at the request of the Corporation, have rated indebtedness of the Corporation which is outstanding at the time of the amendment; and,
 - (b) receipt of written conformation from each such agency that the amendment will not cause the agency to downgrade or withdraw its rating or ratings on such rated indebtedness.

IN WITNESS WHEREOF, the undersigned incorporators, being all at least 18 years of age, have signed this certificate and hereby affirm it is true under penalty of perjury this _____ day of October, 2008.

William Ross, Chairman
Board of Legislators, Niagara County
175 Hawley Street
Lockport, NY 14094

Sworn to before me this _____ day of October, 2008.

Notary Public

Sam Ferraro, Executive Director
Niagara County Industrial Dev. Agency
6311 Inducon Corporation Drive
Sanborn, NY 14132

Sworn to before me this _____ day of October, 2008.

Notary Public

Paul Dyster, Mayor
City of Niagara Falls
745 Main Street
P.O. Box 69
Niagara Falls, NY 14302

Sworn to before me this _____ day of October, 2008.

Notary Public