



# Hamburg New York Land Development Corporation

## ~ BY-LAWS ~

**Adopted**

**April 9, 2010**

**re-adopted as written June 16, 2021**

**re-adopted as written March 16, 2022**

**re-adopted as written May 17, 2023**

**re-adopted as written April 10, 2024**

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## **ARTICLE I**

### **NAME AND OFFICES**

Section 1. Name The name of the Corporation shall be Hamburg New York Land Development Corporation and shall be referred to in these By-Laws as the Corporation.

Section 2. Office The principal office of the Corporation shall be located within the Town of Hamburg, Erie County, in the State of New York, as shall be determined by the Board of Directors.

## **ARTICLE II**

### **POWERS AND PURPOSES**

Section 1. Powers The general powers of the Corporation shall be those which are not inconsistent with the New York Not-For-Profit Corporation Law, the Certificate of Incorporation, By-Laws and the stated purposes of the Corporation.

Section 2. Purposes The stated purposes of the Corporation are set forth in paragraphs THIRD and FOURTH of the Corporation's Certificate of Incorporation. The activities referred to therein will achieve the lawful public purposes 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 Town of Hamburg in reducing unemployment and promoting additional job growth and economic development. In addition, the Corporation's goal is to stimulate economic development within the Town of Hamburg while expanding job opportunities therein.

## **ARTICLE III**

### **MEMBERSHIP**

Section 1. Membership The Corporation shall consist of not less than three (3) nor more than nine (9) members who shall be appointed by the Town Board of the Town of Hamburg (the "Town Board") without term limits.

Section 2. Duties All members are expected to participate as active members of the Corporation. Members are encouraged to provide assistance to the committees of the Corporation.

Section 3. Voting: Only members may vote to provide advice to the Board of Directors. All votes will be open to public record.

#### Section 4. Resignation, Vacancies and Removal

- (A) Any member may resign at any time by delivering a written resignation to the Corporation and to the Town Board. It is not necessary for the resignation to be accepted for it to become effective, unless otherwise required.
- (B) Should any member position become vacant, the Corporation will take steps to recommend to the Town Board one or more nominees to fill the vacancy. The decision to appoint a particular individual as a member rests solely with the Town Board.
- (C) Any member may be removed, at any time, by the Town Board. The termination of a member shall also terminate his or her office as Officer, if any.

### ARTICLE IV

#### MEETING OF MEMBERS

Section 1. Annual Meeting An annual meeting of the members shall be held during the month of January each year, with the exact date, time and place of meeting to be established by the Board of Directors. The purpose will be to receive the Annual Report and transact any other business which may come before the meeting. If the day set for the annual meeting shall be a legal, or religious holiday in the State of New York, the meeting shall be held on the next succeeding business day.

Section 2. Special Meeting The Chairperson, may, when he or she deems it desirable, and shall upon a written request of the Board of Directors or if required pursuant to Section 603 of the Not-for-Profit Corporation Law of the State of New York (the "N-PCL"), call or direct the Executive Director to call a special meeting of the members for the purpose of transacting any business designated in the notice, or in a written agenda accompanying the notice. At such special meeting, no business shall be considered other than as designated in the notice, but if all members are present at a special meeting, with or without notice thereof, and all are agreeable thereto, any and all business may be transacted at such special meeting.

Section 3. Place Of Meeting The Board of Directors may designate any place within the geographic area of the Corporation as the place for the annual meeting. Special meetings, called in accordance with Section 2 of this Article, may be designated at any place within the same area.

Section 4. Notice Of Meeting Written notice stating the place, day and hour of any meeting of members shall be delivered by mail, in person or sent via e-mail to members who have agreed to accept notice by e-mail to each member at least five (5) but not more than thirty (30) days before the date of such meeting, by or at the direction of the Chairperson, or the

Directors or members calling the meeting; however that such notice may be waived by any member by signing a written waiver of notice before or after the meeting or by attending the meeting. The notice shall set forth the place, day and hour of the meeting, and, unless it is an annual meeting, shall state the person or persons calling the meeting and the purpose or purposes for which the meeting is called.

Section 5. Quorum A majority of the members must be present in order to constitute a quorum. If there is no quorum, the members present may adjourn the meeting from time to time to such time and place as they may determine, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Voting And Proxy Each member shall be entitled to one vote on each matter submitted to a vote of membership. There shall be no voting by proxy or by attorney-in-fact.

Section 7. Voting By Mail There shall be no voting by mail.

## ARTICLE V

### BOARD OF DIRECTORS

Section 1. General Powers The property, affairs, and activities of the Corporation shall be managed and its powers exercised by the Board of Directors, except as otherwise provided by statute, or by the Certificate of Incorporation or these By-Laws.

Section 2. Number The initial number of Directors of the Corporation shall be nine (9). Each member of the Corporation shall constitute a separate membership section within the meaning of Section 703(a) of the N-PCL and shall serve as a director therefor.

Section 3. Appointment

- (A) Directors shall be appointed by, and serve at the pleasure of, the Town Board and will also serve as members of the Corporation. Directors are not subject to term limits.
- (B) The majority of the Directors will be "Independent Directors."
- (C) For purposes of these By-Laws, the term "Independent Director" means a Director who:
  - (1) is not, and in the past two years has not been, employed by the Corporation (or an "Affiliate" of the Corporation) in an executive capacity;
  - (2) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than

- \$15,000 for goods and services provided to the Corporation or received any other form of financial assistance valued at more than \$15,000 from the Corporation;
- (3) is not a relative of an executive officer or employee in an executive position of the Corporation (or an "Affiliate" of the Corporation); and
  - (4) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Corporation (or an "Affiliate" of the Corporation).
- (D) For purposes of the By-Laws, the term "Affiliate" means a corporate body having substantially the same ownership or control as the Corporation.
- (E) For purposes of these By-Laws, the term "Relative" means an individual's spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the individual or of the individual's spouse.

#### Section 4. Responsibilities of Directors: Training Requirement

- (A) The Directors of the Corporation constitute the governing body of the Corporation (the "Board"), and will have and will responsibly exercise all of the powers prescribed by Section 1411 of the New York State Not-for-Profit Corporation Law and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York (as may be amended, the "PAAA") and Chapter 506 of the 2009 Laws of the State of New York.
- (B) The Board will appoint a Chief Executive Officer and a Chief Financial Officer of the Corporation, neither of whom will be a Director of the Corporation.
- (C) Every annual financial report of the Corporation must be approved by the Board and provided to the Town Board.
- (D) The Directors of the Corporation will:
- (1) execute direct oversight of the Chief Executive Officer of the Corporation and other senior management of the Corporation in the effective and ethical management of the Corporation; and
  - (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Corporation.

- (E) The Board will not, directly or indirectly, including through a subsidiary, extend or maintain credit or arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, Director or employee (or equivalent thereof) of the Corporation.
- (F) Directors of the Corporation will file annual financial disclosure statements with the Town of Hamburg's Board of Ethics.
- (G) Individuals newly appointed to the Board of the Corporation must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment to such Board. Directors who have already completed state approved training will participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

Section 5. Compensation and Expenses The Board of Directors may by resolution provide for reimbursement for all travel and other actual expenses incurred by any Director in attending any meeting of the Board of Directors or any committee thereof. The Directors shall receive no fixed salary, fixed fees or compensation for their services as directors or committee members.

Section 6. Resignation, Vacancies and Removal

- (A) Any Director may resign at any time by delivering a written resignation to the Corporation and to the Town Board. It is not necessary for the resignation to be accepted for it to become effective, unless otherwise required.
- (B) Should any Director position become vacant, the Corporation will take steps to recommend to the Town Board one or more nominees to fill the vacancy. The decision to appoint a particular individual as a member rests solely with the Town Board.
- (C) Any Director may be removed, at any time, by the Town Board. The termination of a member shall also terminate his or her office as Officer, if any.

## ARTICLE VI

### OFFICERS AND EMPLOYEES

Section 1. Officers. The officers of the Corporation shall be a Chairperson, Vice-Chairperson, each of whom must be a member, an Executive Director, a General Counsel/Assistant Secretary, a Treasurer, a Secretary, and such other officers as may be determined by the Board of Directors, who shall have such duties, powers and functions as hereinafter provided.

Section 2. Election And Term Office. Officers shall be first elected by the Board of Directors at the first meeting of the Board of Directors after the Certificate of Incorporation shall have been filed with the Secretary of State. Each officer, other than the Chairperson, shall hold office at the pleasure of the Board of Directors until his or her successor shall have been elected and qualified.

The Executive Director may be removed by a two-thirds (%) vote of the members of the Board of Directors then in office at a meeting providing notice thereof; all other officers may be removed upon a vote of a majority of the Board of Directors then in office at a meeting providing notice thereof.

Section 3. Vacancies. Vacancies in any office which occur for any reason may be filled by election by the Board of Directors for the remainder of the term, or until the next annual meeting, whichever comes first.

Section 4. Chairperson. The Chairperson shall preside at all meetings of the members and of the Board of Directors, but, for any particular meeting, the Chairperson may delegate the responsibility to so preside to any member, director or officer of the Corporation. He or she shall sign by manual or facsimile signature and execute on behalf of the Corporation all agreements, deeds, contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by resolution of the Board of Directors, and shall perform such other duties as may be prescribed for him or her by law or by the Corporation. The Chairperson shall submit to the Board of Directors such recommendations and information as he or she may consider proper concerning the business, affairs and policies of the Corporation.

Section 5. Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson on the absence or incapacity of the Chairperson. In the event of the resignation or death of the Chairperson, the Vice-Chairperson shall become acting Chairperson and perform the duties of the Chairperson until such time as the Board of Directors shall appoint a new Chairperson.

Section 6. Executive Director. The Executive Director shall be appointed by the Board of Directors by a two-thirds (%) vote of the members of the Board of Directors then in office and shall be responsible for the administration of its affairs. He or she shall:  
be the general manager of the Corporation;

- (A) exercise supervision and control of all administrative functions of the Corporation;
- (B) be responsible for the implementation of all resolutions, orders, programs or projects of the Corporation; and
- (C) act for and in place of any absent officer or employee of the Corporation, except the Chairperson, Treasurer or Secretary of the Corporation.

The Executive Director, as well as the Chairperson, shall have the power to sign and execute on behalf of the Corporation all contracts, notes, bonds or other evidence of indebtedness and to affix and attest to the seal of the Corporation when so authorized by resolution of the Corporation. He or she shall attend all meetings of the Corporation with the right to take part in the discussion and to recommend such measures as he or she may deem necessary or expedient, and shall perform such other duties and have such other powers as may be prescribed for him or her by law or by the Board of Directors. He or she shall have all necessary incidental powers to perform and exercise any of the duties and functions specified above or lawfully delegated to him or her.

Section 7. Secretary. The Secretary shall record all the votes and record the minutes of all meetings of the Board of Directors in a journal to be kept for that purpose; shall attend to the serving of notices of all meetings when required; shall keep in safe custody the seal of the Corporation and shall have power to affix such seal to all papers or other documents as may be required and may certify by manual or facsimile signature to the seal of the Corporation or its facsimile; and shall perform all such other duties as the Board of Directors may designate.

Section 8. Treasurer. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of all Corporation funds and securities, except as otherwise provided by resolution, and shall cause the same to be deposited forthwith in the name of the Corporation in such bank or banks as the Board of Directors may designate.

The Treasurer shall sign all instruments of indebtedness, orders and checks for the payment of moneys by the Corporation pursuant to the direction of the Board of Directors, unless otherwise authorized by resolution of the Board of Directors. Except as otherwise authorized by resolution of the Board of Directors, all such instruments of indebtedness, orders and checks shall be countersigned by the Chairperson, Vice-Chairperson or Executive Director.

The Treasurer shall have charge of the treasury and supervision of receipts, deposits and disbursements of all Corporation moneys. He or she shall cause to be maintained full and accurate and separate accounts of the various funds and moneys under his or her supervision. The Treasurer shall at a reasonable time exhibit the said books and accounts showing all receipts and expenditures, to any member of the Corporation during business hours and he or she shall cause to be rendered an accounting of the current financial condition of the Corporation at each regular meeting and a full financial report at each annual meeting covering the Corporation's prior fiscal year. He or she shall have such other powers and duties as are conferred upon him or her by the Board of Directors or by any special or general law.



Section 9. General Counsel and Assistant Secretary. The General Counsel shall be appointed by the Board of Directors by a majority vote of the members of the Board of Directors present at such meeting and shall also be Assistant Secretary of the Corporation. The General Counsel shall provide legal representation in connection with all of the Corporation's proceedings and activities, and shall perform all such other duties as the Corporation may designate and shall be authorized to perform the duties of the Secretary in the Secretary's absence.

Section 10. Employees. The Board of Directors shall employ the Executive Director and shall authorize the employment of other employees as are needed to carry out the programs of the Corporation. The Executive Director shall select the other employees who shall be hired or discharged by the Executive Director. The salary or wages and other terms of employment shall be set by the Board of Directors who may enter into contracts of employment with employees on behalf of the Corporation.

Section 11. Chief Executive Officer.

- (A) The Chief Executive Officer will have general supervision over the administration of the business and affairs of the Corporation, subject to the direction of the Board of Directors. Whenever possible, the Chief Executive Officer will attend each meeting of the Board of Directors, and will submit such recommendations and information to the Board of Directors as the Chief Executive Officer may consider proper concerning the business, affairs and policies of the Corporation.
- (B) The Chief Executive Officer will be charged with the management of all projects of the Corporation.
- (C) The Chief Executive Officer will also serve as the Contracting Officer (as such term is defined in the PAAA) of the Corporation, and, as such, be responsible for
  - (1) the disposition of property of the Corporation, and
  - (2) the Corporation's compliance with the Corporation's property uses and disposition guidelines.
- (D) Every annual financial report of the Corporation must be certified in writing by the Chief Executive Officer that, based on the Chief Executive Officer's knowledge,
  - (1) the information provided therein is accurate and correct and does not contain any untrue statement of material fact;
  - (2) the annual financial report does not omit any material fact which, if omitted, would cause the financial statements to

be misleading in light of the circumstances under which such statements are made; and

- (3) the annual financial report fairly presents in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the financial statements.

Section 12. Chief Financial Officer

- (A) The Chief Financial Officer will have the care and custody of all funds of the Corporation and will deposit the same in the name of the Corporation in such bank or banks as the Board of Directors may select or, if the Board of Directors has not so selected a bank or banks, which the Chief Financial Officer selects.
- (B) The Chief Financial Officer will keep regular books of accounts showing receipts and expenditures, and will render to the Audit Committee at each regular meeting thereof an account of such transactions and also of the financial condition of the Corporation.
- (C) The Chief Financial Officer will give such bond for the faithful performance of his duties as the Corporation may determine.
- (D) Every annual financial report of the Corporation must be certified in writing by the Chief Financial Officer that, based on the Chief Financial Officer's knowledge,
  - (1) the information provided therein is accurate and correct and does not contain any untrue statement of material fact;
  - (2) the annual financial report does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and
  - (3) the annual financial report fairly presents in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the financial statements.

Section 13. Additional Personnel. The Corporation may from time to time employ such personnel as it deems necessary to exercise its power, duties and functions as prescribed by the New York State Not-for-Profit Corporation Law and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel including the Chief Executive Officer will be determined by the Corporation subject to the laws

of the State of New York. The Corporation may from time to time employ such personnel as it deems necessary to exercise its statutory powers, duties and functions. The selection and compensation of all personnel will be determined by the Corporation.

Section 14. Vacancies. Any vacancy in any office may be filled by vote of the Board of Directors.

Section 15. No Conflict of Interest. It is acknowledged that the members, directors and officers may hold comparable or other positions with the Town of Hamburg Industrial Development Agency (the "Hamburg IDA"). By reason of the shared public purposes of the Corporation and the Hamburg IDA, no member, alternate member, director, alternate director or officer of the Corporation shall be deemed to have a conflict of interest solely due to such person's position with the Hamburg IDA.

## ARTICLE VII

### DIRECTORS MEETING

Section 1. Annual Meeting. Immediately following the annual meeting of the members and in the same place, the Board of Directors will hold its annual meeting without notice except for these By-Laws. The purpose of the meeting is to elect the officers of the Corporation and to transact any other business which may come before it.

Section 2. Regular Meeting. The Board of Directors may provide by resolution the time and place within the geographic area of the Corporation for the holding of additional regular meetings of the Board without other notice than such resolution. Otherwise, notice shall be given as provided in Section 4 of this Article.

Section 3. Special Meetings. Special meetings may be called at any time by the Chairperson or the Executive Director of the Corporation then in office, at such time and places as may be specified in the notice thereof.

Section 4. Notice. Notice of each regular meeting (except as provided in Section 2 of this Article) of the Board of Directors shall be mailed to each Director at his address as shown on the records of the Corporation not less than ten (10) or more than twenty (20) days before the date of the meeting or sent via e-mail to members who have agreed to accept notice by e-mail. Notice of each special meeting of the Board of Directors shall be mailed to each Director at his address as shown on the records of the Corporation not less than five (5) or more than fifteen (15) days before the date of the Special Meeting. Written notice shall declare the time, date and place of the meeting and, if it is a special meeting, the person at whose direction it is being called and purpose(s) therefor. Any Director may waive notice of any meeting. The attendance of any Director at a meeting without protesting the transaction of any business because the meeting was not lawfully convened shall constitute a waiver of notice.

Section 5. Public Board Meetings. All regular meetings of the Board of Directors shall be open to the public unless closed by action of the Board. All regular meetings

of the Board shall be open to any member of the Corporation. 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 New York Open Meetings Law.

Section 6. Quorum; Adjournments. The presence of a majority of the Directors then in office shall constitute a quorum to transact business at any meeting of the Board. If there is no quorum, a majority of the Directors present may adjourn the meeting from time to time to such time and place as they may determine, without notice other than announcement at the meeting, until a quorum shall be present.

Section 7. Voting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these By-Laws.

Section 8. Informal Action By Directors. Any action required by law to be taken at a meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all Directors.

Section 9. Participation At Board Or Committee Meeting By Conference Telephone. Any one or more Directors may participate in a meeting of the Board or any committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## ARTICLE VIII

### COMMITTEES OF THE BOARD AND DIRECTORS

Section 1. Committees. The Board of Directors may establish such committees as are necessary and appropriate to carry out the business of the Corporation. The duties, responsibilities, authority and composition of all standing and AD HOC Committees shall be stated in writing and adopted by resolution of the Board of Directors.

The following committees shall be established:

- (A) Governance Committee: The Board of Directors will appoint a Governance Committee, to be comprised of not less than three (3) Independent Directors, who shall constitute a majority on the committee; and who shall possess the necessary skills to understand the duties and functions of the Governance Committee. The Governance Committee will:
  - (1) keep the Board of Directors informed of current best governance practices;

- (2) review corporate governance trends;
- (3) recommend updates to the Corporation's corporate governance principles;
- (4) advise the Board of Directors on the skills and experiences required of potential Directors of the Board of Directors;
- (5) examine ethical and conflict of interest issues;
- (6) perform board self-evaluations; and
- (7) recommend by-laws which include rules and procedures for conduct of Board business.

(B) Audit Committee: The Board of Directors will appoint an Audit Committee, to be comprised of not less than three (3) Independent Directors, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Audit Committee.

- (1) Members of the Audit Committee shall be familiar with corporate financial and accounting practices.
- (2) The Audit Committee will ensure that the Corporation arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required under the laws of New York State.
- (3) The Audit Committee will recommend to the Board of Directors the hiring of a certified independent public accounting firm for the Corporation, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee will not recommend the hiring of a certified independent public accounting firm to provide audit services to the Corporation if the Chief Executive Officer, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Corporation was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Corporation during the one-year preceding the date of the initiation of the audit.
- (4) If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public

accounting firm proposing to provide an annual independent audit for the Corporation, or the audit partner responsible for reviewing the audit, has performed audit services for the Corporation in each of the five previous fiscal years of the Corporation, the Audit Committee will prohibit such certified independent public accounting firm from providing an annual independent audit for the Corporation.

- (5) The Audit Committee will require that each certified independent public accounting firm that performs for the Corporation an audit required by law will timely report to the Audit Committee:
  - (1) all critical accounting policies and practices to be used;
  - (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Corporation, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and
  - (3) other material written communications between the certified independent public accounting firm and the management of the Corporation, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable. .
- (6) The Audit Committee will prohibit the certified independent public accounting firm providing an annual independent audit for the Corporation from performing any non-audit services to the Corporation contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including:
  - (1) bookkeeping or other services related to the accounting records or financial statements of the Corporation;
  - (2) financial information systems design and Implementation;
  - (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
  - (4) actuarial services;
  - (5) internal audit outsourcing services;

- (6) management functions;
  - (7) broker or dealer, investment advisor, or investment banking services; and
  - (8) legal services and expert services unrelated to the audit.
- (C) Finance Committee: The Board of Directors will appoint a Finance Committee, to be comprised of not less than three (3) Independent Directors, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the committee. The Finance Committee will review proposals for the issuance of debt by the Corporation and its subsidiaries and will make recommendations.

Section 2. Appointment. The Chairperson of all committees shall be appointed by the Board of Directors in consultation with the Executive Director. Committee Chairpersons shall be selected from among the Board members. The Executive Director shall be an ex-officio member of the Board and of all its other committees.

Section 3. Reports. Each committee shall submit activity reports to the Board of Directors as prescribed in its commission.

Section 4. Term of Office. Each member of a committee shall continue as such until the next annual meeting or until his successor is appointed, unless the committee shall be sooner terminated, or unless a member shall resign, be removed or cease to qualify as a member thereof.

Section 5. Vacancies. Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointment.

## **ARTICLE IX**

### CONDUCT OF THE BUSINESS OF THE CORPORATION

Section 1. Raising of Funds. The Board of Directors shall be solely responsible for directing the solicitation and raising of funds to finance the operations and, loan or grant program of the Corporation.

Section 2. Distribution of Funds. The Board of Directors shall determine the allocation of funds for each fiscal year and reallocation during the year, based on the following criteria:

- (a) availability of funds;
- (b) preparation, review and recommendation of the operating budget for each committee, if appropriate;
- (c) objective review of past performance and potential for future performance by each committee; and
- (d) evident need.

Section 3. Approval. All budgets, allocations, and reallocations shall be by affirmative vote of two-thirds (2/3) of the Board of Directors.

Section 4. Books And Reports. The Corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep a record giving the names and addresses of the members entitled to vote. All books and records of the Corporation may be inspected by any member or his agent or attorney for any proper purpose at any reasonable time.

Section 5. Financial Disclosure. Officers and employees of the Corporation will file annual financial disclosure statements with the Town of Hamburg's Board of Ethics.

Section 6. Public Hearing. The Corporation will hold a public hearing on any issuance of Obligations (as defined in the Corporation's Certificate of Incorporation) 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 Hamburg IDA would be required to give pursuant to the provisions of Section 859-a and b of the General Municipal Law of the State of New York as if such hearing was a public hearing of the Hamburg IDA with respect to a project.

## **ARTICLE X**

### CONTRACTS CHECKS DEPOSITS AND FUNDS

Section 1. Contracts. The Board of Directors may authorize any officer or agent or officers or agents of the Corporation in addition to the officers authorized by these By Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Conflict Of Interest and Disclosure Requirement. There shall be no restrictions on any Director, office holder, member or staff member that would negate his or her participation in the programs of the Corporation, provided that such person does not participate in the decision-making process on his or her behalf.



Any Director, office holder, member or staff member may be requested to file a full disclosure statement prior to the Board of Directors, or any committee of the Board taking action on a loan, grant or technical assistance request from that individual,

Section 3. Checks Drafts Etc. All checks, drafts or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Corporation shall be signed by such officer(s) or agent(s) of the Corporation at least two (2) in number and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Investments. Any funds of the Corporation which are not needed currently for the activities of the Corporation may, at the discretion of the Board of Directors pursuant to a two-thirds (2/3) vote of the Directors then in office, be invested in such investments as are permitted by law.

Section 6. Gifts. The Board of Directors may accept on behalf of the Corporation any contributions, gift, grant, bequest or devise for the general purposes or for any special purpose of the Corporation.

Section 7. Fiscal Year. The fiscal year of the Corporation shall begin on January 1 and end on December 31 each year.

Section 8. Audit. Subject to Section 1 (B) of Article VIII of these By-Laws, at the end of each fiscal year, the Board of Directors shall arrange for an audit of the Corporation's books and fiscal affairs as required through contract with funding organizations and as deemed appropriate by the Board.

Section 9. Dues. No initiation fee or dues shall be required from any member of the Corporation.

Section 10. Dissolution. In the event of dissolution of the Corporation, the Board of Directors shall, after payment of all debts and liabilities of the Corporation of whatever kind and nature (including the payment of loans and contributions the repayment of which has been authorized), distribute to the Town of Hamburg or pursuant to an order of the Supreme Court of New York, all as set forth in paragraph EIGHTH of the Corporation's Certificate of Incorporation.

## ARTICLE XI

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Corporation shall, to the extent legally permissible, indemnify each of its Directors, members and Officers against all liabilities and expenses, including counsel fees, reasonably incurred by him or her in connection with the defense or disposition of any action, suit or other proceeding in which he or she may be involved, or with which he or she may be threatened while in office or thereafter, by reason of his or her being or having been such a Director, member or Officer, except with respect to any matter as to which he or she shall have been adjudicated in any proceeding not to have acted in good faith, provided, however, that as to any matter disposed of by a compromise payment by such Director, member or Officer, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expense shall be provided unless such compromise shall be approved as in the best interests of the Corporation, after notice that it involved such indemnification,

- (a) by a disinterested majority of the members then in office, or
- (b) by a majority of the disinterested Directors then in office, provided that there has been obtained in writing an independent legal counsel to the effect that such Directors, members or Officers appear to have acted in good faith in the reasonable belief that his or her actions were in the best interests of the Corporation.

## ARTICLE XII

### SEAL

The Board of Directors shall provide a corporate seal which shall be in the form of a circle, and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal", "New York".

## ARTICLE XIII

### AMENDMENTS AND CONSTRUCTION

Section 1. Amendments. All By-Laws of the Corporation shall be subject to amendment or repeal and new By-Laws may be adopted, by vote of (y) at least two-thirds (2/3) of the Directors of the Corporation at any meeting of the Board of Directors, provided that the proposed change, or the substance thereof, shall have been inserted in the notice of meeting, and (z) at least two-thirds (2/3) of the members of the Town Board.

Section 2. Construction. The decision of the Board of Directors shall be conclusive on all questions of construction of these By-Laws.