

Ulster County Economic Development Alliance
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DEFENSE AND INDEMNIFICATION POLICY

SECTION 1. Indemnification.

- A. The Corporation shall indemnify to the fullest extent now or hereafter permitted by law each person involved in, or made or threatened to be made a party to, any action, suit, claim or proceeding, arbitration, alternative dispute resolution mechanism, investigation, administrative or legislative hearing or any other actual, threatened, pending or completed proceeding, whether civil or criminal, or whether formal or informal, and including an action by or in the right of any corporation, partnership, joint venture, employee benefit plan or other enterprise, whether profit or non-profit (any such entity being hereinafter referred to as an "Enterprise"), and including appeals therein (any such process being hereinafter referred to as a "Proceeding"), by reason of the fact that such person, such person's testator or intestate (i) is or was a member, director, officer or staff of the Corporation, or (ii) while serving as a member, director, officer or staff of the Corporation, is or was serving, at the request of the Corporation, as a member, director, officer, or in any other capacity, of any other Enterprise, against any and all judgments, fines, penalties, amounts paid in settlement, and expenses, including attorneys' fees, actually and reasonably incurred as a result of or in connection with any Proceeding, or any appeal therein, except as provided in subparagraph (B) below.
- B. No indemnification shall be made to or on behalf of any such person if a judgment or other final adjudication adverse to such person establishes that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled. In addition, no indemnification shall be made with respect to any Proceeding initiated by any such person against the Corporation, or a member, director, officer or staff of the Corporation, other than to enforce the terms of this Indemnification Policy, unless such Proceeding was authorized by the members of the Corporation and the directors. Further, no indemnification shall be made with respect to any settlement or compromise of any Proceeding unless and until the Corporation has consented to such settlement compromise.

- C. Written notice of any Proceeding for which indemnification may be sought by any person shall be given to the Chair or the Corporation Counsel as soon as practicable. The Corporation shall then be permitted to participate in the defense of any such Proceeding or, unless conflicts of interest or position exist between such person and the Corporation in the conduct of such defense, to assume such defense. In the event that the Corporation assumes the defense of any such Proceeding, legal counsel selected by the Corporation shall be acceptable to such person. After such an assumption, the Corporation shall not be liable to such person for any legal or other expenses subsequently incurred unless such expenses have been expressly authorized by the Corporation. In the event that the Corporation participates in the defense of any such Proceeding, such person may select counsel to represent such person in regard to such a Proceeding; however, such person shall cooperate in good faith with any request that common counsel be utilized by the parties to any Proceeding who are similarly situated, unless to do so would be inappropriate due to actual or potential differing interests between or among such parties.
- D. In making any determination regarding any person's entitlement to indemnification hereunder, it shall be presumed that such person is entitled to indemnification, and the Corporation shall have the burden of proving the contrary.

SECTION 2. Advancement of Expenses.

Except in the case of a Proceeding against a member, director, officer or staff specifically approved by the member and the directors of the Corporation, the Corporation shall, subject to Section 1 above, pay all expenses incurred by or on behalf of a member, directors, officer or staff in defending any Proceeding in advance of the final disposition of such Proceeding. Such payments shall be made promptly upon receipt by the Corporation, from time to time, of a written demand of such person for such advancement together with an undertaking by or on behalf of such person to repay any expenses so advanced to the extent that the person receiving the advancement is ultimately found not to be entitled to indemnification for part or all of such expenses.

SECTION 3. Rights Not Exclusive.

The rights to indemnification and advancement of expenses granted by or pursuant to this Indemnification Policy: (i) shall not limit or exclude, but shall be in addition to, any other rights which may be granted by or pursuant to any statute, charter, by-law, resolution of Members or by agreement; (ii) shall be deemed to constitute contractual obligations of the Corporation to any member, director, officer or staff who serves in a capacity referred to in Section 1 at any time while this Indemnification Policy is in effect; (iii) shall continue to exist after the repeal or modification of this Indemnification Policy with respect to events occurring prior thereto; and (iv) shall continue as to a person who has ceased to be a member, director, officer

or staff and shall inure to the benefit of the estate, spouse, heirs, executors, administrators or assigns of such person. It is the intent of this Indemnification Policy to require the Corporation to indemnify the persons referred to herein for the aforementioned judgments, fines, penalties, amounts paid in settlement, and expenses, including attorney's fees, in each and every circumstance in which such indemnification could lawfully be permitted by express provisions of by-laws or by law, and the indemnification required by this Indemnification Policy shall not be limited by the absence of an express recital of such circumstances.

Adopted as amended April 26, 2016