

BYLAWS  
OF  
BUFFALO ECONOMIC RENAISSANCE CORPORATION

Formerly Known As

THE BUFFALO ENTERPRISE DEVELOPMENT CORPORATION

Formerly Known As

THE LOCAL DEVELOPMENT CORPORATION FOR THE CITY OF BUFFALO, ERIE COUNTY,  
NEW YORK

Amended November 18, 2009

**ARTICLE I – OFFICES**

The principal office of the Corporation shall be in the City of Buffalo, County of Erie, State of New York. The Corporation may also have offices at such other places within or without this state as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II – PURPOSES**

The purposes for which this Corporation has been organized are as follows:

To relieve and reduce unemployment, to promote and to provide for additional and maximum employment, to better and to maintain job opportunities, to instruct or train individuals to improve or to develop their capabilities for jobs, to carry on scientific research for the purpose of aiding the City of Buffalo by attracting industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and to lessen the burdens of government and to act in the public interest. The Corporation's primary purpose is to service economic development needs in low-income communities and/or economically distressed communities.

**ARTICLE III – MEMBERSHIP**

1. QUALIFICATIONS FOR MEMBERSHIP

There shall be at least twenty-five (25) members of the Corporation and every member shall reside in or do business in the City of Buffalo, New York. The Board of Directors sitting until the First Annual Meeting shall designate and enroll the first twenty-five (25) members of the Corporation. Thereafter, if there are less than twenty-five (25) members because of death, resignation, disqualification or removal or if the Board of Directors determines that more than twenty-five (25) members would promote the purposes of the Corporation, then the Board of Directors shall designate and enroll such new or additional members. The Board of Directors shall review the attendance of members at Annual Meetings of the

members and may remove, without notice, any member who has failed to attend two or more consecutive Annual Meetings.

## 2. MEMBERSHIP MEETINGS

The presence at any Membership Meeting of not less than thirteen (13) members in person or represented by proxy 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 four (4) weeks and the Secretary shall cause a notice of the rescheduled date of the meeting to be sent to those members who were not present at the meeting originally called. A quorum as herein before set forth shall be required at any adjourned meeting.

When a quorum is once present to organize a meeting, it is not broken by the withdrawal of any members.

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 therefor of any member who has given written notice to the Secretary that such request will be made at least ten (10) days prior to such meeting. All persons appearing on such membership roll shall be entitled to vote at the meeting.

Members will be provided with all information which management wishes to discuss at any membership meeting, that information being in written form, at least five (5) days prior to any Membership Meeting.

## 3. ANNUAL MEMBERSHIP MEETINGS

An Annual Membership Meeting of the Corporation shall be held during the first quarter of each fiscal year on a date fixed by the President at which the members shall elect a Board of Directors, and transact such other business as may properly come before the meeting. Written notice of the place, date and hour of the annual meeting shall be given personally or by mail to each member in good standing not less than ten (10) nor more than fifty (50) days prior to the meeting.

## 4. SPECIAL MEETINGS

Special Membership Meetings of the Corporation, for any purpose(s), unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the President or the Board of Directors. Written notice of a Special Meeting of the members, stating the date, time, place, purpose(s) for which the meeting is called, and by or at whose direction it is being issued, shall be given personally or by mail to all members, at least five (5) days but not more than fifty (50) days before the scheduled date of such meeting.

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.

## 5. FIXING A 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 of Directors shall fix, in advance, a date as the record date for any such determination of members. Such date shall not be more than fifty (50) nor less than ten (10) days before any such meeting, or more than fifty (50) days prior to any other action.

## 6. ACTION BY MEMBERS WITHOUT 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 members entitled to vote thereon.

## 7. 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 (11) months from date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except in those cases where an irrevocable proxy is permitted by law.

## 8. 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 officers
- (4) Old and unfinished business
- (5) New business
- (6) Adjournment

## **ARTICLE IV - DIRECTORS**

### 1. MANAGEMENT OF THE CORPORATION

The Corporation shall be managed by the Board of Directors which shall consist of the following ex officio members: Mayor of Buffalo and Deputy Mayor of Buffalo, plus not more than twelve (12) additional Directors, each of whom shall be at least 19 years of age. No more than one-third of the Directors shall be appointed by, or consist of elected or other public officials or employees or officials of an ineligible entity; and 51% of the Directors positions shall be maintained for low and moderate income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low and moderate income neighborhood organizations located in its geographic area of operation.

The majority of Directors must be "Independent" as herein defined. An Independent Director is one who: (1) is not, and in the past two years has not been, employed by the Corporation or an affiliate 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; 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.

Directors shall execute direct oversight of the Corporation's chief executive and other senior management in the effective and ethical management of the Corporation, and understand, review and monitor the

implementation of fundamental financial and management controls and operational decisions of the Corporation.

## 2. ELECTION AND TERM OF ADDITIONAL DIRECTORS

The additional Directors shall be elected at the Annual Membership Meeting, except as provided in Section 4 of this Article IV, to hold office until the next Annual Meeting. Each additional Director shall hold office until the expiration of the term for which he was elected and until his successor has been elected and shall have qualified, or until his prior resignation or removal.

## 3. INCREASE OR DECREASE IN NUMBER OF DIRECTORS

The number of additional Directors may be increased or decreased by vote of the members or by a vote of a majority of all of the Directors. No decrease in the number of additional Directors shall shorten the term of any incumbent additional 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 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 of Directors. 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 of Directors, 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 of Directors 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.

## 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 of Directors, except as may be otherwise specifically provided by law or by the certificate of incorporation. Each Director present shall have one (1) vote. Any one or more Directors or members of any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference, telephone or other 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. In the event that telephone or other communications equipment is used to conduct a Board or committee meeting, the Corporation shall provide an opportunity to attend, listen and observe at any site at which a Director or committee member participates.

## 9. PLACE AND TIME OF BOARD MEETINGS

The Board of Directors 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. Provided however, the Board of Directors shall meet no less frequently than bimonthly.

## 10. DIRECTORS' ANNUAL MEETING

An Annual Meeting of the Board shall be held immediately following the Annual Membership Meeting at the place of such Annual Membership Meeting.

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

Regular Meetings of the Board of Directors may be held without notice at such time and place as it shall from time to time determine. Special Meetings of the Board may be called by the President on two (2) days' notice to each Director either personally or by mail. Special Meetings shall be called by the President or by the Secretary in a like manner on written request of two (2) 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. CHAIR

At all meetings of the Board, a Chair chosen by the Board shall preside.

## 13. EXECUTIVE, AUDIT, GOVERNANCE AND OTHER COMMITTEES

The Board of Directors, by resolution adopted by a majority of the Directors present, may designate from among members or non-members of the Corporation, one or more Loan Committees and other committees, exclusive of an Executive Committee. The Board, at its Annual Meeting, shall elect at least three (3) members for each committee. Each such committee shall serve at the pleasure of the Board and keep minutes of its meetings.

The Board shall establish and maintain a Governance Committee comprised of Independent members. Additionally, the Board shall establish and maintain an Audit Committee consisting, to the extent practicable, of Independent members who are familiar with corporate financial and accounting practices.

The Board may also, appoint from among its members by majority vote, an Executive Committee consisting of not less than three (3) directors, which shall have all the powers of the Board at such time as the Board is not in session.

In addition to the foregoing, the following committees are expressly authorized: Large Business Loan Committee, Small Business Loan Committee, Loan Review Committee, Commercial Area Revitalization Effort/Grant Committee, Finance Committee, and Real Estate Committee.

## 14. ACTION BY DIRECTORS WITHOUT A MEETING.

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

#### 15. BOARD – MANAGEMENT SEPARATION

No Director (including the Board Chair) shall simultaneously be the Corporation’s chief executive officer, executive director, chief financial officer, comptroller or equivalent.

#### 16. NOTICES GENERALLY

Notices to Directors and members shall be in writing and may be delivered personally or by mail. Notice by personal delivery shall be deemed to be given upon delivery. Notice by mail shall be deemed to be given at the time when deposited in the post office or a letter box, in a post-paid sealed wrapper, and addressed to Directors or shareholders at their addresses appearing on the records of the Corporation or at such other addresses as may have been designated in written notice filed with the Secretary.

Whenever a notice is required to be given by any statute, the certificate of incorporation or these Bylaws, a waiver thereof in writing, signed by the person(s) entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to such notice. In addition, any member attending a meeting of members in person or by proxy without protesting prior to the conclusion of the meeting the lack of notice thereof to him, and any Director attending a meeting of the Board of Directors without protesting prior to the meeting or at its commencement such lack of notice shall be conclusively deemed to have waived notice of such meeting.

### **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 (1) 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 Annual meeting of the Board following the Annual Membership Meeting. 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 (2) or more offices may be held by the same person, except the offices of President and Secretary. All officers shall serve without compensation; provided, however, that officers may serve the Corporation in another capacity and may receive compensation therefor.

All officers shall serve without salary; provided, however, that officers may serve the Corporation in another capacity and may receive a salary therefor.

#### 3. PRESIDENT

The President shall be the chief executive officer of the Corporation, have the general and active management and control of the business and affairs of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. The President shall have authority to hire and terminate BERC employees.

#### 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 duties 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 other valuable effects, including securities, of the Corporation, and shall deposit said funds in the name and to the credit of the Corporation in such depositories as the Directors may elect; he shall also sign any check drafts, notes, and orders for the payment of money, if so authorized by the Board of Directors, 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 fiscal year, he shall have an audit of the accounts and investments of the Corporation made by an audit committee appointed by the Board of Directors, and shall present such audit in writing at the Annual Membership Meeting, 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 of the 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.

## 10. CONTRACTS

Contracts on behalf of the Corporation may be signed, when duly authorized by the Board of Directors, by the President, Vice-President or Treasurer.

### **ARTICLE VI - SEAL**

The seal of the Corporation shall be as follows:

A circular impression, engraving, facsimile, or printing which shall have inserted around the circumference the full name of the Corporation and elsewhere thereon shall bear the words "Corporate Seal."

### **ARTICLE VII – CONSTRUCTION**

If there be any conflict between the provisions of the Certificate of Incorporation and these Bylaws, the provisions of the Certificate of Incorporation shall govern.

### **ARTICLE VIII - AMENDMENTS**

The Bylaws may be adopted, amended or repealed by the members at the time they are entitled to vote in the election of Directors. Bylaws may also be adopted, amended or repealed by the Board of Directors but any Bylaw adopted, amended or repealed by the Board may be amended by the members entitled to vote thereon as herein before provided.

If any Bylaw 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 Bylaw so adopted, amended or repealed, together with a concise statement of the changes made.

### **ARTICLE IX - INDEMNIFICATION, INSURANCE, PROHIBITION AGAINST EXTENSION OF CREDIT**

#### 1. DERIVATIVE CLAIMS

Any and every person made a party to any actions, suit or proceeding, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of this Corporation or any corporation which he served as such at the request of this Corporation, may be indemnified by the Corporation to the full extent permitted by Law, against any and all reasonable expenses including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action or in connection with any appeal therein except in relation to matters as to which shall be adjudged in such action, suit, or proceeding that such officer or director has breached his duty to the Corporation.

#### 2. THIRD PARTY CLAIMS

Any and every person made a party to any actions, suit or proceeding other than one by or in the right of the Corporation to procure a judgment in its favor, whether civil or criminal, including any inaction by or in the right of any other corporation of any type or kind, domestic or foreign, which any director or officer of the Corporation served in any capacity at the request of the Corporation, by reason of the fact that he,

his testator or intestate, was a director or officer of the Corporation, or serves such other corporation in any capacity may be indemnified by the Corporation, to the full extent permitted by Law, against judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding or appeal therein, if such person acted in good faith for a purpose which he reasonably believed to be in the best interest of the Corporation and, in criminal actions or proceedings, in addition had no reasonable cause to believe that his conduct was unlawful.

### 3. INSURANCE

The Corporation is authorized to purchase insurance for indemnification of Directors and officers as provided for in this Article, as well as for indemnification of trustees of the Corporation's pension fund(s).

### 4. INTERNAL CREDIT PROHIBITION

The Board shall not (directly or indirectly) extend (arrange for or renew any extension of) credit to any officer, Director, member or employee of the Corporation.

Dated As of November 18, 2009