

# Warren County Board of Supervisors

## RESOLUTION NO. 287 OF 2011

**Resolution introduced by Supervisors Thomas, Taylor, Goodspeed, Belden, Monroe, VanNess, Kenny, Merlino and Conover**

### **RESOLUTION TO AUTHORIZE THE FORMATION OF A LOCAL DEVELOPMENT CORPORATION AND TO APPROVE THE PROPOSED CERTIFICATE OF INCORPORATION RELATED THERETO**

WHEREAS, on January 31, 2008, Section 854 of the New York 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 and 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 Counties of Warren and Washington Industrial Development Agency (the "Agency"), as Civic Facility Projects have increased employment opportunities for residents of Warren County and Washington County and allowed local not-for-profit corporations to upgrade their facilities at the lowest possible cost, and

WHEREAS, by resolution adopted by the members of the Agency on May 16, 2011 (the "Approving Resolution"), the members of the Agency agreed to request the consent and authorization of the Boards of Supervisors of the Counties of Warren and Washington to form a local development corporation under Section 1411 of the New York State Not-For-Profit Corporation Law (the "NFPCL"), and

WHEREAS, local development corporations formed under the NFPCL are created to assist, among other things, 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 geographic 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 local development 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 operations are principally to be conducted, (2) to assist financially in such construction, acquisition, rehabilitation and improvement, and to maintain such plants for others in such territory, (3) to disseminate 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 therefore, 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

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WHEREAS, under the laws of the State of New York, local development 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, prior to forming a local development corporation, the Agency must obtain the Board of Supervisors' 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 Board of Supervisors; and a copy of which is attached hereto as Schedule A, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors authorizes the Agency to form a local development 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 local development corporation and shall never be a debt of the State of New York, the County of Warren, New York, the County of Washington, New York nor any political subdivision thereof (other than the local development corporation) shall be liable thereon, and be it further

RESOLVED, that the Warren County Board of Supervisors 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 changes, variations, omissions and insertions as the Chairman and the County Attorney shall approve, and be it further

RESOLVED, that this resolution shall take effect immediately.

**SCHEDULE A**

**CERTIFICATE OF INCORPORATION  
OF THE  
COUNTIES OF WARREN AND WASHINGTON  
CIVIC DEVELOPMENT CORPORATION**

**A Not-For-Profit Local Development Corporation  
under Section 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, hereby certifies as follows:

**FIRST:** The name of the corporation shall be Counties of Warren and Washington Civic 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 and, as provided in Section 1411 of the Not-For-Profit Corporation Law, will be a Type C Corporation as defined in Section 201 of the Not-For-Profit Corporation Law. The Corporation shall be a public instrumentality of, but separate and apart from the Counties of Warren and Washington, New York (the "Counties").

**THIRD:** The Corporation is to be formed and operated, are 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 Counties 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 Counties for the purpose of relieving and reducing unemployment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the Counties by attracting new industry to the Counties or by encouraging the development of, or retention of, an industry in the Counties, 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

Counties 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 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 Counties 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 Counties. 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 Counties 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 Counties 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 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 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 Not-For-Profit Corporation Law upon the repayment or other discharge in full by the Corporation of all such loans.

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

(b) The Corporation shall 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 debts and liabilities of the Corporation of whatsoever kind or nature, distribute all of the remaining assets and property of the Corporation to the Counties for furtherance of the purposes set forth in Section 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 Section 1008 of the Not-For-Profit Corporation Law.

NINTH: The office of the Corporation shall be located in either Warren or Washington County, New York. The Corporation at all times will:

(a) upon request by the Board of Supervisors of either County, the Corporation will make available any and all books and records of the Corporation for inspection by both Boards of Supervisors and their staffs; and

(b) submit to the Boards of Supervisors an annual financial report together with a report of the operations and accomplishments of the Corporation for such annual period.

The Boards of Supervisors, the New York State Authority Budget Office and the New York State Comptroller have the right to conduct an annual audit of the books and records of the Corporation.

TENTH: The Counties are the only members of the Corporation.

ELEVENTH: The Corporation will be managed by a Board of Directors, who will 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 in which he/she may reside and continue to hold office until his/her successor is appointed by the governing body of said 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.

TWELFTH. The Corporation will consist of not less than six (6) nor more than then (10) Directors. The Directors will be appointed by the governing bodies of the Counties and will include (a) the Chairman of the Counties of Warren and Washington Industrial Development Agency, (b) the Vice-Chairman of the Counties of Warren and Washington Industrial Development Agency, (c) the Treasurer of the Counties of Warren and Washington Industrial Development Agency, (d) the Secretary of the Counties of Warren and Washington Industrial Development Agency, and (e) all additional members of the Counties of Warren and Washington Industrial Development Agency.

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

Nicholas A. Caimano	36 Surrey Field Drive, Queensbury, NY 12804
Joseph P. LaFiura	30 Seminary Street, Fort Edward, NY 12801
Matthew J. Montesi	9 Hillside Drive, Queensbury, NY 12804
Dana Hogan	, Hudson Falls, NY 12839
John Millett, Sr.	3400 Route 21, Whitehall, NY 12887
Bruce A. Ferguson	435 Scott Lake Road, Salem, NY 12865
Louis Tessier	2357 Hubbell Lane, Lake George, NY 12845
Theodore E. Berndt	700 County Route 74, Cambridge, NY 12816
Jerold Quintal	16 Raymond Lane, Warrensburg, NY 12885
Harold G. Taylor	6 Lake Avenue, Glens Falls, NY 12801

It is acknowledged that the Directors hold comparable positions with the Counties of Warren and Washington Industrial Development Agency, a New York State public benefit corporation established by Chapter 862 of the Laws of 1971 of the State of New York, as amended by Chapter 566 of the Laws of 1972 of the State of New York. By reason of the shared public purposes of the Corporation and the Counties of Warren and Washington 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 Counties of Warren and Washington 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 Counties of Warren and Washington 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 the Counties of Warren and Washington, and neither the State of New York nor the Counties of Warren and Washington 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 Counties of Warren and Washington 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 or New York as if such hearing was a public hearing of the Counties of Warren and Washington Industrial Development Agency with respect to a project.

THIRTEENTH: The Corporation will be subject to the Public Authorities Accountability Act of 2005, as amended (the "Act"). As such, the Corporation will be required to, among other things: (1) undergo an annual independent audit and submit the results of such audit to the Counties and the New York State Authority Budget Office, (2) prepare and submit its annual budget to the Counties 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 New York State 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 shall mail a copy of any process against the Corporation served upon him is as follows: Counties of Warren and Washington Civic Development Corporation, c/o Counties of Warren and Washington Industrial Development Agency, 5 Warren Street, Glens Falls, New York, 12801.

FIFTEENTH: The by-laws of the Corporation may be adopted, amended or repealed by a majority of the Directors of the Corporation upon ten (10) days notice to all of the Directors, provided however, that the Corporation will not amend, alter, change or repeal any provision of the by-laws without the consent of the Chairmen of the Boards of Supervisors of the Counties of Warren and Washington.

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 Chairmen of the Boards of Supervisors of the Counties of Warren and Washington, and (2) the Corporation will not amend or change any provision of this Certificate of Incorporation without first providing the Chairmen of the Boards of Supervisors of the Counties of Warren and Washington and the Directors with ten (10) days advance notice of any proposed amendment, alteration, change or repeal.

IN WITNESS WHEREOF, this certificate has been subscribed this                      day of                      , 2011.

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Nicholas A. Caimano, Chairman/Incorporator

CERTIFICATE OF INCORPORATION  
OF THE COUNTIES OF WARREN AND WASHINGTON CIVIC  
DEVELOPMENT CORPORATION  
(Under Section 141 1 of the Not-For-Profit Corporation Law of the State of New York)

Filed by: \_\_\_\_\_  
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