

CERTIFICATE OF INCORPORATION
OF
TSASC, Inc.

A Not-For-Profit Local Development Corporation
under Section 1411 of the Not-For-Profit
Corporation Law of the State of New York

THE UNDERSIGNED, being over the age of eighteen years and the Chief of the Municipal Finance Division of the New York City Law Department, for the purpose of forming a not-for-profit local development corporation pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, hereby certifies as follows:

FIRST: The name of the corporation shall be TSASC, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation will be a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York and, as provided in Section 1411 of the Not-For Profit Corporation Law will be a Type C Corporation as defined in Section 201 of the Not-for-Profit Corporation Law. The Corporation shall be a public instrumentality of, but separate and apart from, The City of New York (the "City").

THIRD: The purpose for which the Corporation is to be formed and operated, exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, is to lessen the burdens of government by engaging solely in the following activities:

(a) To acquire from the City all of the rights of the City under and pursuant to the Consent Decree and Final Judgment of the Supreme Court of the State of New York dated December 23, 1998, as the same may be amended or modified, in the class action entitled State of New York et. al. v. Philip Morris Incorporated et. al. (Index No. 400361/97), including,

without limitation, the rights of the City to receive the moneys due to it thereunder (the "Tobacco Assets");

(b) To purchase, acquire, own, hold, sell, assign, pledge and otherwise deal with the Tobacco Assets, any collateral securing the Tobacco Assets and any proceeds or further rights associated with the Tobacco Assets;

(c) To issue and sell one or more series or classes of bonds, notes and other obligations (the "Obligations") through public letting, private placement, or negotiated underwriting to finance the acquisition referred to in subparagraph (a) above, secured or collateralized by the Tobacco Assets (or any part thereof). The Corporation shall seek the recommendation of the Director of Management and Budget of the City and the Comptroller of the City as to the arrangements necessary for the issuance and sale of Obligations, including the underwriting of such Obligations through public or private sale. Such recommendation shall include compensation for services rendered, price or prices, interest rate or rates, maturities and other terms and conditions for the issuance of the Obligations. No Obligations shall be issued without the affirmative vote of the Directors of the Corporation who are the Director of Management and Budget of the City and the Comptroller of the City, respectively.

(d) To engage the services of one or more underwriters, placement agents, consultants, attorneys, financial advisors and other persons whose services shall be necessary or desirable in connection with the acquisition and financing referred to above;

(e) To act as depositor, settlor or transferor of a trust (the "Trust") and to deposit, transfer or convey to such Trust a residual certificate issued by the Corporation, subordinate to all Obligations issued by the Corporation, and to transfer, sell, and assign to the City the Corporation's beneficial ownership of the Trust; and

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

FOURTH: The acquisition referred to in subparagraph (a) of paragraph THIRD above and the payment of moneys to the City in consideration therefor will achieve the lawful public purpose 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 Corporation is necessary to the continued implementation of the City's capital plan because of the constitutional limitation on the amount of indebtedness which the City may have outstanding.

FIFTH: The operations of the Corporation will be principally conducted within the territory of the City. Notwithstanding any other provision of this Certificate of Incorporation, the bylaws and any provision of law, so long as any Obligations remain outstanding, the Corporation shall not do any of the following:

- (a) engage in any business or activity other than as set forth in paragraph THIRD hereof,
- (b) without the affirmative vote of all of the members of the Board of Directors of the Corporation (which must include the affirmative vote of the duly appointed Independent Directors (as defined in paragraph ELEVENTH below)) and all of the Corporation's members,
 - (i) dissolve or liquidate, in whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consenting to reorganization or relief under any applicable federal

or state law relating to bankruptcy or insolvency, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or a substantial part of its property, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability to pay its debts generally as they become due or (vii) take any corporate action in furtherance of the actions set forth in clauses (i) through (vi) of this paragraph;

(c) without the affirmative vote of all of the members of the Board of Directors of the Corporation (which must include the affirmative vote of the duly appointed Independent Directors) and all of the Corporation's members, merge or consolidate with any other corporation, company or entity or, except to the extent contemplated by paragraph THIRD hereof, sell all or substantially all of its assets or acquire all or substantially all of the assets or capital stock or other ownership interest of any other corporation, company or entity; or

(d) incur or assume any indebtedness for borrowed money other than as set forth in paragraph THIRD hereof or except as expressly permitted in the indenture pursuant to which Obligations shall be issued.

When voting on whether the Corporation will take any action described in paragraph (b) above, each Director shall owe his or her primary fiduciary duty or other obligation to the Corporation (including, without limitation, the Corporation's creditors) and not to the members of the Corporation (except as may specifically be required by the Not-For-Profit Corporation Law). Every member of the Corporation shall be deemed to have consented to the foregoing by virtue of such member's appointment as a member of the Corporation.

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

(a) All income and earnings of the Corporation shall be used exclusively for its corporate purposes or accrue and, subject to the Corporation's responsibilities under the Obligations and the residual certificate referred to in subparagraph (e) of Paragraph THIRD above, be paid to the New York Job Development Authority.

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

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

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

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

(c) The Corporation shall not accept a mortgage loan or loans from the New York Job Development Authority.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets and property of the Corporation to the City. Any of such assets not so disposed of shall be disposed of by order of the Supreme Court of the State of New York pursuant to Section 1008 of the Not-For-Profit Corporation Law.

NINTH: The principal office of the Corporation shall be located in the County of New York in the State of New York and such office shall be functionally separate from those of any member of the City Group (as defined in paragraph ELEVENTH below)(although such office may be in a facility leased from a member of the City Group on arms'-length terms). The Corporation at all times shall:

(a) maintain separate accounting records and other corporate records from those of each member of the City Group;

(b) not divert the Corporation's funds to any other person or for other than the use of the Corporation and not commingle any of the Corporation's assets with those of any member of the City Group;

(c) pay any employee, consultant or agent of the Corporation, or any other operating expense incurred by the Corporation, from the assets of the Corporation and not from the assets of any member of the City Group;

(d) maintain its own deposit account or accounts, separate from those of any member of the City Group, with commercial banking institutions;

- (e) to the extent that the Corporation contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other person, the costs incurred in so doing shall be fairly allocated to or among the Corporation and such persons for whose benefit the goods and services are provided, and the Corporation and each such person shall bear its fair share of such costs;
- (f) conduct its business in its own name and conduct all material transactions between the Corporation and any member of the City Group only on an arm's-length basis;
- (g) observe all necessary, appropriate and customary corporate formalities, including, but not limited to, holding all regular and special members' and directors' meetings appropriate to authorize all corporate action, keeping separate and accurate minutes of such meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, intercompany transaction accounts. Regular members' and directors' meetings shall be held at least annually;
- (h) ensure that decisions with respect to its business and daily operations shall be independently made by the Corporation (although the officer making any particular decision also may be an employee, officer or director of a member of the City Group);
- (i) act solely in its own corporate name and through its own authorized officers and agents, and use its own stationery;
- (j) ensure that no member of the City Group will supply funds to, or guarantee debts of, the Corporation;
- (k) other than organizational expenses and as expressly provided herein, pay all expenses, indebtedness and other obligations incurred by it;

(l) not enter into any guaranty, or otherwise become liable, with respect to any obligation of any member of the City Group;

(m) cause any financial reports required of the Corporation to be prepared in accordance with generally accepted accounting principles and be audited annually and be issued separately from, although they may be consolidated with, any reports prepared for any member of the City Group and

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

TENTH: The types or classes of membership in the Corporation and the number of members of the Corporation shall be described in the By-laws.

ELEVENTH: The Corporation shall be managed by a Board of Directors consisting of not less than five nor more than seven Directors consisting of the Director of Management and Budget of the City, the Commissioner of Finance of the City, the Corporation Counsel of the City, the Comptroller of the City, and the Speaker of the City Council, and prior to the first meeting of the Board of Directors requiring the vote of Independent Directors and at all times thereafter (except as noted hereafter in the event of death, incapacity, resignation or removal), two Directors of the Corporation selected by the Mayor (the "Independent Directors"), who are not, and have not been for a period of five years prior to their appointment as Independent Directors (i) a customer, supplier or advisor of the City; (ii) an official, member, stockholder, director, officer, employee, agent or affiliate of the City or any of its affiliated entities (other than the Corporation) (the City and its affiliated entities other than the Corporation being referred to in this Certificate of Incorporation as the "City Group"); (iii) a person related to any person referred to in clause (i) or (ii); or (iv) a trustee, conservator or receiver for any

member of the City Group. In the event of the death, incapacity, resignation or removal of any Independent Director, the Mayor promptly shall appoint a replacement Independent Director. The Board of Directors shall not vote on any matter requiring the vote of Independent Directors under this Certificate of Incorporation unless and until two Independent Directors then are serving on the Board. Any Director other than the Independent Directors may, by written instrument filed with the Corporation, designate an alternate to perform in his or her absence. The term "Director" as used herein shall include such persons so designated. Each of the Directors who is also an official of the City shall serve so long as such Director continues to be an official of the City or until the earlier designation of a Director to serve in such Director's stead by the members of the Corporation as provided in the By-laws. The Independent Directors shall serve for the term of office provided in the By-laws of the Corporation and may be removed by the Mayor with cause.

TWELFTH: The names, public office and addresses of the initial Directors of the Corporation who are officials of the City will be as follows:

<u>Names</u>	<u>Public Office</u>	<u>Addresses</u>
Robert M. Harding	Director of Management and Budget of the City	75 Park Place, New York, N.Y., 10007
Andrew S. Eristoff	Commissioner of Finance of the City	One Centre Street, New York, N.Y., 10007
Alan G. Hevesi	Comptroller of the City	One Centre Street, New York, N.Y., 10007
Peter F. Vallone	Speaker of the City Council	City Hall, New York, N.Y. 10007
Michael D. Hess	Corporation Counsel of the City	100 Church Street, New York, N.Y. 10007

The Mayor shall select the Independent Directors prior to the first meeting of the Board of Directors requiring the vote of Independent Directors.

THIRTEENTH: The duration of the Corporation shall be perpetual.

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

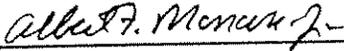
FIFTEENTH: The Secretary of New York State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is as follows: TSASC, Inc., 75 Park Place, New York, New York 10007,

SIXTEENTH: The By-laws of the Corporation may be adopted, amended or repealed by a majority of the Directors of the Corporation which shall include the affirmative vote of at least three *ex-officio* Directors .

SEVENTEENTH: Any fees and expenses of the Corporation incurred to engage the services described in subparagraph (d) of Paragraph THIRD above, any costs or expenses incurred pursuant to subparagraph (e) of Paragraph NINTH ABOVE, and any indemnification payments pursuant to Paragraph FOURTEENTH above shall be deemed "operating expenses" as defined in the indenture pursuant to which any Obligations shall be issued and shall be subject to the conditions applicable to "operating expenses" set forth therein.

EIGHTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in any manner now or hereafter provided herein or by statute; provided, however, that so long as any Obligations remain outstanding, the Corporation shall not amend, alter, change or repeal any provision of paragraphs THIRD, FIFTH, NINTH AND EIGHTEENTH of this Certificate of Incorporation (the "Restricted Articles") without the affirmative vote of all of the members of the Board of Directors of the Corporation (which must include the affirmative vote of the duly appointed Independent Directors) and the holders of 100% of each class of the Corporation's membership interest, and provided, further, that the Corporation shall not amend or change any provision of any Article other than the Restricted Articles so as to be inconsistent with the Restricted Articles.

IN WITNESS WHEREOF, this certificate has been subscribed this 29th day of October, 1999 by undersigned.



Albert F. Moncure, Jr.
Chief, Municipal Finance Division
New York City Law Department
100 Church Street
New York, N.Y. 10007

1991101000599

CERTIFICATE OF INCORPORATION

OF

TSASC, Inc.

(Under Section 1711 of the Not-For-Profit Corporation Law of the State of New York)

d 67

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 01 1999
TAX \$
BY: *NY*

Filed by: Albert F. Moncure Jr.
Acting Corporation Counsel of the
City of New York

State of New York }
Department of State }^{SS:}

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

NOV 08 1999



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line extending to the right.

Special Deputy Secretary of State