

**BY-LAWS**  
**OF**  
**N.F.C. DEVELOPMENT CORP.**

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**ARTICLE I – OFFICES**

The principal office and place of business of the corporation shall be located at 745 Main Street in the City of Niagara Falls, County of Niagara, New York, which shall be open and accessible to the public during normal business hours.

**ARTICLE II – PURPOSES**

The purpose for which this corporation has been organized are as follows:

The purposes as stated in Article III of the Certificate of Incorporation as well as the following additional purposes: to assist and provide aid to small business concerns as the same is defined by the regulations of the United States Small Business Administration; to receive loans for the purpose of assisting and aiding small business concerns pursuant to the applicable laws and regulations of the Small Business Investment Act and in connection with such loans to enter into covenants, agreements and loans with small business concerns for the purpose of stimulating economic development in the area in which the corporation is authorized to conduct its business.

**ARTICLE III – MEMBERSHIP**

**1. MEMBERS.**

The corporation shall have a minimum of twenty-five (25) members who shall qualify for membership in accordance with Section Three of this Article.

**2. MEMBERSHIP VOTES.**

No member of the corporation shall have or possess directly or by proxy membership votes in excess of ten per centum (10%) of the total membership votes.

**3. QUALIFICATIONS FOR MEMBERSHIP.**

The members of the corporation shall consist of the persons who signed the certificate of incorporation and/or named therein as directors until the first annual meeting, together with such person or persons who are of full age and who reside or are primarily employed or do business within the territory in which the activities of the corporation are principally conducted and who fulfill such other requirements as to qualifications as the directors may from time to time prescribe and who are recommended for membership by the committee for admissions and elected as members by an affirmative vote of two-thirds of the Board of Directors.

**(Following added May 15, 2006):**

Except for members who serve as members by virtue of holding a civil office of the City of Niagara Falls, the majority of the remaining members of the governing body of this corporation shall be independent. An independent member is one who:

(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;

(c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(d) 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 public authority or an affiliate.

#### **4. CERTIFICATE OF MEMBERSHIP.**

The board of directors may provide for the issuance of certificates evidencing membership in the corporation, which shall be in such form as may be determined by the board. Such certificates shall be signed by the president or a vice-president and by the secretary or an assistant secretary and shall be sealed with the seal of the corporation. All certificates evidencing membership of any class shall be consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued therefore on such terms and conditions as the board of directors may determine.

#### **5. ISSUANCE OF CERTIFICATES.**

When a member has been elected to membership, a certificate of membership shall be issued in his name and delivered to him by the secretary if the board of directors shall have provided for the issuance of certificates of membership under the provisions of Section Four of this Article.

#### **6. MEMBERSHIP MEETINGS.**

The annual membership meeting of the corporation shall be held on the 1<sup>st</sup> day of March each year except that if such day be a legal holiday, then in that event, the directors shall fix a day not more than two weeks from the date fixed by these by-laws. The secretary shall cause to be mailed to every member in good standing at his address as it appears on the membership roll book of the corporation a notice stating the time and place of the annual meeting.

Notice of the time and place of such annual meeting shall be given by the secretary by mailing a copy thereof or delivering the same to each member not less than ten no more than fifty days before such meeting or pursuant to a waiver of notice signed before or after such meeting by all members.

Regular meetings of the members of the corporation shall be held at the principal office of the corporation or at any such other time or place as the board of directors shall designate.

The presence at any membership meeting of not less than thirty per centum (30%) of the total number of members shall constitute a quorum and shall be necessary to conduct the business of the corporation; however, a lesser number may adjourn the meeting for a period of not more than two (2) weeks from the date scheduled by the by-laws and the secretary shall cause a notice of the rescheduled date of the meetings to be sent to those members who were not present at the meeting originally called. A quorum as hereinbefore set forth shall be required at any adjourned meeting.

A membership roll showing the list of members as of the record date, certified by the secretary of the corporation, shall be produced at any meeting of members upon the request therefore of any member who has given written notice to the corporation that such request will be made at least ten days prior to such meeting. All persons appearing on such membership roll shall be entitled to vote at the meeting.

#### **7. SPECIAL MEETINGS.**

Special meetings of the members of the corporation may be called by the directors. The secretary shall cause a notice of such meeting to be mailed to all members at their addresses as they appear in the membership roll book at least ten days but not more than fifty days before the scheduled date of such meeting. Such notice shall state the date, time, place and purpose of the meeting and by whom called.

No other business but that specified in the notice may be transacted at such special meeting without the unanimous consent of all present at such meeting.

#### **8. FIXING RECORD DATE.**

For the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining the members entitled to receive any distribution or any allotment of any rights, or for the purpose of any other action, the board shall fix, in advance, a date as the record date for any such determination of members. Such date shall not be more than fifty nor less than ten days before any such meeting, nor more than fifty days prior to any other action.

#### **9. ACTION BY MEMBERS WITH A MEETING.**

Whenever members are required or permitted to take any action by vote, such action may be taken without a meeting by written consent, setting forth the action so taken, signed by all the members entitled to vote thereon.

#### **10. PROXIES.**

Every member entitled to vote at a meeting of members or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy.

Every proxy must be signed by the member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise

provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided by law.

**11. ORDER OF BUSINESS.**

The order of business at all meetings of members shall be as follows:

1. Roll call
2. Reading of the minutes of the preceding meeting
3. Reports of committees
4. Reports of officers
5. Old and unfinished business
6. New business
7. Good and welfare
8. Adjournments

**12. MEMBERSHIP DUES.**

No initiation fee and/or dues are required for membership to the corporation.

**ARTICLE IV – DIRECTORS**

**1. MANAGEMENT OF THE CORPORATION.**

The Corporation shall be managed by a Board of Directors which shall consist of not less than five directors who shall meet at least bi-monthly to make management decisions including those relating to loan making and servicing of loans. Each Director shall be at least nineteen years of age.

**(Amended by resolution of members at special annual meeting held November 20, 1984):**

The Corporation shall be managed by a Board of Directors which shall consist of not less than fifteen Directors, nine of whom shall be the Mayor, City Council and members of the Niagara Falls Urban Renewal Agency, one of whom shall be representative of labor, one of whom shall be representative of the banking community, one of whom shall be representative of the minority community, one of whom shall be representative of the Niagara Falls Chamber of Commerce, Industrial Liaison Committee, and two of whom shall be representative of the community at large. The Directors shall meet at least bi-monthly to make management decisions including those relating to loan making and servicing of loans. Each Director shall be at least nineteen years of age.

**(Amended by resolution of members at special annual meeting held March 1, 1988):**

The Corporation shall be managed by a Board of Directors which shall consist of not less than nineteen Directors, twelve of whom shall be the Mayor, City Council and members of the Niagara Falls Urban Renewal Agency, one of whom shall be

representative of labor, one of whom shall be representative of the banking community, one of whom shall be representative of the minority community, one of whom shall be representative of the Niagara Falls Chamber of Commerce, Industrial Liaison Committee, and three of whom shall be representative of the community at large. The Directors shall meet at least bi-monthly to make management decisions including those relating to loan making and servicing of loans. Each Director shall be at least nineteen years of age.

**(Amended by resolution of members at special annual meeting held June 27, 1996):**

The Corporation shall be managed by a Board of Directors which shall consist of not less than twenty-one Directors, twelve of whom shall be the Mayor, City Council and members of the Niagara Falls Urban Renewal Agency, one of whom shall be representative of labor, one of whom shall be representative of the banking community, one of whom shall be representative of the minority community, one of whom shall be representative of the Niagara Falls Chamber of Commerce, Industrial Liaison Committee, and five of whom shall be representative of the community at large. The Directors shall meet at least bi-monthly to make management decisions including those relating to loan making and servicing of loans. Each Director shall be at least nineteen years of age.

**(Amended by resolution of board of directors at annual meeting held June 26, 2001, to take effect 01/01/02):**

The Corporation shall be managed by a Board of Directors which shall consist of the Mayor, City Council and members of the Niagara Falls Urban Renewal Agency, one representative of labor, one representative of the banking community, one representative of the minority community, one representative of the Niagara Falls Chamber of Commerce, Industrial Liaison Committee, and five representatives of the community at large. The Directors shall meet at least bi-monthly to make management decisions including those relating to loan making and servicing of loans. Each Director shall be at least nineteen years of age.

**Amended by resolution of members at annual meeting on March 5, 2003, to take effect immediately):**

The Corporation shall be managed by a Board of Directors which shall consist of the Mayor, City Council and members of the Niagara Falls Urban Renewal Agency, one representative of labor, one representative of the banking community, one representative of the minority community, one representative of Niagara Falls industry, and five representatives of the community at large. The Directors shall meet at least bi-monthly to make management decisions including those relating to loan making and servicing of loans. Each Director shall be at least nineteen years of age.

**(Following added May 15, 2006):**

Except for directors who serve by virtue of holding a civil office of the City of Niagara Falls, the majority of the remaining directors of the governing body of this corporation shall be independent. An independent director is one who:

(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;

(c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(d) 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 public authority or an affiliate.

## **2. ELECTION AND TERM OF DIRECTORS.**

At each annual meeting of members the membership shall elect (the seven community member) directors to hold office until the next annual meeting. Each elected director shall hold office until the expiration of the term for which the director was elected and until the director's successor has been elected and shall have qualified, or until the director's prior resignation or removal. The Mayor, City Council and members of the Niagara Falls Urban Renewal Agency shall serve as directors for so long as they hold such positions. (March 1, 1988 amendment added matter in parenthesis and last sentence, and made clause gender neutral)

## **3. INCREASE OR DECREASE IN NUMBER OF DIRECTORS.**

Any increase or decrease shall be in accordance with Article IX of the Certificate of Incorporation. The number of Directors may be increased or decreased by vote of the members or by a vote of a majority of the Directors. No decrease in number of Directors shall shorten the term of any incumbent Director.

## **4. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.**

Newly created directorships resulting from an increase in the number of Directors and vacancies occurring in the Board for any reason except the removal of Directors without cause may be filled by a vote of a majority of the Directors then in office, although less than a quorum exists, unless otherwise provided in the Certificate of Incorporation. Vacancies occurring by reason of the removal of Directors without cause shall be filled by a vote of the members. A Director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of his predecessor.

## **5. REMOVAL OF DIRECTORS.**

Any or all of the Directors may be removed for cause by vote of the members or by action of the Board. Directors may be removed without cause only by vote of the members.

## **6. RESIGNATION.**

A Director may resign at any time by giving written notice to the Board, the President or the Secretary of the Corporation. Unless otherwise specified in the notice,

the resignation shall take effect upon receipt thereof by the board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

**7. QUORUM OF DIRECTORS.**

Unless otherwise provided in the certificate of incorporation, a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business.

**7-a.** Any one or more members of the board or any committee thereof may participate in a meeting of such board or 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. (added at board of directors meeting 12/20/00)

**8. ACTION OF THE BOARD.**

Unless otherwise required by law, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote.

**9. PLACE AND TIME OF BOARD MEETINGS.**

The board may hold its meetings at the office of the corporation or at such other places, either within or without the state, as it may from time to time determine.

**10. REGULAR ANNUAL MEETING.**

A regular annual meeting of the board shall be held immediately following the annual meeting of members at the place of such annual meeting of members.

**11. NOTICE OF MEETINGS OF THE BOARD, ADJOURNMENT.**

Regular meetings of the board may be held without notice at such time and place as it shall from time to time determine. Special meetings of the board shall be held upon notice to the directors and may be called by the president upon three days' notice to each director either personally or by mail or by wire; special meetings shall be called by the president or by the secretary in a like manner on written request of two directors. Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the adjournment shall be given all directors who were absent at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

**12. CHAIRMAN**

At all meetings of the board the president, or in his absence, a chairman chosen by the board shall preside.

**13. EXECUTIVE AND OTHER COMMITTEES.**

The board, by resolution adopted by a majority of the entire board, may designate from among its members various committees (other than the executive committee), each

consisting of three or more directors. Each committee shall serve at the pleasure of the board.

## **ARTICLE V – OFFICERS**

### **1. OFFICES, ELECTION, TERM.**

Unless otherwise provided for in the certificate of incorporation, the board may elect or appoint a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as it may determine, who shall have such duties, powers and functions as hereinafter provided. All officers shall be elected or appointed to hold office until the meeting of the board following the annual meeting of members. Each officer shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified.

### **2. REMOVAL, RESIGNATION, SALARY.**

Any officer elected or appointed by the board may be removed by the board with or without cause. In the event of the death, resignation or removal of an officer, the board in its discretion may elect or appoint a successor to fill the unexpired term. Any two or more offices may be held by the same person, except the offices of president and secretary. The salaries of all officers shall be fixed by the board.

### **3. PRESIDENT.**

The president shall be the chief executive officer of the corporation; he shall preside at all meetings of the members and of the board; he shall have the general management of the affairs of the corporation and shall see that all orders and resolutions of the board are carried into effect.

### **4. VICE-PRESIDENTS.**

During the absence or disability of the president, the vice-president, or if there are more than one, the executive vice-president, shall have all the powers and functions of the president. Each vice-president shall perform such other duties as the board shall prescribe.

### **5. TREASURER.**

The treasurer shall have the care and custody of all the funds and securities of the corporation, and shall deposit said funds in the name of the corporation, and shall deposit said funds in the name of the corporation in such bank or trust company as the directors may elect; he shall, when duly authorized by the board of directors, sign and execute all contracts in the name of the corporation, when countersigned by the president; he shall also sign all checks, drafts, notes, and orders for the payment of money, which shall be duly authorized by the board of directors and shall be countersigned by the president; he shall at all reasonable times exhibit his books and accounts to any director or member of the corporation upon application at the office of the corporation during ordinary business hours. At the end of each corporate year, he shall have an audit of the accounts of the corporation made by a committee appointed by the president, and shall present such audit in writing at the annual meeting of the members, at which time he shall also present an annual report setting forth in full the financial conditions of the corporation.

**6. ASSISTANT-TREASURER.**

During the absence or disability of the treasurer, the assistant-treasurer, or if there are more than one, the one so designated by the secretary or by the board, shall have the powers and functions of the treasurer.

**7. SECRETARY.**

The secretary shall keep the minutes of the board of directors and also the minutes and members. He shall have the custody of the seal of the corporation and shall affix and attest the same to documents when duly authorized by the board of directors. He shall attend to the giving and serving of all notices of the corporation, and shall have charge of such books and papers as the board of directors may direct; he shall attend to such correspondence as may be assigned to him, and perform all the duties incidental to his office. He shall keep a membership roll containing the names, alphabetically arranged, of all persons who are members of the corporation, showing their places of residence and the time when they became members.

**8. ASSISTANT-SECRETARIES.**

During the absence or disability of the secretary, the assistant-secretary, or if there are more than one, the one so designated by the secretary or by the board, shall have all the powers and functions of the secretary.

**9. SURETIES AND BONDS.**

In case the board shall so require, any officer or agent of the corporation shall execute to the corporation a bond in such sum and with such surety or sureties as the board may direct, conditioned upon the faithful performance of his duties to the corporation and including responsibility for negligence and for the accounting for all property, funds or securities of the corporation which may come into his hands.

**ARTICLE VI – SEAL**

The seal of the corporation shall be as follows:

**ARTICLE VII – CONSTRUCTION**

If there by any conflict between the provisions of the certificate of incorporation and these by-laws, the provisions of the certificate of incorporation shall govern.

## **ARTICLE VIII – AMENDMENTS**

The by-laws may be adopted, amended or repealed by the members at the time they are entitled to vote in the election of directors. By-laws may also be adopted, amended or repealed by the board of directors but any by-law adopted, amended or repealed by the board may be amended by the members entitled to vote thereon as hereinbefore provided.

If any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of members for the election of directors the by-law so adopted, amended or repealed, together with a concise statement of the changes made.