

DRAFT

LEHIGH VALLEY INDUSTRIAL PARK VII

OWNERS ASSOCIATION BY-LAWS

07/11/06

MISSION STATEMENT

The Lehigh Valley Industrial Park VII Owners Association (“Association”) is a non-profit organization comprised of participating individuals and/or entities that own real property (“Owners”) in the industrial park known as LVIP VII (the “Park”). The Association’s purpose is to maintain and improve the common areas within the Park and to encourage Park residents to operate properties consistent with maintaining the appearance and value of the Park environment. The common areas are identified in paragraph C of these By-Laws. Beginning January 1, 2017, the Association shall also review any plans for the construction, renovation or expansion of existing buildings and facilities within the Park to ensure compliance with the recorded Protective Covenants applicable to the Park. A Board of Directors shall have all the necessary powers and duties for the administration of the affairs of the Association, including establishing budgets and financial plans, assessing the Owners and establishing the means and methods for collecting assessments and charges.

A) MEMBERS.

1. **MEMBERSHIP.** All Owners of land in the Park shall be members of the Association and shall be obligated to pay all assessments properly levied by the Association. All Members shall be bound by the provisions of these By-Laws. In the event an Owner sells or otherwise transfers title to any land within the Park, the transferee shall be obligated to become a Member of the Association and be bound by

these By-Laws as set forth in the Protective Covenants.

2. **MEETINGS OF MEMBERS AND QUORUM.** Unless otherwise decided by the Board, the Members shall convene one time each year for an annual meeting at a time and location to be decided by the Board. In addition, the Members may convene for special meetings. Special meetings shall be held at the request of a majority of the Board of Directors or upon the written petition of Members who cumulatively own 40% or more of the land in the Park, based on acres, or upon written petition of 40% or more of the total number of Members, irrespective of the owned acreage. The attendance in person, by proxy or by absentee ballot of the holders of 20% of the acreage owned by Members in the Park shall constitute a quorum for all Member meetings.

3. **PARTICIPATION IN MEETINGS.** One or more Members may participate in meetings of the membership by means of conference telephone or similar communication equipment by which all persons participating can hear each other. Meetings of the Members shall be attended by the Owner, if an individual, or if a legal entity, by an officer, partner, member (if an LLC), or duly authorized representative of the Member.

4. **NOTICE.** All meetings of Members must be preceded by a written notice sent via either first class mail or email at least ten (10) calendar days in advance stating the time, place and date of the meeting and the purpose thereof.

5. **VOTING.** On all matters voted upon or presented to the Members for their consideration, each Member shall be entitled to cast that number of votes equal to the number of acres owned by the Owner in the Park, rounded to the nearest whole

number of acres. No fractional voting shall be permitted. The majority of the votes cast shall be controlling on any issue. Votes may be cast by the Member, if an individual, or, if a legal entity, by an officer, partner, member (if an LCC), or by a duly authorized representative of the Member.

B) BOARD OF DIRECTORS

1. **ESTABLISHMENT.** The Association shall be governed by a Board of Directors consisting of not more than seven (7) members who shall be elected as their terms expire by the Members of the Association at the Annual Meeting.

2. **QUALIFICATIONS.** To qualify as a Director, a person must be an officer, partner or a duly authorized representative of any Member owning more than one (1) acre of land in the Park.

3. **COMPENSATION.** No Director shall receive any compensation from the Association for acting as such, but may be reimbursed for any expenses incurred in the performance of his or her duties.

4. **POWERS AND DUTIES.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association. The Board shall have the power to adopt Rules and Regulations deemed necessary for the operation of the Association, provided such Rules and Regulations shall not be in conflict with these By-Laws. The Board's authority shall also include, but not be limited to, the following:

(a) To keep or cause to be kept, books and records with detailed accounts of all receipts and expenditures affecting the Association. Such books shall be

available for examination during normal business hours by any Owner or duly authorized agent upon reasonable notice.

(b) To hire agents, employees, managers and independent contractors it deems to be necessary for the purpose of managing the Association and maintaining the common areas of the Park. All management agreements must be in writing.

(c) To hire independent legal counsel to assist in its affairs.

(d) To carry out the obligations and powers of the Association as set forth in Sections C and D below.

5. **TERM OF OFFICE.** The term of office for each elected Director shall be three (3) years. The terms of the Directors shall be staggered so that, to the extent possible, not more than three (3) directors at time shall stand for re-election. All Directors shall serve until their successors are duly elected.

6. **ELECTION OF DIRECTORS.** Except as provided for elsewhere in these By-Laws, Director positions which become open by reason of the normal expiration of a Director's term shall be filled by an election to be conducted in the following manner: At least sixty (60) days prior to the date on which any Directors are to be elected, the Board of Directors shall send to each Member a request for nominations for the position of Director. At least thirty (30) days prior to the date on which any Directors are to be elected, the Board of Directors shall deliver to each Member a ballot for the election of Directors containing the names of nominees chosen by the Board of Directors as well as provisions for "write-in" candidates. The ballots shall be returned to the Board of Directors at such time and in such manner as may be provided by the Board

of Directors. The Board of Directors shall announce the names of those persons who have been elected Directors prior to the commencement of the term of office of such Directors. In any election, the available vacancies on the Board of Directors shall be filled by the equivalent number of nominees receiving the highest number of votes.

7. **VACANCIES.** Whenever any Director shall die, be unable to act, resign, shall cease to be qualified under Paragraph B(2) hereof or whenever a vacancy exists due to an insufficient number of nominees pursuant to B(6) above, such Director's position shall automatically be vacated and the remaining Directors, within thirty (30) days after such vacancy is created, shall convene a special meeting of the Board of Directors, and they shall elect, by majority vote, a successor Director for such vacant position for the remainder of the unexpired term.

8. **MEETINGS OF THE BOARD OF DIRECTORS, QUORUM AND OFFICERS.** A majority of Directors shall constitute a quorum. Actions of the Board of Directors shall be by majority vote of those Directors in attendance at any meeting at which there is a quorum present with each Director having one vote. The Principal Officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board. The Board may appoint such other officers as it deems necessary. The President and Vice President must be members of the Board. Any other officers may, but need not be members of the Board of the Association. Any officer other than the President may hold more than one office. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board (to be held following the election at the Annual Meeting of the Association) or until their successors have been elected and

qualified and shall continue to hold such office at the discretion of the Board. The Board shall promulgate operating procedures for the conduct of its affairs. The Board of Directors shall hold at least one annual meeting each year. Written notice of the date, time and location of such annual meeting shall be mailed (or emailed) to each Director at least ten (10) days in advance. The Board may also hold additional regularly scheduled or special meetings, provided ten (10) days notice is given. Special meetings of the Board of Directors may be called at any time by the President, or shall be called by the President upon request by a majority of Directors. One or more Members of the Board may participate in meetings by means of conference telephone or similar communication equipment by which all persons participating can hear each other.

C) DUTIES AND POWERS OF THE ASSOCIATION. The Association shall hold title to and pay real estate and other taxes on those areas of the Park which are established for the common benefit of all the Owners and which are deeded to the Association by Lehigh Valley Industrial Park, Inc. The Association shall properly maintain the common areas and the improvements thereon, whether or not title thereto is held by the Association. As presently constituted, the common areas (“Common Areas”) are as follows:

- (i) The 30’ emergency access way on the Saucon Tract.
- (ii) Gateway signage and landscaping of Emery Street and Commerce Center Boulevard.

At the discretion of the Board, the Association shall also be responsible for the maintenance of all trees within twelve (12) feet of the curb line throughout the Park. Said maintenance may include, but not be limited to, the edging, mulching, pruning, fertilizing and, if necessary, replacement of the above-referenced trees, provided, however, that, at the discretion of the Board, the Owner may be held responsible for the cost of the replacement of any trees on their (its) property which may be necessary.

Beginning January 1, 2017, the Association shall also review, have meaningful consultation with the Owners, if required, and approve any plans for new construction, renovation and/or expansion of any existing building or facility located within the Park to ensure continuing compliance with the recorded Protective Covenants applicable to the Park. The Board of Directors shall also adopt Regulations for the submission and review of such plans and may contract with qualified third parties to assist in such reviews.

D) LEVYING OF ASSESSMENTS.

1. **AUTHORITY.** The Association shall have the right to levy and collect general and special assessments from the Members for the purpose of carrying out the obligations, duties and powers herein set forth, including any legal and other costs incurred. All assessments shall be on a calendar year basis. All Members hereby agree to pay the assessments, provided they are properly adopted by the Board.

2. **FISCAL YEAR.** The fiscal year of the Association shall be the calendar year.

3. **PROCEDURES.** All assessments shall be made in the following manner and shall be subject to the following procedures and limitations:

(a) On or about the month of September of each year, the Board of Directors shall adopt a budget for the ensuing calendar year. At that time, the Board shall also designate a date, time and place for a general Membership meeting to present the budget. In the absence of said meeting, a copy of the Budget should be sent to all Owners along with an invoice for their pro-rata share of the expenses of the Association. (See (b) below.) In the event a new Budget is not adopted by the Board, the Budget of the prior year shall remain in effect until such time that the new annual or an adjusted Budget is adopted.

(b) The Board of Directors shall assess each Owner a pro rata share of the costs to maintain the Common Areas and operate the Association. Such share shall be equal to a fraction, the numerator of which shall be the total acreage owned by that Owner and the denominator of which shall be the total number of acres in all land in LVIP VII owned by the Members, as of the date the budget is adopted.

(c) In addition, the Board of Directors may levy such special assessments in the manner herein set forth, as it deems necessary to be in the best interest of the Association.

4. **NOTICE OF ASSESSMENT.** Notice of each assessment shall be given by sending a written statement by postage prepaid mail addressed to the Owner. An assessment shall become due and payable within thirty (30) working days after notice has been given. In the event an Owner fails to pay the assessment within thirty (30) days after the notice of assessment has been given, the Association shall have a lien against the

real estate owned by the Owner in LVIP VII for the amount of such unpaid assessment. Such lien may be foreclosed by the Association in the same manner as provided by law for the foreclosure and sale of real estate mortgages. In the event of such foreclosure, the Association shall be entitled to recover the court costs and reasonable attorney fees of the foreclosure. The right of the Association to foreclose the lien shall be in addition to any other remedy which may be available at law or equity to the Association for the collection of the amounts due.

5. **USE OF FUNDS.** All assessment funds received by the Association shall be used to provide for, maintain and improve the Common Areas and to fulfill all other obligations of the Association hereunder.

6. **SURPLUSES.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of assessments or otherwise, and may carry forward as surplus any balances remaining, provided the total amount of such surplus shall not exceed \$20,000.00. The Board of Directors shall not be obligated to apply any such surpluses to the reduction of the amount of the general or special assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the effectuation of the purposes of these provisions. If said surplus exceeds \$20,000.00, then, after taking into account any unpaid bills, pending capital improvements, replacement or similar expense, the Board of Directors, in its sole discretion, may apply those amounts in excess of \$20,000.00 on a pro rata basis to the assessments due for the succeeding year or distribute said excess over \$20,000.00 to the Owners on an equitable basis.

E) ASSOCIATION AS OWNER OF LAND. The Association shall have the right to accept and convey title to real property located within the Park, or property which is contiguous, adjoining or adjacent to the Park in order to provide for, maintain, operate and improve the quality of the Common Areas. Lehigh Valley Industrial Park, Inc. shall have the right to convey to the Association the Common Areas described in paragraph C above.

F) AMENDMENT. These By-Laws may be amended or repealed in whole or in part by the majority vote of the Association.

G) INDEMNIFICATION.

1. **PERSONAL LIABILITY OF DIRECTORS.** A Director of the Association shall not be personally liable for monetary damages for any action taken, or any failure to take any action, as a Director except to the extent that by law (including the Directors' Liability Act, 42 Pa. Cons. Stat. 8361 et seq.) a Director's liability for monetary damages may not be limited.

2. **INDEMNIFICATION.** The Association shall 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, including actions by or in the right of the Association, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a Director, officer or agent of the Association, or is or was serving while a Director, officer or agent of the Association or at the request of the Association as a Director, officer, employee, agent, fiduciary or other representative of another corporation, partnership, joint venture trust, employee benefit plan or other enterprise, against expenses (including attorney' fees), judgments, fines, excise taxes and

amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding unless the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

3. **ADVANCEMENT OF EXPENSES.** Expenses incurred by a Director, officer, agent or employee of the Association in defending a civil or criminal action, suit or proceeding described in Section 2 above shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person providing that the Director, officer, agent or employee of the Association shall repay such amount if it shall ultimately be determined that the person is not entitled to be indemnified by the Association.

4. **OTHER RIGHTS.** The indemnification and advancement of expenses provided by or pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Association's insurance, vote of members or Directors or otherwise.

5. **INSURANCE.** The Association shall have the power to purchase and maintain insurance on behalf of the Association as well as any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity arising out of his/her status as such, whether or not the Association would have

the power to indemnify him/her against such liability under the provisions of these By-Laws.

6. **SECURITY FUND; INDEMNITY AGREEMENTS.** The Board of Directors of the Association (notwithstanding their interest in the transaction) may create and fund a trust fund or fund of any nature and may enter into agreements with its Directors, officers, employees and agents for the purpose of securing or insuring in any manner its obligation to indemnify or advance expenses provided for in this Article.

7. **MODIFICATION.** The duties of the Association to indemnify and to advance expenses to a Director of the Association, officer, agent or employee of the Association provided in this Article shall be in the nature of a contract between the Association and each such Director, officer or employee, and no amendment or repeal of any provision of this Article, and no amendment or termination of any trust or other fund created pursuant to Section 6 above, shall alter, to the detriment of such Director, officer, agent or employee, the right of such person to the advance of expenses or indemnification related to a claim based on an act or failure to act which took place prior to such amendment, repeal or termination.

H) **ENFORCEMENT.** These By-Laws provide for the governing of the Association, and every Owner shall be bound by its provisions. Any violation of these By-Laws by a Member shall entitle the Association to enjoin, abate or remedy the violation by appropriate legal proceedings, either at law or in equity.

I) **MISCELLANEOUS.**

1. **RULES OF PROCEDURE.** The rules contained in the current edition of Robert's Rules of Order Newly Revised, as modified by rules and regulations of the Board of Directors, shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with these By-Laws.

2. **WAIVER OF NOTICE.** Whenever notice is required to be given under the provisions of the applicable statutes or these By-Laws, a waiver thereof in writing signed by the persons entitled to said notice, whether before or after the time stated herein, shall be deemed equivalent thereto. Attendance at any meeting by a Director or member or other person shall be conclusively deemed a waiver of notice of that meeting, except when the Director or members or other persons attend the meeting for the sole and expressed purpose of objecting to the absence of proper notice of the meeting.

3. **DISSOLUTION OF ASSETS.** Upon the dissolution or other termination of the Association, no part of its property or any of the proceeds thereof shall be distributed to or inure to the benefit of any Owner, Member, Director, Officer or Employee of the Association, any Director, Officer or Employee of any such Owner or Member of any other private person, entity or enterprise for profit. All such property and proceeds, subject to the payment of all valid debts and obligations of the Association, shall be distributed to Lehigh Valley Industrial Park, Inc., a non-profit economic development corporation, no part of the earnings of which inures to the benefit of any private person, shareholder or entity. In the event Lehigh Valley Industrial Park, Inc. is not in existence, all such assets and proceeds shall be distributed entirely to the City of Bethlehem, Pennsylvania.