

**BYLAWS OF**  
**PENNSYLVANIA INTEGRATED LIBRARY SYSTEM CONSORTIUM**  
**A PENNSYLVANIA NOT-FOR-PROFIT CORPORATION**  
**Instituted 6/30/2011; Revised 7/17/2014; Adopted 10/30/2014**  
**Revised 11/16/2022**

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**ARTICLE I – OFFICES**

1. The registered office of the Corporation shall be in the Commonwealth of Pennsylvania .
2. The Corporation may also have offices at such places as the Board of Directors may from time to time appoint or the activities of the Corporation may require.

## **ARTICLE II – SEAL**

1. The corporate seal shall have inscribed thereon the name of the Corporation, **“PENNSYLVANIA INTEGRATED LIBRARY SYSTEM CONSORTIUM”** the year of its organization, "2011" and the words "Corporate Seal, Pennsylvania".

## **ARTICLE III – PURPOSES AND MEANS**

1. The corporation is incorporated under the Pennsylvania Nonprofit Corporation Law of 1988, as amended, for the following purpose or purposes:
  - a. The corporation is organized exclusively for charitable, religious, literary, educational, and scientific purposes, including, for such purposes, providing a multi-library shared integrated library system to Pennsylvania libraries by creating and maintaining an integrated library system for member libraries located in Pennsylvania.
2. The Corporation shall not operate its facilities nor provide its services nor otherwise hold its services and facilities out for gain, and no member shall be permitted to use corporate facilities for private profit. All funds and property received by the Corporation shall be used solely for the purposes set forth in Section 1 of this Articles III. No part of the net earnings of the corporation shall inure to the benefit of, or be distributed to, its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1 of this Article III. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Bylaws, the corporation shall not, except to an insubstantial degree, engage in any activities that are not in furtherance of the purposes set forth in Section 1 of this Article III. No part of the funds obtained from the membership nor any income or profit shall be distributable to members, Directors, or officers, except as reasonable compensation for services rendered.
3. Upon the dissolution of the corporation, its assets shall be distributed to one or more qualified organizations which are organized and operating in Pennsylvania that qualify as exempt organizations under Section 501 (c) (3) of the Code, as the Board of Directors of the

corporation shall elect. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

#### **ARTICLE IV – MEMBERS**

1. The Corporation shall have Members as set forth below:
  - a. There shall be one class of membership in the Corporation. Membership is held by the participating library entity. No member of this Corporation shall be entitled to vote, other than on User Group matters. Any power or authority otherwise conferred upon the members of this Corporation by statute or by the Articles of Incorporation shall be vested exclusively in the Board of Directors of this Corporation.
  - b. Membership shall be limited to any public or private nonprofit entity operating in Pennsylvania that provides library services.
  - c. Membership shall be on a calendar year basis, effective upon receipt of a signed Membership Agreement. Membership is automatically renewed on an annual basis unless notification of termination is given as described in items (e) and (f) below, “Termination”.
  - d. Each member library entity shall appoint (a) member representative(s) as set out in the PaILS Membership Agreement.
  - e. Any member library entity may terminate membership in the Corporation by providing written notice to the Board of Directors at least six (6) months prior to its membership termination, in accordance with the provisions set forth under the Membership Agreement. The Board of Directors may, by two-thirds (2/3) majority of all Directors, terminate a membership whenever in its judgment the best interests of the Corporation would be served. Termination of membership, for any reason, shall not relieve a member library from outstanding fiscal or contractual obligations to the Corporation.
  - f. A member library entity leaving the Corporation or being terminated has the right to receive at cost and in a timely manner a complete and current copy of its catalog database with attached bibliographic records extracted from the Corporation’s database in a useful format.

2. The Board of Directors may determine annually the amount of initiation fee, if any, and annual dues payable by the members.
3. Upon written request signed by a former member and filed with the Secretary, the Board of Directors may, by the affirmative vote of two-thirds (2/3) of the Directors, reinstate such former member to membership upon such terms as the Board of Directors may deem appropriate.
4. Membership in this Corporation is not transferable or assignable.

#### **ARTICLE V – BOARD OF DIRECTORS**

1. The business and affairs of this Corporation shall be managed by its Board of Directors, which shall consist of not less than seven (7) and not more than nine (9) voting members, who shall be natural persons of full age and who shall act as representatives of members of this Corporation. Such Directors shall be natural persons of full age and need not be residents of this Commonwealth.
2. The Incorporator shall appoint the members of the initial Board of Directors. For purposes of establishing staggered terms for the members of the Board of Directors, the initial Board of Directors shall serve the following terms:

Class I --	One (1) year for two (2) members NOTE: Jan. 1, 2011 – Dec. 31, 2011
Class II --	Two (2) years for three (3) members NOTE: Jan. 1, 2011 – Dec. 31, 2012
Class III --	Three (3) years for four (4) members NOTE: Jan. 1, 2011 – Dec. 31, 2013

- a. The Board of Directors shall thereafter appoint all members of the Board of Directors after the initial appointment by the Incorporator. The initial Board of Directors shall be comprised of the following persons:

i. – Class I		vi. – Class III
ii. – Class I		vii. – Class III
iii. – Class II		viii. – Class III
iv. – Class II		ix. – Class I
v. – Class II		

3. When positions are vacated during a term held on the Board of Directors, nominations will be sought for these vacated positions. However, the vacated position during a term will be filled by the Board of Directors voting via email. Directors will serve a term as set forth above to commence on January 1. A Director shall hold office until the expiration of the term for which he or she was elected and until a successor has been duly elected, qualified and shall have assumed office, or until his or her earlier death, disability, resignation or removal. A decrease in the number of Board of Directors members shall not have the effect of shortening the term of any incumbent Board member.
- a. Directors are limited to two successive terms on the Board of Directors.
- b. The term of the Director's successor is not extended by the time that has elapsed before the successor's appointment and qualification. When a Director is appointed to fill a vacancy on the Board of Directors, the new Director's term will be the unexpired term of the member being replaced.
4. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these Bylaws directed or required to be exercised or done by the members.
5. The Board of Directors, in addition to an Annual Meeting, as described herein, shall hold additional meetings at least three (3) times during the year at such times and at such places within this Commonwealth, as a majority of the Board of Directors may from time to time designate, or as may be designated in the notice calling the meeting(s). An annual meeting of

the Board of Directors shall be held in January of each year, on a date to be determined by a majority of the Board of Directors, if not a legal holiday, and if a legal holiday, then on the next full business day. when they shall elect a Board of Directors and transact such other business as may properly be brought before the meeting. A nominating committee shall approve all persons proposed for election to the Board of Directors. Nominations from the floor of the annual meeting will be accepted. If the annual meeting shall not be called and held within six (6) months after the designated time, any member of the Board of Directors may call such meeting.

6. Written, e-mail, telephone, or personal notice of every meeting of the Board of Directors shall be given to each Director at least five (5) days prior to the day named for the meeting.
7. A majority of the Board of Directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent or consents in writing setting forth the action so taken shall be signed by all of the Directors in office and shall be filed with the Secretary of the Corporation
8. The Board of Directors may, by resolution adopted by a two-thirds (2/3) majority of the Directors in office, establish one or more committees as set forth in Article VI below. Each committee shall have a maximum of seven (7) members. Any such committee, to the extent provided in the resolution of the Board of Directors or in the Bylaws, shall have and may exercise all of the powers and authority of the Board of Directors, except that no such committee shall have any power or authority as to the following:
  - a. The submission to members of any action required by statute to be submitted to the members for their approval.
  - b. The filling of vacancies in the Board of Directors.
  - c. The adoption, amendment or repeal of the Bylaws.
  - d. The amendment or repeal of any resolution of the Board of Directors.
  - e. Action on matters committed by the Bylaws or resolution of the Board of Directors to another committee of the Board of Directors.
9. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the

committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Each Committee of the Board of Directors shall serve at the pleasure of the Board of Directors.

10. Directors may be removed from office without assigning any cause by the vote of members entitled to cast at least a two-thirds (2/3) majority of the votes which all Directors present would be entitled to cast at any annual or other regular election of the Directors. In case the Board of Directors or any one or more Directors are so removed, new Directors may be elected at the same meeting.
11. A Director of this Corporation shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless: (i) the Director has breached or failed to perform the duties of his office in good faith, in a manner he reasonably believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances; and (ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. The provisions of the Section 10 shall not apply to the responsibility of liability of a Director pursuant to any criminal statute or for the payment of taxes pursuant to local, state, or federal law.
12. The Board of Directors may declare vacant the office of a Director if he/she (i) is declared of unsound mind by an order of court; or (ii) is convicted of felony; or (iii) if within sixty (60) days after notice of his/her selection, he/she does not accept such office either in writing or by attending a meeting of the Board of Directors, and fulfill such other requirements of qualification as the Bylaws may specify; or (iv) fails to attend at least three (3) consecutive meetings.

#### **ARTICLE VI – USER GROUP**

1. The Board of Directors shall recognize the SPARK User Group. This User Group shall be provided a charter by resolution of the Board. The purposes of the group shall be to:
  - a. Serve as a forum to influence the development and improvement of the Pennsylvania Integrated Library System for the benefit of SPARK User Group

members.

- b. Foster and improve communication and relationships among members, and between members.
- c. Gather and share information on the use of the Pennsylvania Integrated Library System products among members.
- d. Coordinate and prioritize member requests for development, documentation and support of the Pennsylvania Integrated Library System.
- e. Support the mission and goals of PaILS.
- f. Report to the PaILS board on the topics listed in a-e.

## **ARTICLE VII – OFFICERS**

1. The executive officers of the Corporation shall be chosen by the Board of Directors, and shall be a President, Vice President, Secretary, Treasurer and such other officers and assistant officers as the needs of the Corporation may require. The President and Secretary shall be natural persons of full age; the Treasurer, however, may be a corporation, but if a natural person, shall be of full age. They shall hold their offices for a term of one (1) year and shall have such authority and shall perform such duties as are provided by the Bylaws and as shall from time to time be prescribed by the Board of Directors. It shall be necessary for the officers to be members of the Board of Directors and any number of offices may be held by the same person. The Board of Directors may secure the fidelity of any or all such officers by bond or otherwise.
2. Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.
3. The President shall be the chief executive officer of the Corporation; he/she shall preside at all meetings of the members and Board of Directors; he/she shall have general and active management of the affairs of the Corporation; shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the Board of Directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the Corporation. He/she shall execute bonds, mortgages and other documents requiring a seal, under the seal of the



Corporation. He/she shall be an EX-OFFICIO member of all committees and shall have the general powers and duties of supervision and management usually vested in the office of President.

4. The Vice President shall act in all cases for and as the President in the latter's absence or incapacity, and shall perform such other duties as he/she may be required to do from time to time including, but not limited to, serving as liaison with the SPARK User Group.
5. The Secretary shall attend all sessions of the Board of Directors and all meetings of the members and act as clerk thereof, and record all the votes of the Corporation and the minutes of all its transactions in a book to be kept for that purpose. The secretary or his/her designee shall perform like duties for all committees of the Board of Directors when required. He/she shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he/she shall be. He/she shall keep in safe custody the corporate seal of the Corporation, and when authorized by the Board of Directors, affix the same to any instrument requiring it.
6. The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall keep the moneys of the Corporation in a separate account to the credit of the Corporation. He/she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and Board of Directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his/her transactions as Treasurer and of the financial condition of the Corporation.
7. The Executive Director shall be an ex-officio non-voting officer of the Corporation. They are selected by the Corporation upon the recommendation and approval of the Board. The Executive Director shall be responsible to the Board through the President to carry out the programs and implement the policies of the Corporation, and as authorized by the Board of Directors, sign any legal documents or represent the Corporation.

## **ARTICLE VIII – VACANCIES**

1. If the office of any officer or agent, one (1) or more, becomes vacant for any reason, the Board of Directors may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

Vacancies in the Board of Directors, including vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the Board of Directors, though less than a quorum, and each person so elected shall be a Director until his/her successor is elected by the other members of the Board of Directors.

## **ARTICLE IX – BOOKS AND RECORDS**

1. The Corporation shall keep an original or duplicate record of the proceedings of the members and the Board of Directors, the original or a copy of its Bylaws, including all amendments thereto to date, certified by the Secretary of the Corporation, and an original or a duplicate membership register, giving the names of the members, and showing their respective addresses and the class and other details of the membership of each. The Corporation shall also keep appropriate, complete and accurate books or records of account. The records provided for herein shall be kept at either the registered office of the Corporation in this Commonwealth, or at its principal place of business wherever situated.
2. Every member shall, upon written demand under oath stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the membership register, books and records of account, and records of the proceedings of the members and the Board of Directors, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of such person as a member. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the member. The demand under oath shall be directed to the Corporation at its registered office in this Commonwealth or at its principal place of business wherever situated.

## **ARTICLE X – TRANSACTION OF BUSINESS**

1. The Corporation shall make no purchase of real property nor sell, mortgage, lease away or otherwise dispose of its real property, unless authorized by a vote of two-thirds (2/3) of the members in office of the Board of Directors. If the real property is subject to a trust the conveyance away shall be free of trust and the trust shall be impinged upon the proceeds of such conveyance.
2. Whenever the lawful activities of the Corporation involve among other things the charging of fees or prices for its services or products, it shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the further development, maintenance and operation of the lawful activities of the Corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, Board of Directors or officers of the Corporation.
3. All checks or demands for money and notes of the Corporation shall be signed on authority of the Board.
4. The Corporation shall have all powers conferred upon nonprofit corporations by the Pennsylvania Nonprofit Corporation Law of 1988, not otherwise limited by the Articles of Incorporation of the corporation, or limited by these Bylaws. The corporation shall also have the following powers:
  - a. To purchase, lease, take or receive by gift, devise or bequest, or otherwise acquire, own, hold, use and otherwise deal in and with any real or personal property, or any interest therein.
  - b. To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.
  - c. To purchase, take, receive, subscribe for, and otherwise acquire, own, hold, vote, use or employ shares or other interests in or obligations of domestic or foreign corporations (whether for profit or not for profit), associations, partnerships or individuals; and to sell, mortgage, pledge, loan or otherwise dispose of such shares, interests or obligations.
  - d. To make contracts; to incur liabilities which enable it to accomplish any or all of its purposes; to borrow money for its corporate purposes at such rates of interest as the Foundation may determine; to issue notes, bonds and other obligations; and to secure any of its property, franchises and income.

- e. To invest its funds in any real or personal property; to lend for its corporate purposes; and to take and hold real and personal property as security for the payment of funds so invested and loaned.
  - f. To provide, to the fullest extent permitted by the Pennsylvania Nonprofit Corporation Law of 1988 and any amendment thereto, for the indemnification and advancement of expenses incurred by directors and officers as the result of a third party claim for any action taken by such directors and officers.
  - g. To create a fund of any nature or otherwise secure or insure in any manner any of the Foundation's Indemnification obligations, all to the fullest extent of and as permitted by the Pennsylvania Nonprofit Corporation Law of 1988 and any amendments thereto.
  - h. To make donations in furtherance of any of the Foundation's purposes.
  - i. To provide for the appointment with salary of any personnel to constitute the staff of the Foundation.
  - j. To have and exercise all powers necessary or convenient to affect any and all purposes for which the Foundation is organized.
  - k. To accept donations of gifts which are designated for a particular purpose, entity, or entities. If any Director may be personally affected by an issue of corporate concern, after discussion and deliberation, he or she shall refrain from making any recommendations of voting thereon, but shall be counted in determining whether a quorum exists.
  - l. To select the Executive Director of the Corporation.
  - m. To grant and withdraw the Charter of the User Group.
5. It is the duty of each Director to make known when and if any such conflict shall exist. The Board shall, as soon as possible after its organization, adopt, maintain, implement, amend from time to time, and enforce a policy concerning the conflict of interest of any Director, officer, or employee of the Corporation, which policy may provide reasonable sanctions, including dismissal, for any violation of this policy.

#### **ARTICLE XI – ANNUAL REPORT/AUDIT**

- 1. The Board of Directors shall present annually to the members a report, verified by the Chairman and Treasurer or by a majority of the Board of Directors, showing in

appropriate detail the following:

- a. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year immediately preceding the date of the report.
- b. The principal changes in assets and liabilities including trust funds, during the year immediately preceding the date of the report.
- c. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the Corporation.
- d. The expenses or disbursements of the Corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the Corporation.
- e. The number of members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and addresses of the current members may be found. This report shall be filed with the minutes of the meeting of members.

#### **ARTICLE XII – NOTICES**

1. Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof by first class mail, postage prepaid, or by e-mail, charges prepaid, to his/her address appearing on the books of the corporation, or supplied by him/her to the Corporation for the purpose of notice. If the notice is sent by mail, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail for transmission to such person. A notice of the meeting shall specify the place, day and hour of the meeting and any other information required by statute or these Bylaws. When a special meeting is adjourned it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.
2. Whenever any written notice is required to be given under the provisions of the statute or

by the Articles of Incorporation or by the Bylaws of this corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice, except as otherwise required by statute, neither the business to be transacted at nor the purpose of a meeting need be specified in the waiver of notice of such meeting. Attendance by a person at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

### **ARTICLE XIII – LIQUIDATION OF CORPORATION**

1. This Corporation is not organized, nor shall it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits, or dividends to its members and is organized solely for nonprofit purposes. No part of the profits or net income of this Corporation shall ever inure to the benefit of any Director, officer, or member thereof, or to any individual. Upon the dissolution of the corporation, its assets shall be distributed to one or more qualified organizations which are organized and operating in Pennsylvania that qualify as exempt organizations under Section 501(c)(3) of the Code, as the Board of Directors of the corporation shall elect. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

### **ARTICLE XIV – LIABILITY OF DIRECTORS**

1. A Director of the Corporation shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless:
  - a. The Director has breached or failed to perform the duties of his or her office as required by applicable law or as prescribed in Section 3.21 below; and
  - b. The breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.
  - c. The provisions of this shall not apply to:

- The responsibility or liability of a Director pursuant to any criminal statute; or
  - The liability of a Director for the payment of taxes pursuant to local, state or federal law, if applicable.
2. A Director of the Corporation shall stand in a fiduciary relationship to the Corporation, and shall perform his duties as a Director, including his duties as a member of any committee of the Board of Directors upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his duties, a Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:
- a. One or more officers or employees of the corporation whom the Director reasonably believes to be reliable and competent in the matters presented;
  - b. Legal counsel, public accountants or other persons as to matters which the Director reasonably believes to be within the professional or expert competence of such person; or
  - c. A committee of the Board of Directors upon which he or she does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.
3. A Director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause his reliance to be unwarranted.
- a. Absent breach of fiduciary duty, lack of good faith or self-dealing, any act of the Board of Directors, a committee thereof or an individual Director shall be presumed to be in the best interests of the corporation
  - b. Notation of Dissent. A Director who is present at a meeting of the Board of Directors, or of a committee of the Board, at which action on any corporate matter is taken on which the Director is generally competent to act, shall be presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting or unless the Director files a written dissent to the action with the secretary of the meeting before the adjournment thereof or transmits the dissent in writing to

the Secretary of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a Director who voted in favor of the action. Nothing in this Section or in these Bylaws shall bar a Director from asserting that minutes of the meeting incorrectly omitted his dissent if, promptly upon receipt of a copy of such minutes, the Director notifies the Secretary in writing, of the asserted omission or inaccuracy.

## **ARTICLE XV – INDEMNIFICATION**

1. The corporation shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an indemnified capacity, including, without limitation, liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:
  - a. where such indemnification is expressly prohibited by applicable law;
  - b. where the conduct of the indemnified representative has been finally determined:
    - to constitute willful misconduct or recklessness within the meaning of 15 Pa.C.S. § 513(b) and § 1746(b) and 42 Pa. § 8365(b) or any superseding provision of law sufficient in the circumstances to bar indemnification against liabilities arising from conduct; or
    - to be based upon or attributable to the receipt by the indemnified representative from the Corporation of a personal benefit to which the indemnified representative is not legally entitled; or
    - to the extent such indemnification has been finally determined in a final adjudication pursuant to Section 6.6 to be otherwise unlawful.
2. If an indemnified representative is entitled to indemnification in respect of a portion, but not all, of any liabilities to which such person may be subject, the Corporation shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.
3. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the



indemnified representative is not entitled to indemnification.

4. For purposes of this Article:
  - a. "Indemnified capacity" means any and all past, present and future service by an indemnified representative in one or more capacities as a Director, officer, employee or agent of the Corporation, or, at the request of the Corporation, as a Director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise;
  - b. "Indemnified representative" means any and all Directors and officers of the Corporation and any other person designated as an indemnified representative by the Board of Directors of the Corporation (which may include any person serving at the request of the Corporation, as a Director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise);
  - c. "Liability" means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense, of any nature (including, without limitation, attorneys' fees and disbursements); and
  - d. "Proceeding" means any threatened, pending or completed action suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Corporation, a class of its security holders or otherwise.
5. Notwithstanding other provision of this Article, the corporation shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated ( which shall not be deemed to include counter-claims or affirmative defenses) or participated in as an intervener or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the Directors in office. This Section 6. 2 does not apply to a reimbursement of expenses incurred in successfully prosecuting or defending an action under Section 6.6 or otherwise successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this Article.

6. The Corporation shall pay the expenses (including attorneys' fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Section 6.1, or the initiation or participation in an action which is authorized pursuant to Section 6.2, upon receipt of an undertaking by or on behalf of the indemnified representative to repay the amount if it is ultimately determined pursuant to Section 6.6 that such person is not entitled to be indemnified by the Corporation pursuant to this Article. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.
7. To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the Corporation may maintain insurance, obtain a letter of credit, act as self insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or sue any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate. Absent fraud, the determination of the Board of Directors with respect to such amounts, costs, terms and conditions shall be conclusive against all security holders, officers and Directors and shall not be subject to voidability.
8. An indemnified representative shall be entitled to indemnification within thirty ( 30 ) days after a written request for indemnification has been delivered to the Secretary of the Corporation.
9. Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article shall be decided only by a non-jury trial in the Court of Common Pleas of Cumberland County, or by arbitration under its local rules of court should the amount in controversy be within such limits requiring arbitration.
  - a. The party or parties challenging the right of an indemnified representative to the benefits of this Article shall have the burden of proof.
  - b. The Corporation shall reimburse an indemnified representative for the expenses (including attorneys, fees and disbursements) incurred by him or her in successfully prosecuting or defending such proceeding.
10. If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability of portion thereof, the corporation shall contribute to the

liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

11. Mandatory Indemnification of Directors, Officers, etc.: to the extent that an authorized representative of the Corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in 15 Pa. C.S. §§ 5741 or 5742, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection therewith.
12. All rights under this Article shall be deemed a contract between the corporation and the indemnified representative pursuant to which the Corporation and each indemnified representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.
13. The rights granted by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement, vote of disinterested Directors or otherwise, both as to action in an indemnified capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this Article shall continue as to any person who has ceased to be an indemnified representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person.
14. Each person who shall act as an indemnified representative of the Corporation shall be deemed to be doing so in reliance upon the rights provided in this Article.

#### **ARTICLE XVI – MISCELLANEOUS PROVISIONS**

1. The fiscal year of the Corporation shall end on the last day of December.
2. One or more persons may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.
3. So long as the Corporation shall continue to be organized on a nonstock basis, the Board

of Directors shall have authority to provide for the members to make capital contributions in such amounts and upon such terms as are fixed by the Board of Directors in accordance with the provisions of section 5541 of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

4. The Board of Directors, by resolution, may authorize the Corporation to accept subventions from members or nonmembers on terms and conditions not inconsistent with the provisions of section 5542 of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.
5. The Corporation shall, to the fullest extent permitted by law, indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, civil, criminal, administrative or investigative (and whether brought by or in the right of the corporation) by reason of the fact that he or she is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him/her in connection with such action, suit or proceeding.
6. Voting by proxy shall not be permitted.

#### **ARTICLE XVII – AMENDMENTS**

1. Bylaws may be adopted, amended or repealed by the vote of the Board of Directors of at least a majority of the votes which all Directors present are entitled to cast thereon at any regular or special meeting duly convened after notice to the Directors of that purpose.