



SARATOGA COUNTY BOARD OF SUPERVISORS

RESOLUTION 106 - 2014

**Introduced by Supervisors Lawler, Daly, Grattidge, Johnson, Kinowski,
Lewza and Richardson**

AUTHORIZING THE FORMATION OF THE SARATOGA COUNTY PROSPERITY PARTNERSHIP, INC. LOCAL DEVELOPMENT CORPORATION (THE "CORPORATION"), APPROVING A FORM OF CERTIFICATE OF INCORPORATION FOR THE CORPORATION, APPOINTING THE INITIAL DIRECTORS OF THE CORPORATION, AUTHORIZING THE CORPORATION TO PERFORM ESSENTIAL GOVERNMENTAL FUNCTIONS INCLUDING ACTIVITIES ASSOCIATED WITH JOB CREATION AND THE PROMOTION OF COMMUNITY AND ECONOMIC DEVELOPMENT INITIATIVES

WHEREAS, it the policy of the State of New York to promote the economic welfare and prosperity of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry; and

WHEREAS, the County of Saratoga (the "County") is tasked with the responsibility to promote the health, safety and general welfare of the residents of Saratoga County by among other things preventing unemployment and economic deterioration including by increasing and maintaining employment opportunities and attracting and sustaining economically sound commerce; and

WHEREAS, it is essential for the County to support the operations and activities of both for-profit and not-for-profit entities and corporations within the County in furtherance of both job creation and retention opportunities within the County; and

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law ("N-CPL") of the State of New York (collectively, the "LDC Act") authorizes the establishment of not-for-profit local development corporations operated exclusively for the charitable or public purposes of 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, and lessening the burdens of government and acting in the public interest; and

WHEREAS, pursuant to Resolution 65-2014, this Board of Supervisors adopted the Saratoga County Economic Development Strategic Plan to guide economic development efforts throughout Saratoga County over the next ten years; and

WHEREAS, in accordance with the recommendation made in the Saratoga County Economic Development Strategic Plan, this Board determined pursuant to Resolution 86-2014 to form a local development corporation under which economic development entities in Saratoga County would be united in a true economic development partnership; and

WHEREAS, in furtherance of the foregoing, the Saratoga County Board of Supervisors desires to establish the new local development corporation pursuant to N-CPL Section 1411 to undertake certain projects and initiatives for the benefit of and to relieve the burdens of the County, including, but not limited to undertaking certain financings through the issuance of tax exempt and taxable bonds, notes and other instruments for the benefit of both for-profit and not-for-profit entities and corporations located within the County; and

WHEREAS, a proposed certificate of incorporation (the "Certificate of Incorporation", a copy of which is attached hereto as Exhibit A) for the establishment of Saratoga County Prosperity Partnership, Inc. (the "Corporation") pursuant to N-PCL Section 1411 has been prepared for review by this Board of Supervisors; and

WHEREAS, in furtherance of the foregoing public purposes and the LDC Act, this Board of Supervisors desires to establish the Corporation to undertake the purposes and powers as set forth within the LDC Act, including (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, to accomplish the purposes and powers as set forth within the LDC Act and Certificate of Incorporation, including relieving the burdens of the County and the undertaking of projects for the benefit of both for-profit and not-for-profit entities and corporations in furtherance of their access to cost-effective capital for projects that enhance, create and preserve employment opportunities for residents of the County, this Board of Supervisors desires to task the Corporation with such burdens and responsibilities and authorizes the Corporation, once established, to issue bonds on behalf of the County for such purposes pursuant to and in accordance with applicable provisions of the Internal Revenue Code (the "Code");

NOW, THEREFORE, BE IT

RESOLVED, that the Saratoga County Board of Supervisors hereby authorizes the establishment of the Saratoga County Prosperity Partnership, Inc. pursuant to the LDC Act. The Chair of the Board is hereby authorized to execute and cause the filing of the Certificate of Incorporation in substantially the form attached hereto as Exhibit A, with such changes, modifications, variations, omissions and insertions as may be approved by the Chair of the Board in consultation with the County Attorney; and be it further

RESOLVED, that the County of Saratoga, acting by and through this Board of Supervisors, shall serve as the sole member of the Corporation. In furtherance of same, this Board of Supervisors hereby approves the appointment of the following individuals to serve as the initial Directors of the Corporation:

1. John Lawler
2. Anita Daly
3. Arthur Johnson
4. Raymond Callanan
5. Brendan Chudy
6. Omar Usmani
7. Penny Hill

And be it further

RESOLVED, that the Corporation is hereby designated as an on behalf of issuer of the County for the purposes of issuing bonds, notes and other instruments with authority to exercise on the County's behalf all lawful powers as may be deemed necessary to accomplish its public purposes including to enhance, create and preserve employment opportunities for residents of the County, such purposes and powers to include, but not be limited to, those powers contained within the LDC Act and the Certificate of Incorporation, with the power to issue tax exempt and taxable bonds, notes, or other instruments on behalf of the County in furtherance of its purposes, provided however that any obligations issued by the Corporation shall never be a debt of the State of New York, the County or any political subdivision thereof (other than Corporation) and neither the State of New York, the County or any political subdivision thereof (other than Corporation) shall be liable thereon; and be it further

RESOLVED, that this Board of Supervisors hereby authorizes the County to covenant and agree with the Corporation in any transaction undertaken by the Corporation in furtherance of the LDC Act, the Certificate of Incorporation, and any initiatives described herein, and for the benefit of the Corporation and the holders from time to time of any bonds, notes or other instruments or other securities (hereinafter collectively, the "Securities") issued by the Corporation that the County will not limit or alter the rights of the Corporation to fulfill the terms of its agreements with the holders of

EXHIBIT A

CERTIFICATE OF INCORPORATION

OF

SARATOGA COUNTY PROSPERITY PARTNERSHIP, INC.

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 "Saratoga County Prosperity Partnership, Inc." (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 serve as a supporting organization for, but operate separate and apart from, the County of Saratoga, New York (the "County").

THIRD: The purposes for which 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, to relieve and reduce unemployment, promote and provide for additional and maximum employment, improve and maintain job opportunities, lessen the burdens of government, and act in the public interest. In furtherance of said purposes, the Corporation's powers shall include:

(a) 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;

(b) To acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein;

(c) 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;

(d) 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;

(e) 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;

(f) To apply for and make grants and loans and to execute any and all documents necessary in connection therewith;

(g) 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.

(h) 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's mission and public objective, which the Corporation's purposes will achieve, shall include the lessening of the burdens of government and fostering the creation, retention and expansion of jobs and economic opportunities for the benefit of the County, New York State and local economies.

FIFTH: The operations of the Corporation will be principally conducted within the territory of Saratoga County, New York and surrounding communities.

SIXTH: 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 with the intent being that all income and earnings will be expended or deposited in appropriate reserves for corporate purposes; to the extent not so used, the income and earnings will accrue and be paid to the Job Development Authority to the extent required by Section 1411 of the Not-for-Profit Corporation Law.

(b) The property of the Corporation is irrevocably dedicated to its corporate 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 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.

SEVENTH: (a) The Corporation shall not 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.

(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.

EIGHTH: 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 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 Saratoga County, New York.

TENTH: The offices of the Corporation shall be functionally separate from those of the County or any of its affiliated entities (collectively, the "County Entities")

(although such office may be in a facility leased from the County or any of its affiliates on arms-length terms). The Corporation at all times shall:

(a) maintain separate accounting records and other corporate records from those of the County Entities;

(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 Entities;

(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 any of the County Entities;

(d) maintain its own deposit account or accounts, separate from those of the County Entities, 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 Entities 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, 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. Regular members' and directors' meetings shall be held at least annually;

(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 Entities);

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

(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 the County Entities;

(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 any member of the County Entities; and

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

ELEVENTH: The County of Saratoga, acting by and through its Board of Supervisors, shall be the sole Member of the Corporation.

TWELFTH: The Corporation shall be managed by a Board of Directors consisting of not less than seven (7) and not more than fifteen (15) Directors, each

appointed by and serving at the pleasure of the Saratoga County Board of Supervisors. The initial Directors shall serve for a term ending December 31, 2015. Subsequent appointments of Directors by the Saratoga County Board of Supervisors shall be made for a term of two (2) years ending in such case on December 31 of the last year of such term, and such Directors may be removed by the Saratoga County Board of Supervisors without cause at any time for any reason. Vacancies occurring on the Board of Directors other than by expiration of terms of office shall be filled by appointment of the Saratoga County Board of Supervisors for the remainder of the unexpired term of the previous Director. Any subsequent increase or decrease in the size of the Board of Directors will require the unanimous approval of the Members and the affirmative vote of a majority of the Directors.

THIRTEENTH: The names and addresses of the initial Directors of the Corporation will be as follows:

Name	Address
1. John Lawler	30 Towpath Lane, Waterford, NY 12188
2. Anita Daly	87 Robinwood Drive, Clifton Park, NY 12065
3. Arthur Johnson	55 Timbura Drive, Gansevoort, NY 12831
4. Raymond Callanan	4 Conifer Drive, Burnt Hills, NY 12027
5. Brendan Chudy	24 Tyler Drive, Saratoga Springs, NY 12866
6. Omar Usmani	14 Fort Amherst Road, Queensbury, NY 12804
7. Penny Hill	1045 Wallace Avenue, Rotterdam, NY 12306

FOURTEENTH: The Corporation is and shall be deemed a "local authority" as defined within the Public Authorities Law ("PAL") of the State of New York, as may be

amended from time to time, and as such, the Corporation shall comply with the applicable requirements of the PAL, including, but not limited to, the establishment within the By-laws of the Corporation of standing committees that will include an Audit and Finance Committee and Governance Committee, and the Corporation shall further establish an Executive Committee, the composition of which shall be subject to review and approval by the Chairman of the Saratoga County Board of Supervisors.

FIFTEENTH: The duration of the Corporation shall be perpetual.

SIXTEENTH: The Corporation shall indemnify each Member, each Director, each officer, and, to the extent authorized by the Board of Directors, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under the Not-For-Profit Corporation Law.

SEVENTEENTH: 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 shall mail a copy of any process against the Corporation served upon him is as follows: Saratoga County Prosperity Partnership, Inc., c/o Saratoga County Administrator, 40 McMaster Street, Ballston Spa, New York, 12866.

EIGHTEENTH: The By-laws of the Corporation may be adopted, amended or repealed by a majority of the Directors of the Corporation.

NINETEENTH: The Corporation will not do any of the following:

(a) Without the affirmative vote of all Members of the Corporation and the affirmative vote of a majority of the Directors, increase or decrease

the number of Members of the Corporation or increase or decrease the number of Directors of the Corporation.

(b) Without the affirmative vote of a majority of the Directors of the Corporation and 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) Without the affirmative vote of all of the Directors of the Corporation and all of the Corporation's members, 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.

IN WITNESS WHEREOF, this certificate has been subscribed this __ day of May, 2014.

Paul J. Sausville, Incorporator
Chairman
Saratoga County Board of Supervisors
40 McMaster Street
Ballston Spa, New York, 12020

CERTIFICATE OF INCORPORATION

OF

SARATOGA COUNTY PROSPERITY PARTNERSHIP, INC.

(Under Section 1411 of the Not-For-Profit Corporation Law of the State of New York)

Filed by:
Stephen M. Dorsey, Esq.
Saratoga County Attorney
40 McMaster Street
Ballston Spa, New York 12020