

**BYLAWS OF
THE DELAWARE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**ARTICLE I
THE AGENCY**

Section 1: Name. The name of the Agency shall be "The Delaware County Industrial Development Agency".

Section 2: Purposes of the Agency. The purposes of this Agency shall be to promote the economic welfare, recreation opportunities and prosperity of Delaware County inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects. Further, it is the purpose of this Agency to protect and promote the health of the inhabitants of Delaware County by the conservation, protection and improvement of the natural and cultural or historic resources and environment and to control land, sewer, water, air, noise or general environmental pollution derived from the operation of industrial, manufacturing, warehousing, commercial, recreation, horse racing facilities, railroad facilities and research facilities.

Section 3: Members. The Agency shall consist of a seven (7) - member board of directors appointed by and serving at the pleasure of the Delaware County Board of Supervisors.

Section 4: Seal of Agency. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency.

Section 5: Office of Agency. The office of the Agency shall be at such place as the Agency may from time to time designate.

ARTICLE II
OFFICERS

Section 1: Officers. The officers of the Agency shall be a Chairman, a Vice Chairman, a Secretary, and a Treasurer.

Section 2: Chairman. The Chairman shall preside at all meetings of the Agency. Except as otherwise authorized by the Agency, the Chairman shall sign all agreements, contracts, deeds and any other instruments of the Agency. At each meeting of the Agency, the Chairman shall submit such recommendations and information as he may consider proper concerning the business, affairs, and policies of the Agency.

Section 3: Vice Chairman. The Vice Chairman shall be a member of the Agency and perform the duties of the Chairman, in the absence or incapacity of the Chairman. In the event of the resignation or death of the Chairman, the Vice Chairman shall become acting Chairman and perform the duties of the Chairman until such time as the Agency shall elect a new Chairman.

Section 4: Secretary. The Secretary shall keep the records and proceedings of the Agency, and shall perform all duties incident to this office. The Secretary shall have power to affix such seal to all contracts and other instruments authorized to be executed by the Agency.

Section 5: Treasurer. The Treasurer shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such banks as the Agency may select. All disbursements shall be approved by a majority vote at a meeting of a quorum of all the Members and signed or drawn on behalf of the Agency by any one (1) of the following officers or agents: Executive Director, Chairman, Treasurer; except that withdrawals for \$5,000 or more will require two (2) signatures, one of which may be the administrative assistant (recording secretary). He shall keep

regular books of accounts showing receipts and expenditures, and shall render to the Agency at each regular meeting an account of his transactions and also of the financial condition of the Agency. Bond or insurance for his faithful performance of his duties shall be determined and provided by the Agency.

Section 6: Additional Duties. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, the By Laws of the Agency, or by the rules and regulations of the Agency.

Section 7: Election of Officers. All officers of the Agency, except the first chairman, shall be elected at the annual meeting of the Agency from among members of the Agency and shall hold office for one year. Officers shall be elected by a majority vote at a meeting of a quorum of the Members.

Section 8: Vacancies. Should any office become vacant, the Agency shall elect a successor from among its membership at the next regular meeting, in the manner prescribed in Section 7 of this Article II, and such appointment shall be for the unexpired term of said office.

Section 9: Executive Director. The Agency may appoint and employ an Executive Director. The Executive Director shall serve at the pleasure of the Agency and shall have the responsibility and authority for carrying out the policies and purposes adopted and approved by the Agency. The Executive Director shall manage the day to day affairs of the Agency, recruit and hire staff, recommend an annual operating budget, evaluate programs, pursue funding opportunities, and shall identify potential new areas of service for recommendation to the Members. The Agency, from time to time, may authorize the Executive Director to execute contracts and sign financial instruments.

Section 10: Additional Personnel. The Agency may, from time to time, employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act, as amended,

and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel, including the Executive Director, shall be determined by the Agency subject to the laws of the State of New York.

ARTICLE III
MEMBERS

Section 1: Appointment. The appointment of each member of the Agency shall be at the pleasure of the Delaware County Board of Supervisors. The Agency shall consist of seven (7) members.

Section 2: Terms of Appointments. The term of office of each member of the Agency shall be three (3) years, at which time, the Member may be reappointed by the Delaware County Board of Supervisors. The Chairman and the Executive Director may make recommendation for membership to that Board. In instituting term limits, the terms of appointment of Agency Members may be staggered to aid in the transition and continued functioning of the Agency.

Section 3: Vacancies. Any Member may resign by submitting a letter of resignation to the Secretary. Any resignation shall take effect at the time specified therein or, if no time is specified, immediately upon receipt. The acceptance of such resignation shall not be necessary to make it effective. If a vacancy should occur, for any reason, the Agency will request the Board of Supervisors appoint a member to fill the unexpired term of the vacancy.

Any Member may be removed with or without cause by a majority vote at a meeting of a quorum of the Members that Members have been duly notified, as in Article IV, Section 4.

Any Member(s) may be removed for cause by a majority vote of all of the Members. Removal for cause shall include but not be limited to (i) failure to fulfill the duties of a

member, as evidenced by unexcused absence for three consecutive meetings without notice to the Chairman, Executive Director or Secretary, (ii) violation of the Agency's Code of Ethics, after notice and an opportunity to cure, (iii) actions inconsistent with the interests or purposes of the Agency, or (iv) any other actions in violation of the By Laws or other laws and regulations. At least ten (10) days notice of the grounds for removal shall be given to such Member, and such Member shall be given the opportunity to be heard by the Agency prior to removal.

Section 4. Compensation of Directors. The Members shall serve without compensation, except that Members may be reimbursed for their actual expenses for attendance at meetings of the Agency and committees thereof and other expenses furtherance of the Agency's affairs, pursuant to written policies established from time to time by resolution of the Agency. Such policies shall be consistent with the Agency's Code of Ethics.

ARTICLE IV MEETINGS

Section 1. Annual Meeting. The annual meeting of the Agency shall be held yearly, on or before the 15th of January, at such time and place as determined by the Agency. At each annual meeting, the members shall elect Officers and transact such other business as is within the power of the Members.

Section 2: Regular Meetings. Meetings of the Members shall be held at such times and places as, from time to time, determined by the Agency.

Section 3: Special Meetings. Special meetings of the Agency may be called by a majority of the board, by the Chairman, or written request of two of the Members for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each Member of the Agency or may be mailed to the business or home address of each Member of the Agency at least two days prior to the date of such special meeting. Waivers of notice may be signed by any members

failing to receive a proper notice. At such special meeting, no business shall be considered other than as designated in the call, but if all the members of the Agency are present at a special meeting, with or without notice thereof, any and all business may be transacted at such special meeting.

Section 4: Notice of Members' Meetings. Written notice, stating the place, date, and hour of the meeting and the purpose(s) for which the meeting is called, shall be given to each Member, either personally, by First Class Mail, addressed to such Member with postage prepaid, or by electronic mail not less than five (5) days before the date of any meeting. Any requirements of furnishing notice shall be waived by any Member who submits a signed waiver of notice before or after the meeting or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

Section 5: Executive Session. When determined by the Agency, that any matter pending before it is confidential in nature, it may, upon its own motion, establish an executive session in accordance with the NYS Open Meetings Law and exclude non-members from such sessions.

Section 6: Quorum: At all meetings of the Agency, a majority of the total members of the Agency, shall constitute a quorum for the purpose of transacting business. A majority of those present may meet and adjourn to some other time or until the quorum is obtained. Notice of any such adjournment need not be given to any Members who were present if the time and place thereof are announced at the meeting at which the adjournment is taken. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally scheduled.

Section 7: Actions. The voting on all issues coming before the Agency may be by voice vote and the yeas and nays shall be entered on the minutes of such meeting, except in the case of appointments and elections when the vote shall be by ballot.

The Agency shall decide which questions coming before the Agency require a roll call vote. Any action of the Agency shall be binding upon determination by a majority vote at a meeting of a quorum of the Members. Each Member shall be entitled to one vote.

Section 8: Action Without A Meeting. Any action required or permitted to be taken by the Members, may be taken without a meeting if all Members (7) consent in writing to the adoption of a resolution authorizing the action, and the written consents thereto by the Members of the Agency shall be filed with the minutes of the proceedings of the Agency.

Section 9: Action By Conference Call. Any one or more members of the Agency or any committee thereof, may participate in a meeting of said Agency or committee by means of a conference telephone call or similar communications equipment allowing all persons participating at the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 10: Conduct of Meetings. The Chairman, if present, shall preside at all meetings. Otherwise the Vice Chairman, if present, or, if neither of the foregoing is present, any other Member chosen by the members of the Agency present, shall preside. Except as otherwise provided in these by laws or by statute, "Robert's Rules of Order Revised" shall govern the conduct of all meetings.

ARTICLE V

POLICIES AND PROCEDURES

Section 1: Projects to be Considered by this Agency. It is the policy of this Agency that any project shall be considered by it which shall conform to the letter and spirit of the Laws of New York State, Chapter 18A of 1969, as Amended.

Section 2: Site of Agency Projects.

- i) The Agency shall not approve any project to be located on a site or within an area which does not conform to or has not been granted a variance from the zoning laws of the State, county, town or village.

- ii) The Agency shall not approve any project which shall be in violation NYS Environmental Quality Review Act.

- iii) The Agency shall not approve any project which shall be in violation of the health, labor or other laws of the State of New York or the United States nor of the local laws of the County of Delaware, township or village.

Section 3: Audit of Records and Accounts.

- i) The Agency shall annually secure a certified audit of its financial records and accounts and shall file a copy of such certified audit with the New York State Comptroller's Office and the Board of Supervisors of the County of Delaware within ninety (90) days after the close of the Agency's fiscal year, December 31.

- ii) The Agency may require any other operating statement which it shall determine is required for daily operation.

Section 4: Conveyance of Property. The Agency may insert in a contract for a project that, upon the payment in full of all notes, bonds an indebtedness incurred in connection with a project, that the Agency will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract and that the additional consideration for such conveyance may be nominal.

Section 5: The Agency, by resolution may adopt such rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these by Laws as they may be amended from time to time.

ARTICLE VI
CONTRACTS, RECORDS AND FISCAL MATTERS

Section 1: Books and Records. The Agency shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the Agency and any committee which the Members may appoint. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 2: Bank Accounts. The Agency may from time to time authorize the opening and maintenance of general and special bank accounts with such banks, trust companies or other depositories as the Members may designate. The Members may make such special rules and regulations regarding the management of these accounts, not inconsistent with these By Laws, as may deem expedient.

Section 3. Investments. The funds of the Agency may be retained in whole or in part in cash or be invested from time to time in such property, real, personal, or otherwise including stocks, bonds or other securities, as the Members may deem desirable. The Agency shall comply with the provisions of the Agency's Investment Policy, Adopted by Resolution December 15, 1998, as amended from time to time.

Section 4: Checks, Drafts or Orders of Payment. All checks, drafts, or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Agency shall, after approval of the Agency by resolution, be signed by such Officers or agents of the Agency and such manner as provided in Resolution No. 127, October 9, 2001, and as may be amended from time to time.

Section 5: Contracts. The Agency may authorize by resolution any Officer or Officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Agency, and such authority may be general or confined to specific instances.

Section 6. Corporate Seal. The Agency's seal shall be in such form as the Board of Directors shall prescribe. The Agency seal on any Agency bond, contract, obligation or other document may be a facsimile, engraved or printed, and shall not be required for the valid execution or delivery of any contract or instrument unless otherwise required by law.

Section 7: Fiscal Year. The fiscal year of the Agency shall be January 1 to December 31, unless otherwise determined by the Agency. The Agency shall maintain records according to such special fiscal years as may be required by the Agency's funding entities.

ARTICLE VII STANDARD OF CARE

Section 1: Duty of Members and Officers. Members and Officers shall discharge the duties of their respective positions in good faith and with the degree of diligence, care and skill which ordinarily prudent (wo)men would exercise under similar circumstances in like positions.

Section 2: Reliance in Good Faith. In discharging their duties, Members and Officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case presented by, (i) one or more Officers or employees of the Agency whom the Member believes to be reliable and competent in the matters presented, (ii) counsel, public accountants, or other persons as to matters which the Members or Officers believe to be within such person's professional or expert competence, or

(iii) a committee of the Agency upon which they do not serve, which committee the Members and Officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified Article VI, Section 1. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted.

ARTICLE VIII CODE OF ETHICS

Section 1: Disclosure Required. No Officer, Member, employee of the Agency ("Interested Person") shall engage in any activity or acquire any business investment or financial interest, either directly or indirectly, which conflicts in any manner with the best interests of the Agency or which interferes with or impedes an Interested Person's ability to perform his/her duties in good faith and in the best interests of the Agency unless

- i) the material facts as to such Interested Person's interest are disclosed in good faith or known to the Agency; and
- ii) the Agency authorizes or approves such contract or transaction by a vote sufficient for such purpose without counting the vote of the Interested Person.

Any contract or transaction entered into in violation of this provision shall be voidable by the Agency.

Section 2: Guidelines: Without limiting anything in Section 1, the following shall be a violation of the Agency's Code of Ethics unless fully disclosed and authorized or approved in accordance with Article IV.

- i) The ownership or acquisition, directly or indirectly, of any business investment or financial interest in any entity in which the Agency holds an interest, or which has current or known prospective business dealings with the Agency.
- ii) The ownership or acquisition, directly or indirectly, of any interest in real property or personal property in which the Agency holds an interest.
- iii) The acceptance by any Interested Person or a member of his/her immediate family, directly or indirectly, of loans, subsidy payments or other financial assistance provided through any of the Agency's programs.
- iv) The solicitation or acceptance, either directly or indirectly, of any payment, loan, gift, gratuity, discount or other thing of value from any entity in which the Agency holds an interest, or from any person or entity which has current or knows of prospective business dealings with the Agency. The solicitation for, or acceptance of, a contribution by the Agency from any person or entity shall not be deemed a business dealing. The acceptance of any payments, loans, gifts, gratuity, discount or other thing of value from any person or entity which is of nominal value (less than \$75) and within business practices shall not constitute a violation of this guideline.
- v) The diversion of any business opportunity of the Agency, or the participation in any business opportunity with knowledge of the fact that such business opportunity has been or will be submitted or presented to the Agency, whether or not the same is ultimately rejected by the Agency.

Section 3: Procedures. If a conflict of interest is relevant to a matter requiring action by the Agency, the Interested Person shall bring it to the attention of the Members and shall provide all relevant information of the Agency. The Interested Person should not be present in the room during, and should not participate in, the deliberation, decision or vote on the matter under consideration.

A copy of this Code of Ethics shall be given to each Officer, Member and employee of the Agency.

Section 4: Loans Prohibited. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Agency to any Officer or Member or to a corporation, firm, association or other entity in which an Officer or Member has a financial interest.

Section 5: Interest in Programs Prohibited. No Officer nor Member may be an officer or employee of an organization (other than a municipality, public benefit corporation or political jurisdiction) which has a contract with the Agency.

ARTICLE IX INDEMNIFICATION

Section 1: Non-Liability of Directors and Officers. No Member nor Officer shall be personally liable to the Agency's own behalf nor for the benefit of the Agency's creditors for damages for any breach of duty as a Member or Officer; provided, however, that the foregoing shall not eliminate or limit the liability of a Member or Officer of a judgement or other final adjudication adverse to such Member or Officer established that such Member's or Officer's acts were committed in bad faith or where the result of active or deliberate dishonesty and were material to the cause of action so adjudicated, or that such Member or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 2: Indemnification and Defense. If a Member or Officer of the Agency is made or is threatened to be made, a party to any action, suit, or proceeding, whether civil or criminal (including without limitation actions or proceedings of an administrative or investigative nature), in any matter arising from the fact that such person, his testator

or intestate, was a Member or Officer of the Agency, or served any other entity in any capacity, the Agency shall:

i) Promptly upon written request to the Agency, by or in behalf of, any Member or Officer therefor, undertake the defense of any such action or proceeding for the benefit of such Member or Officer, at the Agency's expense, subject to the right granted to such Member or Officer hereby to select legal counsel of his or her reasonable choice and/or to participate in his or her own defense.

ii) Indemnify such Member or Officer against all sums paid by him / her in the way of judgements, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, subject to the proper application of credit for any sums advanced to the Member or Officer pursuant to clause i) of this paragraph.

Such right of indemnification shall be a contract right that may be enforced in any manner desired by such Member or Officer. Such right of indemnification shall not be exclusive of any other right that such Member or Officer shall be entitled to his / her rights of indemnification under any agreement, resolution of members, provision of law or otherwise, as well as his / her rights under this By Law.

The indemnification provided for in this Article IX may apply whether or not the claim asserted is based on matters which antedate the adoption of this By Law and may continue as to a person who has ceased to be a Member, Officer or agent and may inure to the benefit of the heirs and personal representatives of such person.

Section 3: Insurance. To the extent not prohibited by law, the Agency may purchase and maintain insurance to indemnify the Agency and its Members and Officers.

ARTICLE X
AMENDMENT OF BY LAWS

These By Laws and any amendment thereof may be amended or repealed and additional By Laws may be adopted at any meeting of the Agency, at which a quorum is present, with the approval of a majority of all of the Members, but no amendment shall be adopted unless at least five days written notice thereof has been previously given to all members of the Agency.

Resolved and entered into the official record of the Minutes on this day, the 21st Day of August 2002, of the Delaware County Industrial Development Agency.