

MAINE DEVELOPMENT FOUNDATION

MAINE DEVELOPMENT FOUNDATION BOARD BYLAWS¹

ARTICLE I

Name and Purposes

Section 1. Name. In accordance with 10 MRSA §916, the name of this corporation is the MAINE DEVELOPMENT FOUNDATION, which sometimes shall be identified herein as the Foundation.

Section 2. Purposes. The purpose of the Maine Development Foundation is to foster, support, and assist economic growth and revitalization throughout Maine, in complement to and in coordination with the economic development activities of the private sector, community and regional agencies, and State government. The Foundation is established to build a creative partnership of the private and public sectors, a partnership which capitalizes on the interests, resources, and special skills of each sector. To achieve its purpose, the Foundation provides a range of financial and management services, coordinates development efforts, participates in development ventures, and engages in other activities, services, and programs designed to facilitate economic development in Maine. The Foundation's statutory purposes are specified in 10 MRSA §915 et seq.

Section 3. Corporate Powers. In furtherance of its objectives, the Foundation is empowered to have the general powers accorded corporations under Title 13-A, Section 202, and do all other things necessary and convenient to carry out the lawful purposes of the Foundation, including but not limited to:

- a. Application for and receipt of funds. Apply for and receive funds from any private source or governmental entity, whether by way of grant, donation or loan or any other manner;
- b. Economic development services; fees. Provide services to public and private entities to assist their efforts in economic development in Maine and to charge such fees for these services as it may deem appropriate;
- c. Real and personal property. Purchase, receive, hold, lease, or acquire by foreclosure, and operate, manage, license and sell, convey, transfer, grant or lease real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the Foundation from time to time in the satisfaction of debts or enforcement of obligations.

¹As adopted by the Corporators on October 18, 1979, amended on June 24, 1981, and September 8, 2006.

- d. Expenditures and obligations regarding real and personal property. Make all expenditures and incur any obligations reasonably required in the exercise of sound business principles to secure possession of, preserve, maintain, insure, and improve real and personal property or interests therein acquired by the Foundation;
- e. Securities. Acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, or pledge the stock, shares, bonds, debentures, notes or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint stock company, partnership, association or trust, and, while the owner or holder thereof, exercise all the rights, powers and privileges of ownership, including the right to vote thereon;
- f. Encumbrance of property. Mortgage, pledge or otherwise encumber any property right or thing of value acquired pursuant to the powers contained in subsections 4, 5 or 6 as security for the payment of any part of the purchase price thereof;
- g. Equity investments and loans. Make equity investments or loans to local and regional economic development corporations and to small and medium size businesses;
- h. Contracts and liabilities. Make contracts, including contracts for services and incur liabilities for any of the purposes authorized therein;
- i. Debt. Borrow money for any of the purposes authorized herein; incur debt, including the power to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured; and secure the same by mortgage, pledge, deed of trust or other lien on its property, rights and privileges of every kind and nature, or any part thereof, or interest therein;
- j. Bylaws. Adopt Bylaws not inconsistent with the Foundation's enabling legislation.

Section 4. Limitations of Powers. The Foundation shall have no power or authority to enter into contracts, obligations, or commitments of any kind on behalf of the State of any of its agencies, nor shall it have the power of eminent domain or any other power not provided to business corporations generally. Bonds, notes, and other evidences of indebtedness of the Foundation shall not in any way be a debt or liability of the State or constitute a pledge of the faith and credit of the State of Maine.

Section 5. Office. The location of the principal office and place of business of this corporation shall be at such place as the Board of Directors shall fix. The corporation may have such other offices and places of business both within and without the State of Maine as the Board of Directors may from time to time fix, or as the business of the corporation may from time to time require.

Section 6. Nonpartisan. The Foundation in its activities shall be nonpartisan, nonsectional, and nonsectarian.

Section 7. Not-for-Profit; Essential Government Function. The Foundation shall exist as a not-for-profit corporation with a public purpose, and the exercise by the Foundation of its powers shall be deemed and held to be an essential governmental function (10 MRSA § 916). To that end, the corporation shall not be conducted for gain or profit but shall be supported and maintained by such corporator fees and assessments as the Board of Directors shall determine to be necessary for the proper functioning of the Foundation, by income from operations, and from contributions, benefactions, endowments, grants, loans or any other funds of which the Foundation may be beneficiary.

ARTICLE II

Membership

Section 1. Corporators. Corporators, who shall elect the Board of Directors as provided in Article IV, Section 1, shall consist of individuals and organizations classified as private sector corporators, public sector corporators and ex officio corporators.

- a. Private sector corporators. Private sector corporators shall be those individuals, partnerships, firms, corporations, and other organizations providing support of at least \$250 annually to the Foundation.
- b. Public sector corporators. Public sector corporators shall be those agencies of government and other organizations providing support of at least \$50 annually to the Foundation. For the purposes of this chapter, public sector corporators shall include: Municipal and county government; councils of government; local and area development corporations; regional planning commissions; development districts; state agencies; higher educational facilities, including the components of the state university system, the Maine Maritime Academy, private colleges and post-secondary schools, and vocational-technical institutes; and such other public or quasi-public entities as may be approved by the directors of the Foundation.
- c. Ex officio corporators. Ex officio corporators shall consist of the heads of the major state departments and agencies and the Chancellor of the University of Maine. State department and agency heads shall include the following:
 1. Treasurer of State;
 2. Director of the State Planning Office;
 3. Director of the State Development Office;
 4. Commissioner of Agriculture;
 5. Commissioner of Business Regulation;
 6. Commissioner of Conservation;
 7. Commissioner of Educational and Cultural Services;
 8. Commissioner of Environmental Protection;
 9. Commissioner of Finance and Administration;
 10. Commissioner of Human Services;
 11. Commissioner of Indian Affairs;

12. Commissioner of Inland Fisheries and Wildlife;
13. Commissioner of Manpower Affairs;
14. Commissioner of Marine Resources;
15. Commissioner of Mental Health and Corrections;
16. Commissioner of Transportation
17. Manager of the Maine Guarantee Authority;
18. Executive Director of the Maine Municipal Bond Bank; and
19. Executive Director of the Maine State Housing Authority.

Section 2. Becoming a Corporator. Any individual or organization shall become a corporator of the Maine Development Foundation upon receipt by the Foundation of fiscal support (funds and/or contributed goods or services) sufficient to qualify the individual or organization as a private sector corporator or a public sector corporator, except in the case of ex officio corporators who automatically shall be corporators by virtue of their positions of public responsibility. A written pledge of funds and/or contributed goods and services in sufficient amount and in such form as the Board of Directors deems appropriate shall also entitle a qualified individual or organization to become a corporator for twelve (12) months. From time to time, the Board of Directors may establish criteria for acceptable contributed goods and services.

Section 3. Special classes of Membership. The Foundation may establish as many classes of membership (other than corporator) which shall enjoy such privileges as may be authorized by the Board of Directors.

Section 4. Term. The private and public corporator membership year shall be twelve (12) months, commencing upon receipt of fiscal support or a written pledge sufficient to qualify the individual or organization as a corporator.

Section 5. Corporate Membership. To participate as a state development company pursuant to §113(a) of Public Law 96-302 (94 STAT. 833) and 13 CFR Part 108 of the Code of Federal Regulations, the Foundation shall have at least twenty-five (25) corporate members at all times.

ARTICLE III

Meetings

Section 1. Annual Meeting. The annual meeting of the Maine Development Foundation shall be held on the third Thursday in the month of October, or on another date selected by the Board of Directors, at a time and place designated by the Board of Directors.

Section 2. Special Meetings. Special meetings of corporators of the Foundation shall be held when called by the Chairman, the Board of Directors, or upon written request to

the Chairman or Board of Directors of twenty-five (25) corporators, stating the purpose of the meeting.

Section 3. Meeting Notice. Each corporator of the Foundation shall be given notice of every regular or special meeting of the Foundation's corporators which notice shall be in writing, setting forth the purpose, date, time and place of the meeting, and shall be delivered, either personally or by mail, not less than ten (10) nor more than fifty (50) days prior to such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the US Mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. A waiver in writing of any notice of meeting signed by a member, whether before or after the time stated in said waiver for holding such meeting, shall be deemed equivalent to a notice required to be given to any member.

Section 4. Quorum. Twenty-five corporators shall constitute a quorum for the transaction of business at any Annual or Special Meeting of the Foundation.

Section 5. Voting Rights. Each corporator shall have a vote in such affairs of the Foundation as may involve the corporators, provided that, in the case where the corporator is an organization and not an individual, the governing body of that organization shall designate the individual who is to exercise the voting right.

ARTICLE IV

Board of Directors

Section 1. Number, Qualifications, and Terms. The Board of Directors shall consist of 15 directors. At the annual meeting, the corporators shall elect 12 directors from among the corporators, provided that 7 directors shall be elected from among the private sector corporators and 5 directors shall be elected from among the public sector corporators. Each director elected shall serve until the next succeeding annual meeting and until his successor shall have been elected and qualified or until his earlier resignation, removal from office, death, or incapacity. The Governor shall appoint 2 directors from among the ex officio corporators. Each director so appointed shall serve for one year and until his successor shall have been appointed and qualified or until his earlier resignation, removal from office, death or incapacity. No person shall serve as a director for more than 5 years in succession. There shall be a chairman, a vice chairman and a treasurer elected by the corporators from among the Board of Directors. The President of the Foundation shall be appointed by the directors so elected or appointed and shall become a director and chief executive officer of the Foundation. The President shall not be appointed from among the other directors.

Section 2. Authority and Duties. The Board of Directors shall manage and control the business, property and affairs of the Foundation. In the management and control of business, property and affairs of the Foundation, the Board of Directors is hereby vested

with all of the powers and authority of the Foundation itself, so far as not inconsistent with law, the Articles of Incorporation or these Bylaws.

Section 3. Vacancies, Resignation, and Removal. Vacancies on the Board of Directors shall be filled by the vote of a majority of the members of the Board of Directors then in office, upon recommendation of the Chairman, at any duly called meeting thereof for the remainder of the unexpired term; with the exception that in the case of the two directors appointed by the Governor, the Governor shall appoint new directors from among the ex officio corporators. Any director may resign his office by delivering a written resignation to the Chairman or President. Directors may be removed from office without cause in the manner prescribed by law.

ARTICLE V

Meetings of the Board of Directors

Section 1. Organizational Meeting and Budget Approval. The first meeting of each newly constituted Board of Directors shall be held upon call of the Chairman or the Vice Chairman at such time and place as they shall designate, but in no event later than December 31 of each year. At the organizational meeting, the incoming Board of Directors shall meet for organization, for appointments and elections of individuals for the ensuing year. The Board of Directors shall adopt a budget for the ensuing year before December 31.

Section 2. Regular and Special Meetings. Regular and/or special meetings of the Board of Directors shall be called by the Chairman or the Vice Chairman at such time and place as they shall designate or, at the request of any four (4) directors, provided, however that the Board shall meet at least once in every other month and, provided further, that notice shall be given to each Director stating the purpose of the meeting and the time and place thereof, according to procedures established by the Board of Directors.

Section 3. Quorum and Vote Required. A majority of the elected Directors then in office shall constitute a quorum for the transaction of business. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

Section 4. Meetings by Conference Telephone. A regular or special meeting of the Board of Directors may be held 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; provided that all Directors are properly notified and called, unless they expressly indicate they cannot participate. The results of any meeting held by conference telephone shall be reported and discussed at the next regular or special meeting of the Board of Directors.

ARTICLE VI

Officers

Section 1. Number. The elected officers of the Foundation shall be a chairman, vice chairman, and a treasurer.

Section 2. Term and Election. The elected officers shall serve one-year terms. Except as may be provided otherwise in these Bylaws, there shall be no limit on the number of such terms. The elected officers shall be elected by the corporators at the Annual Meeting.

Section 3. Appointed Officers. The Board of Directors shall appoint a President and may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. Compensation of Officers. The compensation of all officers of the Foundation shall be fixed by the Board of Directors.

Section 5. Chairman. The Chairman shall preside at all Board of Directors meetings, and meetings of the corporators, and shall be responsible, with the Board of Directors, for the formation of the general policies and programs of the Foundation, and shall perform all duties incidental to the office.

Section 6. Vice Chairman. The Vice Chairman will assist the Chairman in carrying out the duties of the Foundation, and preside in the Chairman's absence at meetings of the Board of Directors and of the corporators.

Section 7. Treasurer. The Treasurer shall have the custody of the Foundation's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Foundation and shall deposit all monies and other valuable effects in the name and to the credit of the Foundation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Foundation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chairman and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Foundation.

Section 8. President. At its first meeting held after the Annual Meeting of the corporators, the fourteen (14) elected and appointed Directors shall appoint a President. There shall be no limit on the number of terms the President may serve. The President shall be appointed by the Board of Directors under terms and conditions mutually agreeable and shall be the chief executive and administrative officer of the Foundation. The President may also serve as Secretary or appoint another person to serve as Secretary. With the advice and counsel of the Chairman and the Board of

Directors, the President shall be in charge of operations, organization and staff. The President may sign, with any other proper officer of the corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some officer or agent of the corporation; and in general he shall perform all duties incidental to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 9. Secretary. The President or the President's appointed representative shall serve as Secretary. The Secretary shall keep a record of all meetings of the corporators, the Board of Directors, the Executive Committee and other committees of the Board of Directors. The Secretary shall be the custodian of the seal and shall attest to all official papers.

Section 10. Vacancies; Removal. The elected officers of the Foundation shall hold office until their successors are chosen and qualify. All appointed officers of the Foundation shall serve at the pleasure of the Board of Directors. Any vacancy occurring in any office of the corporation may be filled by the Board of Directors.

ARTICLE VII

Nominations and Elections

Section 1. Elections. The elections of directors and officers elected by the corporators shall be held on the day of the Annual Meeting, and in accordance with the corporation's Articles of Incorporation and these Bylaws.

Section 2. Nominating Committee. At least thirty days prior to the Annual Meeting, the Board of Directors shall appoint a Nominating Committee for the purpose of proposing a slate of Directors to be voted upon at the Annual Meeting. The Board of Directors shall designate its chairman.

Section 3. Duties of the Committee. The Nominating Committee shall nominate the candidates for directors and officers to be elected at the Annual Meeting, other than those who are to be nominated or appointed pursuant to some other provision of these Bylaws. In making nominations, the Nominating Committee shall take into consideration the geographic location of corporators; the mix of business, professional occupations, and interests among the corporators; the composition and location of population and business centers in Maine; the need to foster a cooperative public/private partnership; and such other factors as it deems appropriate in the interest of creating a strong, effective Board of Directors.

Section 4. Additional Nominations. At the Annual Meeting, additional nominations may be made by motion duly seconded from the floor by any corporator.

Section 5. Election Results. The candidates to be elected by the incorporators receiving the highest number of votes cast at the Annual Meeting shall be declared members of the Board of Directors and officers for the ensuing year.

Section 6. Voting Rights. Each incorporator shall have one vote for each directorship and for each office to be filled by a vote of the incorporators.

ARTICLE VIII

Committees and Task Forces

Section 1. Appointment. The Chairman shall appoint all committees and task forces, and name committee and task force chairmen, subject to confirmation by the Board of Directors.

Section 2. Authority of Committees and Task Forces. It shall be the function of committees and task forces to investigate and make recommendations. They shall report in writing to the Board of Directors, unless it is waived, and then their report shall be oral. No standing committees or special committee or task force shall represent the Foundation in advocacy of, or opposition to, any project or proposal, without the specific confirmation of the Board of Directors, or such confirmation as may be clearly granted under general powers delegated by the Board of Directors.

Section 3. Meetings. Meetings of committees and task forces may be called at any time by the Chairman, President or chairman of such committees.

Section 4. Quorum. A majority of the members of a committee or task force shall constitute a quorum.

Section 5. Ex-Officio Members. The Chairman, Vice Chairman, and the President shall be ex-officio voting members of all committees and task forces of the Foundation.

ARTICLE IX

Finances

Section 1. Fiscal Year. The fiscal year of the Foundation shall be January 1 to December 31 inclusive. The Board of Directors shall adopt a budget for the ensuing year before December 31.

Section 2. Disbursement of Funds. No disbursement of funds shall be made unless approved, authorized or ordered by the Board of Directors, except that, upon approval of the budget, the President is authorized to make disbursements on accounts of expenses provided for in the budget, without any additional approval of the Board of

Directors. All disbursements shall be made by check signed by one or more persons duly authorized by the Board of Directors for such purpose.

Section 3. Appropriations. No appropriations of money or other property of the Foundation shall be made for any purposes other than to defray expenses as specified in the budget approved and adopted by the Board of Directors, except by the majority vote of the members present at a meeting of the Board of Directors.

Section 4. Obligations. No officer, director, committee or task force member, subordinate associate or employee of the Foundation, except the President or such other persons who are from time to time authorized by a majority vote of the Board of Directors, shall contract any obligation or incur any debt on behalf of the Foundation or in any way render it liable.

Section 5. Appropriated State Funds. The President is authorized to request State funds appropriated to the Foundation, provided the President certifies the Foundation has received matching and equal fiscal support from its private and public corporators and members, and further provided the President insures that sufficient corporate records are maintained to document such matching and equal fiscal support.

Section 6. Corporator Records. The Foundation shall keep at its registered office, or principal place of business, in Maine, a record of corporators, giving the name and address of each corporator, the date and amount(s) of each corporator's fiscal support, and, in the case of organizations, the name of the individual authorized to vote in the corporator's interests.

Section 7. Financial Statements. The Foundation shall cause to be prepared an audited financial statement, certified by an independent certified public accountant, within 120 days after the close of each fiscal year of its operation. This report, together with an annual report of its activities, shall be provided to the Governor, the Legislative Council, the Foundation's corporators and members, and made available to the public.

Section 8. Other Corporate Records. The Foundation shall keep at such location as the Board of Directors shall designate accurate books and records of account, written minutes of the proceedings of its corporators, Board of Directors, committees of Directors, and other or additional records, statements, lists and information as may be required by law.

Section 9. Surety Bonds. All officers, directors, employees and other agents of the Foundation entrusted with the custody of the securities of or authorized to disburse the funds of the Foundation shall be bonded, either by a blanket bond or by individual bond, with a surety bond or bonds with a minimum limitation of \$100,000 coverage for each person covered thereby, conditioned upon the faithful performance of their duties, the premiums for which shall be paid out of the assets of the Foundation.

ARTICLE X

General Provisions

Section 1. Indemnification and Liability Insurance. The Foundation shall, to the full extent of its power to do so, indemnify any person who was or is a director, officer, employee or agent of the Foundation or is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses related to duties undertaken on behalf of the Foundation, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person; however, nothing contained in this section shall prevent the Foundation, by action of its incorporators or by action of disinterested directors, from indemnifying any person, including without limitation a director, officer, an employee or an agent of this corporation, in any particular case, if in the judgment of the corporation such indemnification should be made. In furtherance of the foregoing indemnification provisions, the Foundation shall purchase liability insurance in amounts and with such coverages as determined by the Board of Directors to be sufficient to fulfill the obligations of the Foundation hereunder.

Section 2. Prohibited Interests. No officer, director or employee of the Foundation or their spouses or dependent children shall receive any direct personal benefit from the activities of the Foundation in assisting any private entity. This provision shall not prohibit corporations or other entities with which an officer or director is associated by reason of ownership or employment from participating in economic development activities with the Foundation, provided that such ownership or employment is made known to the Board, and the officer or director abstains from voting on matters relating to such participation. The prohibition does not extend to incorporators who are not officers or directors of the Foundation.

Section 3. Net Earnings. No part of the net earnings of the Foundation shall inure to the benefit of any corporator, officer, director, or employee except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered, and otherwise hold, manage and dispose of it property in furtherance of the purposes of the Foundation.

Section 4. Dissolution. Upon dissolution of the Foundation, the incorporators shall, after paying or making provisions for the payment of all liabilities of the Foundation, cause all of the remaining assets of the Foundation to be transferred to the State.

Section 5. Rules of Order. Unless otherwise provided by these Bylaws, Roberts' Rules of Order shall prevail in meetings of the incorporators and the Board of Directors.

Section 6. Effective Date of Bylaws. These Bylaws shall be effective immediately following their adoption by a majority vote of the incorporators of the Maine Development Foundation, present at a meeting called for the purpose.

Section 7. Amendments to Bylaws. These Bylaws may be altered, amended, or repealed by a majority vote of the incorporators in attendance at any properly called Annual or Special Meeting at which there is a quorum present, as defined in these Bylaws, provided that such amendments and supporting explanations shall be plainly stated in the call for the meeting at which they are to be considered. Recommendations to alter, amend or repeal these Bylaws may be made by the Board of Directors or any twenty-five (25) incorporators of the Foundation.

Section 8. Affiliate Organizations. From time to time, the Maine Development Foundation Board of Directors may establish affiliate relationships with other non-profit organizations, whose missions are compatible with and supportive of the Maine Development Foundation's mission, and for whom the relationship is mutually beneficial to the Maine Development Foundation and to the affiliate organization. The Maine Development Foundation Board of Directors will appoint a representative to serve on the governing board of the affiliate organization.

AMENDMENTS TO THE BYLAWS OF
THE MAINE DEVELOPMENT FOUNDATION

To amend Article II by adding thereto a new Section 5 as follows:

Section 5. Corporate Membership. To participate as a state development company pursuant to §113(a) of Public Law 96-302 (94 STAT. 833) and 13 CFR Part 108 of the Code of Federal Regulations, the Foundation shall have at least twenty-five (25) corporate members at all times.

To delete Article V, Section 2 as currently drafted and insert in its place the following:

Section 2. Regular and Special Meetings. Regular and/or special meetings of the Board of Directors shall be called by the Chairman or the Vice Chairman at such time as they shall designate or, at the request of any four (4) directors, provided, however, that the Board shall meet at least once in every other month and, provided further, that notice shall be given to each Director stating the purpose of the meeting and the time and place thereof, according to procedures established by the Board of Directors.

Amended June 24, 1981

To amend Article X, by adding thereto a new Section 8 as follows:

Section 8. Affiliate Organizations. From time to time, the Maine Development Foundation Board of Directors may establish affiliate relationships with other non-profit organizations, whose missions are compatible with and supportive of the Maine Development Foundation's mission, and for whom the relationship is mutually beneficial to the Maine Development Foundation and to the affiliate organization. The Maine Development Foundation Board of Directors will appoint a representative to serve on the governing board of the affiliate organization.

To delete Article V, Section 3 as currently drafted and insert in its place the following:

Section 3. Quorum and Vote Required. A majority of the elected Directors then in office shall constitute a quorum for the transaction of business. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

Amended September 8, 2006