

CERTIFICATE OF INCORPORATION
OF
GENESEE GATEWAY LOCAL 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 Genesee Gateway 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 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 County of Genesee, New York (the "County") and the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency").

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, better and maintain job opportunities, and lessen the burden of government and act in the public interest. In furtherance of said purposes, the Corporation's powers shall include:

- (a) To foster the creation, retention and expansion of jobs and economic opportunities for the benefit of both the County, State and local economies; and
- (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 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 such 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.

(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's mission, which the Corporation's purpose will achieve, includes the lessening of the burdens of government by undertaking and promoting economic development initiatives in Genesee County, New York that will include real estate development and management, fundraising, business loan issuance and administration, regional marketing and promotion, and other community-based economic development activities permissible under the Not-For-Profit Corporation Law.

FIFTH: The operations of the Corporation will be principally conducted within the territory of the County of Genesee.

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 New York 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 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 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 (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), or 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.

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 the County and such office shall be functionally separate from those of the County or its affiliated entities (the County and its affiliated entities other than the Corporation being referred to in this Certificate of Incorporation as the "County Group" (although such office may be in a facility leased from a member of the County Group on arms-length terms). The Corporation at all times shall:

- (a) maintain separate accounting records and other corporate records from those of each member of the County Group;
- (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 any member of the County Group;
- (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 member of the County Group;
- (d) maintain its own deposit account or accounts, separate from those of any member of the County Group, 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 any member of the County Group 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 a member of the County Group);
- (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 any member of the County Group;
- (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 Group; and

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

TENTH: The types or classes of Membership in the Corporation and the number of Members of the Corporation shall be described in the By-laws. The initial Members of the Corporation shall be identified in the By-laws.

ELEVENTH: The Corporation shall be managed by a Board of Directors consisting of three to seven voting Directors. Up to an additional thirteen individuals can be designated by the voting Directors as non-voting members of the Board who shall serve for one year terms and act in an advisory capacity only to the voting Directors. The non-voting Directors shall hold the title merely in an advisory capacity to the voting Directors. The designation of non-voting Director does not create any rights for the individual designated to notice or other participation except at the request of the voting Directors; provided however, said non-voting directors shall enjoy the benefits of any indemnification of directors as determined herein or as determined from time to time. 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 voting Directors.

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

<u>Name</u>	<u>Address</u>
John F. Andrews	25 Woodcrest Drive Batavia, New York 14020
James L. Vincent	5992 Tower Hill Road Byron, New York 14422
Hollis D. Upson	4 Burke Drive Batavia, New York 14020

THIRTEENTH: The duration of the Corporation shall be perpetual.

FOURTEENTH: 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.

FIFTEENTH: 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: One Mill Street, Batavia, New York 14020.

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

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

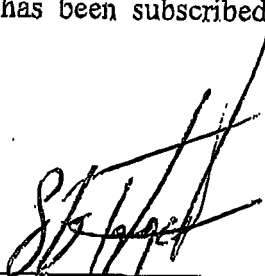
(a) Without the affirmative vote of all Members of the Corporation and the affirmative vote of a majority of the voting Directors, increase or decrease the number of Members of the Corporation or increase or decrease the number of Directors of the Corporation.

(b) Without the affirmative vote of a majority of the voting 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 voting 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 8th day of September, 2004.



Steven G. Hyde, Incorporator

CERTIFICATE OF INCORPORATION

OF

GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION

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

Filed by: Carla J. Penazek
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