

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 July 19, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

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CERTIFICATE OF INCORPORATION
OF
CITY OF ALBANY 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 City of Albany 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, as provided in Section 1411(b) of the NFPCL, will be a Type C Corporation as defined in Section 201 of the NFPCL. The Corporation is a public instrumentality of, but separate and apart from, the City of Albany, New York (the "City").

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, and for the specific purpose of:

(a) promoting community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of the City 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; and

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

By means of engaging in the following activities:

(i) 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 subparagraphs (a) and (b) above, on a secured or unsecured basis;

(ii) 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;

(iii) entering into contracts with any other economic development organizations sponsored by the City to help achieve the purposes described in subparagraphs (a) and (b) above; and

(iv) 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 paragraph **THIRD** above will achieve the lawful public objective 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 City 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 City. 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 City 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 City 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: 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) The property of the Corporation is irrevocably dedicated to charitable purposes. 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: (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 City, so that the City 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 the ^{County}~~City~~ of Albany, New York. The Corporation at all times will:

(a) upon request by the Common Council of the City (the "Common Council") and/or the Mayor of the City of Albany (the "Mayor"), the Corporation will make available any and all books and records of the Corporation for inspection by the Common Council or the Mayor, as the case may be, and their staff; and

(b) submit to the Common Council and the Mayor 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 City, the New York State Authority 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 City 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 City and continue to hold office until his successor is appointed by the governing body of the City.

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.

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 City and will include (a) the Chairman of City of Albany Industrial Development Agency, (b) the Vice-Chairman of City of Albany Industrial Development Agency, (c) the Treasurer of City of Albany Industrial Development Agency, (d) the Secretary of City of Albany Industrial Development Agency, and (e) any additional members of City of Albany Industrial Development Agency.

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

(i) Anthony J. Ferrara, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

(ii) Willard A. Bruce, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

(iii) Hon. Kathryn Sheehan, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

(iv) Susan Pedo, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

(v) Martin Daley, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

(vi) Gary Simpson, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

(vii) Prairie Wells, City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207.

It is acknowledged that the Directors hold comparable positions with City of Albany Industrial Development Agency established by Chapter 325 of the 1974 Laws of the State of New York, as amended. By reason of the shared public purposes of the Corporation and the City of Albany 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 City of Albany 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 City of Albany Industrial Development Agency, in the form of a resolution adopted by the members of the 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 the City of Albany, and neither the State of New York nor the City of Albany 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 City of Albany 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 City of Albany 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 such, the Corporation will be required to, among other things: (1) undergo annual independent audits and submit the results of such audits to the City and the New York State Authority Budget Office, (2) prepare and submit its annual budget to the City and the New York State Authority 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.

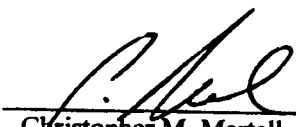
FOURTEENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State will mail a copy of any process against the Corporation served upon him or her is City of Albany Capital Resource Corporation, 21 Lodge Street, Albany, New York 12207. Attn: Chief Executive Officer.

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 City of Albany Common Council.

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 City of Albany Common Council, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Common Council with 10 days advance notice of any proposed amendment, alteration, change or repeal.

SEVENTEENTH: Notwithstanding anything herein to the contrary, the authority of the Corporation to issue Obligations to finance projects to be undertaken by the Corporation shall expire on April 15, 2012, subject to the determination by the Common Council to extend such authority by resolution duly adopted by the Common Council.

IN WITNESS WHEREOF, this certificate has been subscribed by the undersigned this 13th day of April, 2010.



Christopher M. Martell, Incorporator
Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207

Drawdown #66

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CERTIFICATE OF INCORPORATION
OF
CITY OF ALBANY CAPITAL RESOURCE CORPORATION

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

Filed by: Christopher M. Martell, Esq.
Hodgson Russ LLP
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Albany, New York 12207

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 13 2010
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