

A Special Video Conference Meeting of the Dormitory Authority of the State of New York (“DASNY”) was held at the Dormitory Authority’s New York City Office at 28 Liberty Street, New York New York and via video conference on Friday, June 17, 2022 at 9:30 a.m. Members participated in person and via Zoom.

CALL TO ORDER / ROLL CALL

The Meeting was called to order by Alfonso Carney, Board Chair at 9:30 a.m. and a quorum was declared present.

Ms. Fontaine noted that the DASNY Board is authorized to meet and conduct business remotely due to the extension of the Executive Order which suspends various provisions of the Public Officers Law due to the ongoing COVID public health emergency. She stated that as a result, members of the public may meet and act without permitting in-person access to the meeting. Members of the public may view or listen to the proceedings in accordance with the posted notice. Ms. Fontaine further stated that an audio and video recording of today’s meeting will be accessible from DASNY’s website (www.dasny.org) within two days, and a transcript will be posted as soon as practicable under the circumstances.

Ms. Nazario, Confidential Legal Assistant, called the roll. The following Board Members and Staff were present:

Board Members Present—Via Zoom

Alfonso L. Carney, Jr. – Chair
Beryl L. Snyder, Esq. – Secretary
Jonathan Gardner, Esq. – Board Member
Gerard Ronski, Esq. – Board Member
Joan M. Sullivan – Board Member
Janice McKinnie – Board Member
Wellington Chen—Board Member
Lisa Gomez—Board Member
Adrian Swierczewski--Designated Representative of the Director of the Budget, Board Member (ex officio)
Ken Evans, Designated Representative of the Commissioner of Health, Board Member (ex officio)
Phyllis Morris---Designated Representative of the Commissioner of Education, Board Member (ex officio)

Staff Members Present—Via Zoom

Reuben R. McDaniel, III, President and Chief Executive Officer
Paul G. Koopman, Vice President
R. Nadine Fontaine, Esq., General Counsel
Kimberly A. Ellis, Chief Financial Officer
Deborah Fasser, Director, Strategic Communications and Business Development
Amanda Nazario, Confidential Legal Assistant

FORMATION OF THE SOCIAL EQUITY SERVICING CORPORATION

The Board Chair thanked the Members and Staff for making themselves available for the Special Meeting to consider authorizing the formation of a new DASNY subsidiary (the “Subsidiary”). He asked Ms. Fontaine to brief the Members on the matter before them for consideration.

Ms. Fontaine informed the Members that pursuant to recently enacted legislation that was included in the Executive Budget (Part II of Part HH of Chapter 52 of the Laws of 2022 (the “Act”), DASNY was granted the authority to lease, plan, design, construct, reconstruct, rehabilitate, improve, furnish and equip adult-use cannabis retail dispensaries for operation by social equity licensees who have been duly licensed by the Office of Cannabis Management (“OCM”) and the Cannabis Control Board (“CCB”). She stated that the statute also allows for the creation of a private debt or equity fund, currently identified as a Social Equity Investment Fund, to support the creation and development of such dispensaries.

Ms. Fontaine explained that the enacted legislation authorizes DASNY to enter into one or more agreements with OCM, the CCB, and the Fund for the following purposes:

- To acquire by lease or sublease (whether as lessee or agent), real property necessary or convenient for the construction or reconstruction of the dispensaries;
- To prepare or cause to prepare (whether as principal or agent), plans and costs estimates for the construction or reconstruction of the dispensaries and to enter into contracts for the design and construction of such facilities;
- To enter into leases, subleases or other agreements, as agent for the Fund subject to OCM’s approval of the general terms of these agreements; and
- To enter into, as lender or agent to the lender, non-recourse loan agreements with eligible licensees, provided that the interest rate charged does not exceed 8% plus prime.

Ms. Fontaine informed the Members that in order to address and limit DASNY’s exposure from directly engaging in the work authorized under these new statutory provisions, DASNY has been authorized to form one or more subsidiaries that will be specifically empowered to enter into lease or subleases with respect to real property or equipment; service the non-recourse loan agreements; furnish property management services; and provide general operational and administrative support services.

Ms. Fontaine explained that the Act requires that the Subsidiary be formed as a public benefit corporation with the same powers, privileges, immunities, tax exemptions, and other exemptions of DASNY and that the members of the board of the Subsidiary shall be the same as the members of the DASNY Board. Moreover, the liabilities, obligations and responsibilities of the Subsidiary shall not be imposed upon DASNY unless DASNY so provides. Ms. Fontaine reported that the Authorities Budget Office, the Governor, the Comptroller, and the Legislature have been notified of DASNY’s intent to create a subsidiary in accordance with relevant statutory provisions. Ms. Fontaine presented the Resolution before the Members seeking authorization to allow DASNY to file a certificate of incorporation with the Secretary of State to establish a subsidiary for the purpose of limiting liability against DASNY in connection with the work performed in connection with the initiative as described.

The Board Chair thanked Ms. Fontaine for her presentation. He noted that the Board Members have had the opportunity, as always, to speak with President McDaniel, Ms. Fontaine, or Mr. Salaman with respect to this matter.

Mr. Gardner thanked President McDaniel and Ms. Fontaine for their work on this initiative and asked for more information regarding the monies available for the Fund and its structure. Ms. Fontaine explained that the State will be investing \$50 million into a private equity fund, and that an additional \$150 million will be raised by the selected fund manager for the purpose of establishing the dispensaries. She explained that there is a Cannabis Revenue Fund created pursuant to the State Finance Law into which license fees will be deposited; funding for the newly created investment fund will essentially come from the Cannabis Revenue Fund. Ms. Fontaine noted that DASNY procuring a fund manager for the private equity fund, which is expected to be named the New York Social Equity Cannabis Investment Fund LP. Mr. McDaniel stated that once the fund manager has been procured, the private equity fund will be created, and a limited partnership agreement will be entered into before any portion of the State's \$50 million will be invested into the investment fund. He noted that the Board will need to approve the limited partnership agreement with the Fund Manager.

Mr. Gardner discussed the importance of indemnifying the board members, including advancement of defense costs, the importance of reflecting those protections in the organizational documents given the Subsidiary's involvement of real property transactions and some operations, potential litigation exposure, and insulating the Members and DASNY from liability to the maximum extent possible. He noted, to which the Chair agreed, that he would be more comfortable if the full weight of DASNY were backing the DASNY Members in their capacity as Subsidiary board members. President McDaniel clarified that neither DASNY nor the Subsidiary would be granting licenses, owning properties, nor assuming any operating responsibility. The Subsidiary's work would be limited to build out of the facilities, including ancillary expenses, and to sublease the space and servicing the loans for the work to provide these dispensaries to licensed operators. He explained that the Fund, or the Subsidiary solely as agent for the Fund, would enter into the leases with the landlord, which would be subleased to the dispensary licensees. Mr. Koopman further clarified that the work of the Subsidiary will be similar to that typically performed by DASNY, except that it will be in the role of an agent, and not undertaken directly, which adds another layer of protection by having the authority serve as an agent of the fund for both the construction and the leasing.

Ms. Fontaine noted that the protections afforded to the Subsidiary board are identical to those protections provided to the DASNY board. She explained that the purpose of creating the subsidiary and also noted that the authorizing legislation specifically states that liability shall not be passed onto the DASNY Board Members absent gross negligence. Ms. Fontaine explained the principal/agent relationship and informed the Members that agreements were being developed, which included indemnification and hold harmless provisions, including the limited partnership agreement with the Fund, and the construction related contracts. Mr. Gardner expressed that with the appropriate contractual provisions, he believes the structure will work very well. The Board Chair agreed and stated that the legal documentation establishing the subsidiary must be thorough to protect DASNY and the Members.

Ms. Sullivan stated that while she was partially comfortable with the structure, she would rely on others to provide the necessary legal advice and guidance. The Board Chair informed the Members that as General Counsel, Ms. Fontaine has the primary responsibility in this regard.

The Chair inquired whether a DASNY Board Member could choose not to be a Subsidiary board member. Ms. Fontaine advised that the legislation requires the Subsidiary board members to be the same as the DASNY Board thus precluding the option to decline membership on the Subsidiary Board. The Board Chair discussed the differences of the work of the prior DASNY subsidiaries and the new Subsidiary which could be viewed by Members as a departure from their expectations of serving on the DASNY Board. The Board Chair noted that although the program provides an opportunity to do great things, others might not share the

same enthusiasm. Mr. Gardner suggested having non-identical boards and independent members on the subsidiary Board.

Ms. McKinnie stated that briefings with the President and Ms. Fontaine helped her to better understand the role and structure of the Subsidiary. While not necessarily expecting to be on the Board of a subsidiary responsible for cannabis matters, Ms. McKinnie understood that if one is a Member of DASNY and DASNY forms a subsidiary, the Board of the subsidiary would be comprised of the same Members. Ms. McKinnie also stated that she is comfortable creating the subsidiary, while also continuing to work through certain matters. She thanked Mr. Gardner for his input on the legal matters.

Mr. Gardner thanked Ms. McKinnie, but stated that he is relying on Ms. Fontaine to provide the Members with expert legal advice. He thanked Ms. Fontaine for her hard work and informed the Members that he has complete confidence in Ms. Fontaine's legal advice in this regard. Ms. Fontaine stated that the Members will be provided with a copy of the partnership agreement, and that the agreement must be approved by the Board. She further stated that there will be additional details provided with respect to the partnership agreement so that the Members fully understand and are comfortable with the provisions.

Ms. Snyder advanced option to create the Subsidiary, while continuing to review the operative documents and learning additional details. She clarified that the approval to create the Subsidiary is merely the first step of several actions that will be required.

The President stated that at this meeting, the DASNY Board is being asked to authorize the creation of a Subsidiary. Going forward, the organizational documents, agreements, and other matters will continue to be discussion prior to finalization and approval of those documents and agreements. Ms. Fontaine agreed, and stated that if Board approval is obtained today, the certificate of incorporation will be filed with the Department of State. She further noted that this is an administrative act that will identify the name of the entity, provide relevant contact information, and identify the entity's status as a public benefit corporation.

Mr. Ronski also express desire to consider the indemnification provisions separate and apart from the filing of the certificate of incorporation. The Board Chair stated that he plans to review the underlying legal documentation for the subsidiary in detail once it is drafted. He noted that he is in favor of establishing the Subsidiary but wants to be careful moving forward to be sure that appropriate legal provisions are included in the documents.

Ms. Snyder stated that she supports moving forward incrementally so that the Certificate can be filed while at the same time leaving ample opportunity to refine the operative documentation.

Mr. Chen thanked DASNY staff and the Members for the very thoughtful and intelligent discussion and stated he would be in favor of supporting the filing of the Certificate of Incorporation. The Board Chair requested a roll call vote with respect to the Resolution.

The Board Chair requested a roll call vote with respect to the Resolution.

Ms. Fontaine polled the Members, and each Member voted in turn to approve the Resolution

Mr. Ronski moved the adoption of the following entitled Resolution:

Resolution of the members of the Dormitory Authority Of The State Of New York authorizing DASNY to file a certificate of incorporation with the Secretary of State to establish a subsidiary for

the purpose of limiting the potential liability of DASNY in connection with certain work that is to be performed on behalf of the Office of Cannabis Management, the Cannabis Control Board, or the private debt or equity fund.

Mr. Gardner seconded the motion.

The Board Chair noted the approval of the motion and thanked President McDaniel, Ms. Fontaine, and the Members for their hard work and an informative discussion.

President McDaniel thanked the Board Chair, Ms. Fontaine, and the Members for their participation and the time spent reviewing this matter. He stated that additional information will be provided to them in the upcoming weeks. The President stated that Staff will take all possible steps to provide the necessary protection to the Board Members while at the same time, doing something that is truly meaningful for the State of New York. He highlighted the social equity component of this program and stated that he believes the Members will be very proud of its accomplishments in the future.

President McDaniel informed the Members that DASNY will be choosing a Fund Manager later today, after the interviews are completed. He stated that a public announcement is expected early next week.

Mr. Ronski moved to adjourn the meeting. Ms. McKinnie seconded the motion, and the meeting was adjourned at 10:30 am.

Respectfully submitted,

R. Nadine Fontaine
Assistant Secretary