

1
2 **CERTIFICATE OF INCORPORATION**

3
4 **OF**

5
6 **THE TOMPKINS COUNTY DEVELOPMENT CORPORATION**

7
8 A Not-For-Profit Local Development Corporation
9 under Section 1411 of the Not-For-Profit
10 Corporation Law of the State of New York
11
12

13 **THE UNDERSIGNED**, being over the age of eighteen years, for the purpose of
14 forming a not-for-profit local development corporation pursuant to Section 1411 of the
15 Not-For-Profit Corporation Law of the State of New York, hereby certifies as follows:
16

17 **FIRST:** The name of the corporation shall be the Tompkins County
18 Development Corporation” (hereinafter referred to as the “Corporation”).
19

20 **SECOND:** The Corporation will be a corporation as defined in subparagraph
21 (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York
22 and, as provided in Section 1411 of the Not-For-Profit Corporation Law, will be a Type
23 C Corporation as defined in Section 201 of the Not-For-Profit Corporation Law. The
24 Corporation shall serve as a supporting organization for, but operate separate and apart
25 from Tompkins County, New York (the “County”).
26

27 **THIRD:** The purposes for which the Corporation is to be formed and
28 operated are exclusively for charitable purposes within the meaning of Section 501(c)(3)
29 of the Internal Revenue Code of 1986, as amended, to relieve and reduce unemployment,
30 promote and provide for additional and maximum employment, improve and maintain
31 job opportunities, and lessen the burden of government and act in the public interest. In
32 furtherance of said purposes, the Corporation’s powers shall include:
33

1 (a) To foster the creation, retention and expansion of jobs and
2 economic opportunities for the benefit of the County, New York State and local
3 economies; and

4
5 (b) Upon approval of the Tompkins County Legislature or its
6 designee, to construct, acquire, rehabilitate and improve for use by others, facilities in the
7 territory in which its operations are principally to be conducted, to assist financially in
8 such construction, acquisition, rehabilitation and improvement, to maintain and/or lease
9 such facilities on its behalf or for others in such territory; to disseminate information and
10 furnish advice, technical assistance and liaison with federal, state and local authorities
11 with respect thereto;

12
13 (c) Upon approval of the Tompkins County Legislature or its
14 designee, to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal
15 property or interests therein;

16
17 (d) To apply for loans and borrow money without limit as to
18 amount; to make, draw, accept, endorse, execute and issue negotiable bonds, debentures,
19 notes and other obligations therefor;

20
21 (e) To sell, lease, mortgage or otherwise dispose of or
22 encumber any such facilities or any of its real or personal property or any interest therein
23 upon such terms as it may determine;

24
25 (f) To enter into covenants and agreements and to comply with
26 all the terms, conditions and provisions thereof, and otherwise to carry out its corporate
27 purposes and to foster and encourage the location or expansion of facilities and related
28 businesses in the territory in which the operations of the Corporation are principally to be
29 conducted;

30

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

3
4 (h) To do any other act or thing incidental to or connected with
5 the foregoing purposes or in advancement thereof, but not for the pecuniary profit or
6 financial gain of its members, directors, officers or any private person.

7
8 (i) In general, to perform any and all acts and things, and
9 exercise any and all powers which may now or hereafter be lawful for the Corporation to
10 do or exercise under and pursuant to the laws of the State of New York for the purpose of
11 accomplishing any of the foregoing purposes of the Corporation.

12
13 FOURTH: The Corporation's mission and public objective, which the
14 Corporation's purposes will achieve, include, but are not limited to, the lessening of the
15 burdens of government by undertaking and promoting economic development initiatives
16 in Tompkins County, New York (refer to THIRD for eligible activities the Corporation
17 may undertake).

18
19 FIFTH: The operations of the Corporation will be principally conducted
20 within the State of New York.

21
22 SIXTH: Pursuant to the requirements of Section 1411(e) of the Not-For-
23 Profit Corporation Law:

24
25 (a) All income and earnings of the Corporation shall be used
26 exclusively for its corporate purposes with the intent being that all income and earnings
27 will be expended or deposited in appropriate reserves for corporate purposes; to the
28 extent not so used, the income and earnings will accrue and be paid to the Job
29 Development Authority to the extent required by Section 1411 of the Not-for-Profit
30 Corporation Law.

31

1 (b) The property of the Corporation is irrevocably dedicated to
2 charitable purposes. No part of the income or earnings of the Corporation shall inure to
3 the benefit or profit of, nor shall any distribution of its property or assets be made to, any
4 member, director or officer of the Corporation, or private person, corporate or individual,
5 or to any other private interest, except that the Corporation may repay loans made to it
6 and may repay contributions (other than dues) made to it to the extent that any such
7 contribution may not be allowable as a deduction in computing taxable income under the
8 Internal Revenue Code of 1986, as amended.

9
10 (c) If the Corporation accepts a mortgage loan or loans from
11 the New York Job Development Authority, the Corporation shall be dissolved in
12 accordance with the provisions of paragraph (g) of Section 1411 of the Not-For-Profit
13 Corporation Law upon the repayment or other discharge in full by the Corporation of all
14 such loans.

15
16 SEVENTH: (a) The Corporation shall not attempt to influence legislation
17 by propaganda or otherwise, or participate in or intervene, directly or indirectly, in any
18 political campaign on behalf of or in opposition to any candidate for public office.

19
20 (b) The Corporation shall not engage in any activities not
21 permitted to be carried on by an organization exempt from federal income taxation
22 pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the
23 regulations promulgated thereunder.

24
25 EIGHTH: In the event of the dissolution of the Corporation or the winding up
26 of its affairs, the Board of Directors shall, after paying or making provision for the
27 payment of all debts and liabilities of the Corporation of whatsoever kind or nature,
28 distribute all of the remaining assets and property of the Corporation to the County for
29 furtherance of the purposes set forth in Section 1411 of the Not-for-Profit Corporation
30 Law. Any of such assets not so disposed of shall be disposed of by order of the Supreme

1 Court of the State of New York pursuant to Section 1008 of the Not-For-Profit
2 Corporation Law.

3

4 NINTH: The office of the Corporation shall be located in Tompkins
5 County, New York.

6

7 TENTH: The offices of the Corporation shall be functionally separate from
8 those of the County or any of its affiliated entities (collectively, the “County Entities”)
9 (although such office may be in a facility leased from the County or any of its affiliates
10 on arms-length terms). The Corporation at all times shall:

11

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

14

15 (b) not divert the Corporation’s funds to any other person or
16 for other than the use of the Corporation and not commingle any of the Corporation’s
17 assets with those of the County Entities;

18

19 (c) pay any employee, consultant or agent of the Corporation,
20 or any other operating expense incurred by the Corporation, from the assets of the
21 Corporation and not from the assets of any of the County Entities;

22

23 (d) maintain its own deposit account or accounts, separate from
24 those of the County Entities, with commercial banking institutions and/or trust
25 companies;

26

27 (e) to the extent that the Corporation contracts or does business
28 with vendors or service providers where the goods and services provided are partially for
29 the benefit of any other person, the costs incurred in so doing shall be fairly allocated to
30 or among the Corporation and such persons for whose benefit the goods and services are
31 provided, and the Corporation and each such person shall bear its fair share of such costs;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

(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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

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

ELEVENTH: 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.

TWELFTH: The Corporation shall be managed by a Board of Directors consisting of three to nine Directors. 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
Martha Robertson	1655 Ellis Hollow Road Ithaca, New York 14850
Larry Baum	15 Thornwood Drive Ithaca New York 14850
Daniel Cogan	706 N. Tioga Street Ithaca, New York 14850
Jeffrey Furman	124 Westfield Drive Ithaca, New York 14850
Will Burbank	132 Glenside Road Ithaca, NY 14850
James Dennis	47 Elm Street Trumansburg, NY 14886
Nathan Shinagawa	520 E. Buffalo Street, Apt. 2 Ithaca, NY 14850

FOURTEENTH: The duration of the Corporation shall be perpetual.

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

5
6 SIXTEENTH: The Secretary of State of the State of New York is designated as
7 agent of the Corporation upon whom process against it may be served. The post office
8 address to which the Secretary of State shall mail a copy of any process against the
9 Corporation served upon him is as follows: Tompkins County Development Corporation,
10 c/o Tompkins County Area Development, 401 E. Street, Suite 402B, Ithaca, New York
11 14850.

12
13 SEVENTEENTH: The By-laws of the Corporation may be adopted, amended
14 or repealed by a majority of the Directors of the Corporation.

15
16 EIGHTEENTH: The Corporation will not do any of the following:

17
18 (a) Without the affirmative vote of all Members of the
19 Corporation and the affirmative vote of a majority of the Directors, increase or decrease
20 the number of Members of the Corporation or increase or decrease the number of
21 Directors of the Corporation.

22
23 (b) Without the affirmative vote of a majority of the Directors
24 of the Corporation and all of the Corporation's members, (i) dissolve or liquidate, in
25 whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii)
26 consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a
27 petition seeking or consenting to reorganization or relief under any applicable federal or
28 state law relating to bankruptcy or insolvency, (iv) consent to the appointment of a
29 receiver, liquidator, assignee, trustee, sequestrator or other similar official of the

1 Corporation or a substantial part of its property, (v) make a general assignment for the
2 benefit of creditors, (vi) admit in writing its inability to pay its debts generally as they
3 become due or (vii) take any corporate action in furtherance of the actions set forth in
4 clauses (i) through (vi) of this paragraph.

5
6 (c) Without the affirmative vote of all of the Directors of the
7 Corporation and all of the Corporation's members, merge or consolidate with any other
8 corporation, company or entity or, except to the extent contemplated by paragraph
9 THIRD hereof, sell all or substantially all of its assets or acquire all or substantially all of
10 the assets or capital stock or other ownership interest of any other corporation, company
11 or entity.

12
13 IN WITNESS WHEREOF, this certificate has been subscribed this []th day of
14 January, 2010.

15
16
17
18
19 /s/ Christopher A. Andreucci
20 Christopher A. Andreucci
21 99 Garnsey Road
22 Pittsford, New York 14534
23
24
25

CERTIFICATE OF INCORPORATION

OF

THE TOMPKINS COUNTY DEVELOPMENT CORPORATION

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

Filed by: Harris Beach PLLC
99 Garnsey Road
Pittsford, NY 14534