

Farmers Market Guide to Non-Profit Incorporation



by Michael R. Siegel, Esq

Former Bd Member: RVGA (Rondout Valley Growers Association, Inc), UCCE/CEUC (Ulster County Cooperative Extension), SCAFM (Sullivan County Area Farmers Markets, Inc), SCFMA (Sullivan County Farmer's Market Association, Inc), Kingston Farmers Market, Ellenville Farmers Market

This guide is designed to provide an overview for Farmers Markets which may be considering becoming a not-for-profit, 501 (c) 3 entity. It is a step by step guide for Farmers Market Managers and Boards that are contemplating the holy grail of Not-for-Profit Incorporation - Tax Exempt status. (Note through out this document I refer to both Not-for-Profit and Non-Profit, they both mean the same thing, however, the tax code rules if you have a question about it) My background for this guide includes my own Farmers Market board experiences and my legal training. I am an attorney licensed to practice law in the State of New York, and my wife and I own an organic farm in Wawarsing, NY.

We recognize that most farmers markets have very limited budgets and resources and these resources are always stretched to the max. The market, after all, is designed to provide a proper business environment for the farmers and vendors, and it is their welfare which often outweighs the (financial) viability of the market itself.

A common question then is “should we declare ourselves as a not-for-profit entity?” There are many reasons for considering this designation, many of which are accounting based and not the subject covered here, Suffice it to say that as a not for profit, or “charitable” organization, your market MAY be able to raise funds, sponsor events, get discounts on some services and have a wider array of grants and loans available than the “for – profit” elements. It is surprising to learn therefore that the US Code is not Farmers Market friendly.

Nevertheless, you are probably reading this because you recognize that in order to operate a Market you need to fund raise, and/or you may wish to have an organizational structure manage the market to limit the liabilities of its activities. Most Farmers Market Organizations are composed of folks who got together to do the right thing and then discovered after they got up and running that they either needed the added liability protection of a corporate structure or figured that they need to become tax-exempt in order to be able to offer donors the incentive of a tax deduction.

This is the number one reason Farmers Markets want to incorporate; so that donors can claim their tax benefit. But as with so many good ideas and intentions, the road to tax exemption is more difficult than one would think and requires diligence, persistence and a clear idea of what your market is (or can be) to best position yourself for this designation. In short, it will be among the most complex and frustrating jobs you ever attempt. After reading this document, consulting with your financial and legal advisor and researching each of the elements of “non-profit incorporation”, you may still conclude that you are not certain which path to take (or to attempt the journey at all!)

Perhaps equally important to farmers market boards and management is the legal protections a corporation provides. While it does not mean that the market cannot be sued, it does mean that the individual board members and employees cannot be held personally responsible. The only exception is when intentional decisions that are knowingly contrary to law or the “prudent man” test are violated. But as long as the board attempts to act responsibly, legally and ethically, being incorporated protects the assets of the individual board members and employees. It is also advised that boards purchase Officers and Directors liability insurance for added protection.

There are some markets that choose to remain unincorporated, “flying under the radar”. This is often the case when a small market exists, is led by one or two key individuals and has a relatively small budget and no assets. Without incorporation the individuals are liable for their actions. With Incorporation the organization is liable only to the extent of the assets of the corporation.

There are good reasons, not to incorporate. One is that Farmers Markets in and of themselves are mostly not-for-profit organizations, and there is no clear path for a Farmer’s Market to incorporate and become Non-Profit. The path is even murkier when reaching for Tax-Exemption. This is because the IRS doesn’t recognize that Farmers Markets are a category of organization that should receive either not-for-profit or Tax Exemption status. The other is that the Attorney General is trying to protect the public from people/organizations who raise money for charity fraudulently, (keeping most of it for their own profit), The AG and IRS are also trying to discourage would be tax-exempt fundraising organizations, simply because these are offices which rely on tax collection, not exemption, to finance their needs, all of which can be intimidating for small poor organizations who may need this mechanism to survive.

If you are considering becoming a Not-for-Profit I warn you that it is not for the faint hearted, and it will require a real serious commitment of time as well as the fees necessary for such a filing. The time commitment is not all up front. It keeps asking of you year after year. PLEASE take the time while you are learning the application, to understand the aspects which will be needed from you annually to maintain your status (i.e. meeting schedules, Board Committees and Membership, auditing procedures, etc.) While I present a thorough review of the application process, I strongly advise you learn as much as possible and speak with others who are knowledgeable about this process.

One other note; The information presented here is current as of March of 2012. There is no guarantee that the application process nor criteria will remain consistent, so insights and instructions contained herein may not be applicable to future prospects.

A Non-Profit organization is not automatically “born” a Non-Profit, and even if it is deemed Non-Profit it is not automatically Tax Exempt. This is true even if the organizational charter says they are one or both, and even if it defies all logic. To be deemed Non- Profit an organization must receive notice from both the IRS, and then the State whether or not they believe that the organization is entitled to be a Non-Profit organization, and further whether (or not) it qualifies as Tax-Exempt. The organization must first apply to the IRS, because the State will not entertain either designation until after the IRS does. Therefore, any analysis for Non-Profit and/or Tax- Exemption is made under the US Code. That is the Code that the IRS looks at when you make your application.

Under The US Code 26 USC section 501(c) is the governing section to analyze whether or not an organization’s purpose can be considered Non-Profit (see [http://en.wikipedia.org/wiki/501\(c\)_organization](http://en.wikipedia.org/wiki/501(c)_organization) for a condensed description). Only a very small portion of the categories therein are deemed eligible for Tax-Exempt status. The basic difference between the two is that under the code a Non- Profit is exempt from paying income taxes, whereas a Tax-Exempt organization is both exempt from paying income taxes and contributions may be made to such an entity that are tax deductible by the donor.

26 USC section 501(c) lists 27 types non-profit corporations, sections 501(c)(1) through 501(c)(27). Of those 27 types of 501(c) organizations 501(c)(3) specifies the types of non-profit corporations that may be deemed Tax-Exempt. A 501(c) (3) is a Private Foundation, that is formed for Religious, Educational, Charitable, Scientific, Literacy, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organization purposes.

Notice that you won't recognize a Farmers Market in there anywhere. More importantly neither does the IRS, without proper persuasion.

If you read through the other 26 types of 501(c) Non-profits the only other categories that come remotely close to the activities of a Farmers Market are 501(c)(5) , 501 (c)(6), 501(c)(16), and then there is another remote section of the code 26 USC section 521(a) which lists yet a 28th type of non-profit that also comes remotely close. Let's look at each of them:

501(c)(5)'s are Labor, Agricultural, and Horticultural Organizations which are Educational or instructive, the purpose being to improve conditions of work, and to improve products and efficiency; (NOT Tax Exempt, meaning that your contributors cannot claim a tax deduction for any "donations".)

501(c)(6)'s are Business Leagues, Chambers of Commerce, Real Estate Boards, Etc., the purpose being Improvement of business conditions of one or more lines of business; (Also, NOT Tax Exempt)

501(c)(16)'s are Cooperative Organizations to Finance Crop Operations, the purpose being Financing Crop operations in conjunction with activities of a marketing or purchasing association (for this one no application needs to be made to the IRS) (it also is not Tax-Exempt);and then finally;

521(a)'s are Farmers Cooperative Associations for the purpose of Cooperative marketing and purchasing for agricultural producers (also not Tax-Exempt).

None of these purposes really fit the purposes of a Farmers Market well. I invite you to read the rest of the 501(c)'s and see if I missed anything that might be useful. You can find a full version of it here: <http://www.law.cornell.edu/uscode/text/26/501> .

Because a Farmers Market is generally organized primarily for the purpose of marketing and selling of farm goods "For-Profit" to consumers directly, IRS code does not recognize the non-profit aspect of work done by most farmers markets. To the IRS, the purposes of farmers markets sound like For Profit entities. Because of this basic premise any vendor, member, director, or officer of a Farmers Market Corporation that wants to participate in the profit making available in most markets is immediately straddling a very gray area of Not-for- Profit law and weakening any Not-for-Profit pitch the organization may wish to make. This is because a not-for-profit or non-profit corporation is defined as "an organization formed not for pecuniary profit or financial gain, **and no part of the assets, income or profits** is distributable to or inures to the benefit of members, directors or officers." (emphasis added).

This leads us to two absolutely essential suggestions when you pursue this application:

- 1) When is a Farmers Market NOT a Farmers Market? – Simply stated the answer is when it is applying for 501 (c) 3 status you should not call yourselves a Farmers Market.
- 2) For the purposes of achieving Not-for-Profit status it is not advisable for vendors, or anyone with a pecuniary interest in the Market to be on, and/or most certainly not dominate the seats within the Board

Allow me to explain;

Not a Farmers Market!

After talking to dozens of IRS agents, who all genuinely wrestle with the code, and the words you use in your application, when going over these applications, you will be doing them and yourselves a favor if you don't call your organization a Farmers Market. Why does your Non-Profit organization have to be called a Farmers Market anyway (even if it is one)? I know, no one reading this wants to feel like they are lying to the IRS – nor am I implying that the following is lying to the IRS but the IRS doesn't recognize that Farmers Markets fall into Not-for-Profit categories – so let's look at the following train of thoughts as an alternative:

Of the purposes allowed in a 501(c)(3) Non-Profit Tax-Exempt Corporation, the purpose that comes closest in its elements to what Farmers Market does is "Educational". Farmers Markets are educational in the following ways (and more): Farmers and the Market organization are teachers. They are giving the public and the potential buyer information about what local farm products are, how to use them, how to access them. They teach about how food is grown, how to prepare it, how it compares to other food. They give out samples, opportunities to try out new products, generate interest in locally produced foods and producers. They give out growing advice, lessons, and tips. They prepare educational materials to encourage use of locally produced foods. They give cooking, planting, handling and purchasing lessons. I'm sure if you start to brainstorm this you can come up with a more complete list but the general idea here is to advance a legal theory that the overall would-be market organization needs to be a structure designed around educating when it comes to Not-for-Profit purposes. So instead of being called a Farmers Market and to win Not-for-Profit and Tax-Exempt status, describe your organization's purposes as Educational within the language defining a 501(c)(3) organization. Use only the words in the code to describe what your organization does.

If a Farmers Market has to be an educational organization for 501(C)(3) status let's give it an appropriate name. Use terms like: Albany Local Food Education, Incorporated (or ALo FEd Inc), or something along that line.

Here's a couple of more name ideas: Cooperstown Vegetable Education Center, Inc or CoVEC Inc; Binghamton Local Vegetable Education, Inc Binghamton LoVE, Inc) – please just leave the words "Farmers Market" out. Put it nowhere in your application. Once you put Farmers Market in the application, you raise issues for the IRS, as to what category your application should be applied to.. Your use of "Farmers Market," and or "marketing activities" may result in either the rejection of your application, or the IRS trying to steer you into either 501(c)5 of 521(a) status. By the way, there is nothing in the rules to prevent your organization, as part of its educational mission, from spinning off

the ALoFEd Inc's Farmers Market or the CoVEC, Inc Farmers Market, or the Binghamton LoVE, Inc's Farmers Market, provided that you stick to your purposes in doing so, which are to Educate.

Vendors as Board Members:

There are good legal reasons why having vendors, or persons with a pecuniary interest in the Market's activities weakens the Not-for-Profit application. Anyone who has business interests in the organization/entity in question faces a clear conflict of interest in running that entity. It not only raises questions about your application, but it also, puts the organization's Not-for-Profit status at risk. This will be especially true if, at some future point after incorporation, someone chooses to challenge the composition of the Board, the decisions it has made, or the viability of the status of the entity as a Not-for-Profit. A "vendor only" Board of Directors in a Not-For-Profit, tax exempt organization is certainly a contradiction of "an organization formed not for pecuniary profit or financial gain." It simply should not happen.

Having said this, there are most certainly ways for vendors to participate in Not-for-Profit Board business. One way may be for there to be Ex-Officio vendor seats on the Board, and another way may be to create advisory positions for would-be vendor members. A third way is for the Board to have rotating appointed or elected representative(s) for the vendors.

The Steps in the Application Process

Not-For-Profit Incorporation

Every corporation is a legal entity, and to become a legal entity you will need to file a certificate of not-for-profit corporation with the Secretary of State of New York State. I used to use a professional filing service. They are very inexpensive to use and they all have offices across the street from the Department of State. You tell them you are filing a Not-for-profit Corporation, give them a corporate purpose statement, a mailing address and answer a few more questions for them and pay them using a credit card, but you can also go directly to the NYS Department of State's website and file it online yourself. You will need a credit card and they will warn you to use an attorney, but since you are following an attorney's advice here you do this in the following way:

You will need to make up a name for your not-for-profit corporation and then you have to verify that your name is available. When you have your name, go to the following link: http://www.dos.ny.gov/corps/bus_entity_search.html and type in the name where it says Business Entity Name and hit the button (4.) Search Database. If your name comes up – you will have to rename yourself, and then search again. I have searched all the corporate names I created above and none of them were in use as of this writing. Please note two things about each name– One is the regional name identifier with each name. If you change the region or city or locale part (ie: Ellenville LoVE, Inc. instead of Binghamton LoVE, Inc., or use Poughkeepsie and make PLoFEd Inc instead of ALoFed Inc, or use Allentown and make AllIVEC, Inc instead of CoVEC, Inc) your regional addition will give you a unique name that should not be in the database and enable you to use it.

The second thing is that all corporations need to use the following monikers at the end: Inc, Ltd, Corporation or Incorporated. This identifies you as a corporation. Once you have your name, you now go into the Department of State's Not for Profit Corporation Filing page, located here: <http://www.dos.ny.gov/corps/nfpcorp.html#certinc> . There it will tell you that a not-for-profit corporation may be formed by filing a Certificate of Incorporation pursuant to Section 402 of the Not-for-Profit Corporation Law. The Department of State has prepared a sample form and instructions for forming a not-for-profit corporation. The form has been designed to satisfy the minimum filing requirements; and that the completed Certificate of Incorporation, together with the statutory filing fee of \$75, should be forwarded to the Department of State, Division of Corporations, State Records and Uniform Commercial Code, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

Click the "Fillable Certificate of Incorporation Form" which will take you to this link: <http://www.dos.ny.gov/forms/corporations/1511-f-l.pdf> and then fill it in as follows: Type in your Corporate name at the top above where it says (Insert Corporation Name). Type it in again under where it says "1. The name of the corporation is:".

Then you will have to type in the purposes for which the Corporation is formed. Again don't let your guard down – you will have to send this certificate to the IRS – do not use the words: Farmers Market – here is a suggested statement of purposes:

"To educate the population and visitors within a 75 mile radius of (enter your Town, City, Village name) on the benefits of using freshly grown and/or prepared food and other products, and create venues and opportunities for them and others (not limited) to learn about, comparing, acquiring, preparing, growing, methods, taxonomy of, identification of, proper handling of, uses of, benefits of, dietary information of local and other sources of freshly grown and/or prepared food."

Then Scroll Down to the next page and select Type B. Fill in your County where indicated. Type in the names and addresses of three directors of your corporation. Then you will have to place the address of your Corporation. Every Corporation must have an address. This address is the legal place where the Secretary of State must be able to contact your corporation. A PO Box, with City, State and Zip is acceptable for these purposes.

Then under where it says EIGHTH on the next page you will place the following suggested language for the IRS:

"This corporation is a tax-exempt Private Foundation and non-profit corporation as defined under 501(c)(3) of the US Code, formed for Educational purposes.."

Then you will select one of your directors to be the "incorporator" and fill in their name, the address of the corporation and have them sign there after you print it. If you choose to file directly (that is to say, without having an attorney or other professional do it for you), this is the person the IRS will contact with questions.

Then on the next page you will type in the name of the corporation, the filer's name and corporate address yet again.

(See Sample Certificate of Incorporation attached)

Then Print out and send with \$75 filing fee made payable to NYS Department of State to: Department of State, Division of Corporations, State Records and Uniform Commercial Code, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. Make sure you keep a copy of the check and the Certificate you mail them, and make sure the certificate you send them is sent with a check and an original signature.

You will next need to obtain an Employer Identification Number (EIN). You do not need to wait until your certificate is returned to file for an EIN. You may use the date of mailing as your date of corporate origination. Go to the following link to obtain an EIN <https://sa2.www4.irs.gov/modiein/individual/index.jsp>. Have all the information we placed in the Corporate filing with you and click “Begin Application.”

Select Corporation and click “Continue > >”, then on next page select corporation again and click “Continue > >” then confirm it by clicking “Continue > >” again. On the next page you will select “Banking purposes Select this option if the reason for applying for the EIN is strictly to satisfy banking requirements or local law.” Then click “Continue > >”. Then select a responsible party (individual or organization) and click “Continue > >”. Choose whether you are a third party (attorney) or responsible party – most of you will have to select a responsible party/corporate officer – usually the same as the Corporate filer who signed the Incorporation Certificate then “Continue > >” then the Corporation’s info as indicated in Corporate Certificate but you will have to give a contact phone number and a street address to the IRS, then “Continue > >”. Then fill in the Corporate Info – do not use commas or periods or characters only numbers and letters and spaces, then “Continue > >” answer no to all questions on next page and click “Continue > >”. Then select “other” on next page and click “Continue > >”. Select Organization on next page and “Continue >>”. Select other and type in Educational on next page and “Continue>>”. Then on the next page you will get an opportunity to review all your info and make sure it’s as accurate as it can be and then click “Submit”. Assuming you didn’t raise any flags, you should be given an EIN number and get an opportunity to print it out on an official letter as well.

Next we will go over an IRS 1023 form and gather all the other steps you need to complete creating your organization and meet the IRS requirements: The 1023 form is the bulk of the IRS application for 501(C)(3) corporations you can find it at the following link <http://www.irs.gov/pub/irs-pdf/f1023.pdf> . In filling out the 1023 remember – we are not using the words Farmers Market anywhere on the form – ever.

Let’s review the content and approach for this form:

Page 1 Section 10 – yes – you are doing a Form 990-EZ. (I would suggest telling the IRS that you are an organization that will have less than \$10,000 in revenue. Also your projections should be consistent with that when you get to that point. You can always amend this.) Date incorporated is the date that the Department of State says you were incorporated.

Page 2

You will need to fill the Name of Corporation and EIN Number at the top of page

Check Yes on line 1

Part III - Remember paragraph 8 of your certificate of incorporation is your enabling paragraph stating your tax exempt purposes, and check 2C regarding dissolution – you are in New York and the attorney general will oversee your dissolution.

For your narrative IV just cut and paste the paragraph we inserted in your incorporation certificate “To educate the population and visitors within a 75 mile radius of (enter your Town, City, Village name) on the benefits of using freshly grown and/or prepared food and other products, and create venues and opportunities for them and others (not limited) to learn about, to compare, to prepare, to grow, methods, taxonomy of, identification of, proper handling of, uses of, benefits of, dietary information of local and other sources of freshly grown and/ or prepared food.”

The two biggest issues in a non-profit are corporate compensation and conflicts of interest. This may best be avoided with an all volunteer board – and specify that no-one will be compensated. The last column should all say “none” in Part V. However, you will need a conflict of interest policy that requires all board members, whether volunteer or compensated, to disclose annually anything they are involved in that may conflict with the work of your not-for-profit. These disclosures should be maintained for a minimum of 7 years.

You should have no employees making \$50,000 or more a year. You should have no independent contractors making \$50,000 or more a year. **I strongly advise your group to retain either an experienced attorney or accountant to guide you through this process if there are any budgetary issues that total \$25,000 or more.**

If members of the board have business or family relationships you need to disclose these relationships.

Your answers 2a- 4c should all be “No.” Your answers 4d- 5 should all be Yes and you need to have a written conflict of interests policy passed by your board – I will share one with you at the end of this document. Answers in 6-9 should all be no. If you feel the answer is “yes” to any of these you will need experienced counsel to provide proper guidance.

Page 5 Part V you should be able to bracket and write “None”. Part VI answers should all be No. If you are placing a vendor on your board, please remember, you can, and it is preferable to have a vendor or vendors with advisory roles, such “Member Emeritus”, “Ex-Officico”, or “At Large Members”, but please use caution in having vendors on your Board and remember that it weakens the appearance of the non pecuniary nature of a not-for-profit.

Part VIII – 1-3 answers should all be “No” – 4b, 4c, & 4e should all be answered “No”. 5-10 should also all be “No”.

Page 7 & 8 should all be answered “No”

Project revenue and expenses for page 9 at under \$10,000 in year one and under \$25,000 in years 2 & 3.

Part X – you are a private foundation, check box in 1b – NYS law covers you = the answer to 2 is “Yes” you are a private operating foundation. In part 4 you can make your own statement describing your operations – but break down your activities flowing from the language we used in your purposes – do not say you are a farmers market – however you can create venues where food growers and producers

can demonstrate and teach about their products and all the other good things we listed. In part 5 all “No”, Page 11 is all “No.”

Once you are determined to be a not-for-profit

After you file the 1023 we IRS will contact you with any questions that they have – you are not a Farmer’s Market, you are organized to educate the public about local food. As long as you keep your activities answers with that in mind you can answer their questions freely. When you receive your letter of opinion you must then register your organization with NYS Office of Taxation and the NYS Attorney General’s Charities office. Generally you just parrot your 1023 on the State Department of Taxation’s applicable form and pay a fee. The NYS Attorney General’s office will want to know who your fund raisers are, how you fund raise, and who on your board, if anyone, has a financial interest in the organization.

You will also need to file annual tax reports. The IRS requires an annual 990 or 990EZ. This identifies all your income and expenses, categorized by program area and defines not-for-profit work versus any for-profit work you may be doing. You will also answer questions about employee and board of director compensation. IRS will use this to show that you are still operating under the legal definition of a not-for-profit. This report must be filed by the 15th day of the 5th month following the end of your fiscal year. For example, if your organizational fiscal year runs July 1 through June 30, then your 990 report will be due November 15.

You will also need to complete an annual filing for New York State. This is NYS Charities Bureau CHAR 500. Basically, you will file a copy of your 990, along with a short form and a filing fee. Most noteworthy with the CHAR 500 is the chart showing whether you are required to have your books reviewed or audited by an independent accountant. Revenue under \$100,000 requires no outside review. The due date for the New York State CHAR 500 mirrors the IRS 990.

About Michael R. Siegel, Esq

Michael R. Siegel is an attorney licensed to practice law in the State of New York, he attended law school at the Benjamin N. Cardozo School of Law. He and his wife Barbara have a farm in Wawarsing, NY and they have participated in many regional Farmer’s Markets. He is a former Bd Member of the RVGA (Rondout Valley Growers Association, Inc), the UCCE/CEUC (Ulster County Cooperative Extension), SCAFM (Sullivan County Area Farmers Markets, Inc), SCFMA (Sullivan County Farmer’s Market Association, Inc), and The Kingston Farmers Market, and he also formed and directed the Ellenville Farmers Market.

CERTIFICATE OF INCORPORATION OF

Ellenville LoVE, Inc
(Insert Corporation Name)

Under Section 402 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Ellenville LoVE, Inc

SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law.

THIRD-Part A: The purpose or purposes for which the corporation is formed are as follows:

To educate the population within a 75 mile radius of Ellenville (enter your Town, City, Village name) on the benefits of using freshly grown and/or prepared food and other products, and create venues and opportunities for them and other visitors to our region not limited to learn: about, to compare, to prepare, to grow, methods, taxonomy of, identification of, proper handling of, uses of, benefits of, dietary information of local and other sources of freshly grown and/or prepared food

THIRD-Part B: If the corporation is a Type C corporation, the lawful public or quasi-public objective which each business purpose will achieve is:

FOURTH: The corporation shall be a Type A Type B Type C Type D corporation pursuant to Section 201 of the Not-for-Profit Corporation Law.

FIFTH: The office of the corporation is to be located in the County of Ulster, State of New York.

SIXTH: The names and addresses of the three initial directors of the corporation are:
(A minimum of three are required)

Name: Toby V Lover
Address: 801 Farm to City Lane
Ellenville, NY 12428

Name: Viggie Raw
Address: 90 Coutry Route 3
Ellenville, NY 12428

Name: Kathy Greenbean
Address: 6 Goaled Acres
Ellenville, NY 12428

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:

PO Box 62
Ellenville, NY 12428

EIGHTH: *(Corporations seeking tax exempt status may include language required by the Internal Revenue Service in this paragraph.)*

This corporation is a tax-exempt Private Foundation and non-profit corporation as defined under 501(c)(3) of the US Code, formed for Educational purposes.

Incorporator Name: Toby Vegetable Lover

(Type or Print)

Address: PO Box 62
Ellenville, NY 12428

Signature **X**

CERTIFICATE OF INCORPORATION
OF

Ellenville LoVE, Inc

(Insert Corporation Name)

Under Section 402 of the Not-for-Profit Corporation Law

FILED BY: Name: Toby V. Lover

Mailing Address: PO Box 62

City: Ellenville State: NY Zip Code: _____

NOTE: This sample form is provided by the New York State Department of State Division of Corporations for filing a certificate of incorporation. This form is designed to satisfy the minimum filing requirements pursuant to the Not-for-Profit Corporation Law. The Division will accept any other form which complies with the applicable statutory provisions. The Division recommends that this legal document be prepared under the guidance of an attorney. The Division does not provide legal, accounting or tax advice. This certificate must be submitted with a \$75 filing fee made payable to the "Department of State."

For DOS use only

[name of organization]

CONFLICT OF INTEREST POLICY

SECTION 1. PURPOSE:

_____ is a nonprofit, tax-exempt organization. Maintenance of its tax-exempt status is important both for its continued financial stability and for public support. Therefore, the IRS as well as state regulatory and tax officials view the operations of _____ as a public trust, which is subject to scrutiny by and accountable to such governmental authorities as well as to members of the public.

Consequently, there exists between _____ and its board, officers, and management employees and the public a fiduciary duty, which carries with it a broad and unbending duty of loyalty and fidelity. The board, officers, and management employees have the responsibility of administering the affairs of _____ honestly and prudently, and of exercising their best care, skill, and judgment for the sole benefit of _____. Those persons shall exercise the utmost good faith in all transactions involved in their duties, and they shall not use their positions with _____ or knowledge gained therefrom for their personal benefit. The interests of the organization must be the first priority in all decisions and actions.

SECTION 2. PERSONS CONCERNED:

This statement is directed not only to directors and officers, but to all employees who can influence the actions of _____. For example, this would include all who make purchasing decisions, all persons who might be described as "management personnel," and anyone who has proprietary information concerning _____.

SECTION 3. AREAS IN WHICH CONFLICT MAY ARISE:

Conflicts of interest may arise in the relations of directors, officers, and management employees with any of the following third parties:

1. Persons and firms supplying goods and services to _____.
2. Persons and firms from whom _____ leases property and equipment.
3. Persons and firms with whom _____ is dealing or planning to deal in connection with the gift, purchase or sale of real estate, securities, or other property.
4. Competing or affinity organizations.
5. Donors and others supporting _____.
6. Agencies, organizations, and associations which affect the operations of _____.
7. Family members, friends, and other employees.

SECTION 4. NATURE OF CONFLICTING INTEREST:

A conflicting interest may be defined as an interest, direct or indirect, with any persons or firms mentioned in Section 3. Such an interest might arise through:

1. Owning stock or holding debt or other proprietary interests in any third party dealing with _____.
2. Holding office, serving on the board, participating in management, or being otherwise employed (or formerly employed) with any third party dealing with _____.
3. Receiving remuneration for services with respect to individual transactions involving _____.
4. Using _____'s time, personnel, equipment, supplies, or good will for other than _____-approved activities, programs, and purposes.
5. Receiving personal gifts or loans from third parties dealing or competing with _____. Receipt of any gift is disapproved except gifts of a value less than \$50, which could not be refused without discourtesy. No personal gift of money should ever be accepted.

SECTION 5. INTERPRETATION OF THIS STATEMENT OF POLICY:

The areas of conflicting interest listed in Section 3, and the relations in those areas which may give rise to conflict, as listed in Section 4, are not exhaustive. Conflicts might arise in other areas or through other relations. It is assumed that the directors, officers, and management employees will recognize such areas and relation by analogy.

The fact that one of the interests described in Section 4 exists does not necessarily mean that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance, or if material, that upon full disclosure of all relevant facts and circumstances it is necessarily adverse to the interests of _____.

However, it is the policy of the board that the existence of any of the interests described in Section 4 shall be disclosed before any transaction is consummated. It shall be the continuing responsibility of the board, officers, and management employees to scrutinize their transactions and outside business interests and relationships for potential conflicts and to immediately make such disclosures.

SECTION 6. DISCLOSURE POLICY AND PROCEDURE:

Transactions with parties with whom a conflicting interest exists may be undertaken only if all of the following are observed:

1. The conflicting interest is fully disclosed;
2. The person with the conflict of interest is excluded from the discussion and approval of such transaction;
3. A competitive bid or comparable valuation exists; and

4. The [board or a duly constituted committee thereof] has determined that the transaction is in the best interest of the organization.

Disclosure in the organization should be made to the chief executive officer (or if she or he is the one with the conflict, then to the board chair), who shall bring the matter to the attention of the [board or a duly constituted committee thereof]. Disclosure involving directors should be made to the board chair, (or if she or he is the one with the conflict, then to the board vice-chair) who shall bring these matters to the [board or a duly constituted committee thereof].

The [board or a duly constituted committee thereof] shall determine whether a conflict exists and in the case of an existing conflict, whether the contemplated transaction may be authorized as just, fair, and reasonable to _____. The decision of the [board or a duly constituted committee thereof] on these matters will rest in their sole discretion, and their concern must be the welfare of _____ and the advancement of its purpose.

[name of organization]

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Preliminary note: In order to be more comprehensive, this statement of disclosure/questionnaire also requires you to provide information with respect to certain parties that are related to you. These persons are termed “affiliated persons” and include the following:

- a. your spouse, domestic partner, child, mother, father, brother or sister;
- b. any corporation or organization of which you are a board member, an officer, a partner, participate in management or are employed by, or are, directly or indirectly, a debt holder or the beneficial owner of any class of equity securities; and
- c. any trust or other estate in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.

1. NAME OF EMPLOYEE OR BOARD MEMBER: (Please print)

2. CAPACITY: board of directors
 executive committee
 officer
 committee member
 staff (position): _____

3. Have you or any of your affiliated persons provided services or property to _____ in the past year?

YES NO

If yes, please describe the nature of the services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

4. Have you or any of your affiliated persons purchased services or property from _____ in the past year?

YES NO

If yes, please describe the purchased services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

5. Please indicate whether you or any of your affiliated persons had any direct or indirect interest in any business transaction(s) in the past year to which _____ was or is a party?

_____ YES _____ NO

If yes, describe the transaction(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

6. Were you or any of your affiliated persons indebted to pay money to _____ at any time in the past year (other than travel advances or the like)?

_____ YES _____ NO

If yes, please describe the indebtedness and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

7. In the past year, did you or any of your affiliated persons receive, or become entitled to receive, directly or indirectly, any personal benefits from _____ or as a result of your relationship with _____, that in the aggregate could be valued in excess of \$1,000, that were not or will not be compensation directly related to your duties to _____?

_____ YES _____ NO

If yes, please describe the benefit(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

8. Are you or any of your affiliated persons a party to or have an interest in any pending legal proceedings involving _____?
- _____ YES _____ NO

If yes, please describe the proceeding(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

9. Are you aware of any other events, transactions, arrangements or other situations that have occurred or may occur in the future that you believe should be examined by _____'s [board or a duly constituted committee thereof] in accordance with the terms and intent of _____'s conflict of interest policy?
- _____ YES _____ NO

If yes, please describe the situation(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

I HERBY CONFIRM that I have read and understand _____'s conflict of interest policy and that my responses to the above questions are complete and correct to the best of my information and belief. I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with this policy, I will notify [designated officer or director] immediately.

Signature

Date

[name of organization]

GIFT POLICY AND DISCLOSURE FORM

As part of its conflict of interest policy, _____ requires that directors, officers and employees decline to accept certain gifts, consideration or remuneration from individuals or companies that seek to do business with _____ or are a competitor of it. This policy and disclosure form is intended to implement that prohibition on gifts.

- Section 1.** “Responsible Person” is any person serving as an officer, employee or a member of the board of directors of _____.
- Section 2.** “Family Member” is a spouse, domestic partner, parent, child or spouse of a child, or a brother, sister, or spouse of a brother or sister, of a Responsible Person.
- Section 3.** “Contract or Transaction” is any agreement or relationship involving the sale or purchase of goods, services or rights of any kind, receipt of a loan or grant, or the establishment of any other pecuniary relationship. The making of a gift to _____ is not a “contract” or “transaction.”
- Section 4.** Prohibited gifts, gratuities and entertainment. Except as approved by the Chairman of the Board or his designee or for gifts of a value less than \$50 which could not be refused without discourtesy, no Responsible Person or Family Member shall accept gifts, entertainment or other favors from any person or entity which:
1. Does or seeks to do business with _____ or,
 2. Does or seeks to compete with _____ or,
 3. Has received, is receiving, or is seeking to receive a Contract or Transaction with _____.

GIFT STATEMENT

I certify that I have read the above policy concerning gifts, and I agree that I will not accept gifts, entertainment or other favors from any individual or entity, which would be prohibited by the above policy. Following my initial statement, I agree to provide a signed statement at the end of each calendar year certifying that I have not received any such gifts, entertainment or other favors during the preceding year.

Signature

Date

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