

SECOND AMENDED BYLAWS OF THE FORT DUPONT REDEVELOPMENT AND PRESERVATION CORPORATION

ARTICLE I - DEFINITIONS

For purposes of these Bylaws:

“Act” means the Fort DuPont Redevelopment and Preservation Act, 7 Del. C. §§ 4730 *et seq.*, attached hereto as Exhibit A, as the same may be amended from time to time.

“Board” means the Board of Directors of the Corporation.

“Board Appointed Director” means any Director duly seated, appointed, or designated to the Board in accordance with §§ 4733(b)(10) of the Act.

“Bylaws” means these Bylaws of the Fort DuPont Redevelopment and Preservation Corporation, as the same may be amended from time to time.

“Certificate” means the Second Amended and Restated Certificate of Incorporation of the Fort DuPont Redevelopment and Preservation Corporation dated July [], 2019, as the same may be amended from time to time in accordance with the Act.

“Chair” shall mean the Chair of the Board of Directors appointed by the Governor in accordance with § 4733(b)(1) of the Act.

“Committee” shall mean any committee (including, but not limited to, the Executive Committee, a Sub-Committee or Implementation Committee) established by the Board of Directors.

“Corporation” means the Fort DuPont Redevelopment and Preservation Corporation.

“Delaware City Representative” means any Director duly appointed to the Board by the City of Delaware City in accordance with § 4733(b)(8) or (b)(9) of the Act.

“DNREC” means the Delaware Department of Natural Resources and Environmental Control.

“Director” means a member of the Board of Directors of the Corporation duly appointed by the appropriate appointing authority in accordance with the Act.

“Ft. DuPont Complex” shall have the meaning set forth in the Act.

“Officer(s)” shall have the meaning set forth in Article IV, Section 1 of these Bylaws.

“Redevelopment Plan” means the draft master plan for the redevelopment of the Fort DuPont complex dated October 2013, as may be amended from time to time by the Board, which is intended to guide the redevelopment of the Fort DuPont Complex.

“State of Delaware Representative” means any Director duly seated, appointed, or designated to the Board in accordance with §§ 4733(b)(1) through and including (b)(7) of the Act.

ARTICLE II – BOARD OF DIRECTORS

Section 1. Election and Appointment.

(a) The Board Appointed Directors shall be elected to the Board of Directors within ninety (90) days of the adoption of these By-Laws. The Board of Directors shall designate the duty of nominating persons to serve as Board Appointed Directors to an appropriate Sub-Committee, which shall bring such nominations to the floor for vote at the next regularly scheduled meeting of the Board of Directors following such designation; provided, however, that nothing herein shall prevent any Board of Director from bringing a separate nomination to the floor for vote at such meeting outside of the Sub-Committee. Any Board Appointed Director shall be elected by majority vote of the Board of Directors, and shall serve at the pleasure of the Board of Directors. Any nomination submitted consistent with this Article II, Section 1(a) shall, to the extent possible, state the candidates expertise, if any, in one or more of the fields or areas set forth in § 4733(b) of the Act. Board Appointed Directors may not appoint a designee to serve in their stead.

(b) Any vacancy created by the resignation or early departure of a Board of Director shall be filled by the appointing authority within sixty (60) days and.

Section 2. Regular Meetings.

(a) Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Chair and publicized among all Directors. Preference shall be given to holding meetings of the Board at a location at the Ft. DuPont Complex or within the City of Delaware City, to the extent such location is practicable for each such meeting. Minutes of all meetings shall be maintained.

(b) Notice of the place, date, and time of each regular meeting shall be given to each Director (unless waived) on not less than seven (7) days before the meeting, in the manner set forth in Article V, Section 1 of these Bylaws.

Section 3. Special Meetings.

(a) Special meetings of the Board of Directors may be called by the Chair or by one-third (1/3) of the Directors then in office. Special meetings shall be held at such place, on such date, and at such time as the Chair or as such Directors shall fix, as the case may be.

(b) Notwithstanding Article V, Section 1 of these Bylaws, of the place, date, and time of each special meeting shall be given each Director by whom it is not waived only by personal delivery, by electronic mail, or by facsimile as soon as is practicable, but in no event less than twenty-four (24) hours before the meeting. Delivery of such notice shall be in accordance with Article V, Sections 1(a)(i), 1(a)(ii), and 1(a)(v) of these Bylaws.

(c) Unless otherwise indicated in the notice of such meeting, in any provision of these Bylaws, in the Act, or in any other applicable provision of law, any and all business of the Corporation may be transacted at a special meeting called hereunder.

Section 4. Quorum.

In accordance with the Act, a majority of the total number of Board of Directors shall constitute a quorum at any meeting of the Board of Directors.

Section 5. Participation in Meetings by Teleconferences.

(a) Members of the Board of Directors, or the members of any Committee thereof, may participate in a meeting of such Board or Committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other.

(b) For all purposes hereunder, participation at any meeting of the Board of Directors in accordance with this Section shall constitute presence in person at such meeting.

Section 6. Conduct of Business.

(a) At any meeting of the Board of Directors, business shall be transacted in accordance with applicable Delaware law in such order and in such manner as the Board may from time to time determine.

(b) All matters shall be determined by the affirmative vote of a majority of Directors present at any meeting, except as otherwise required by the Act or other applicable provision of law.

Section 7. Powers.

(a) Except as prohibited or restricted by the Certificate, the Act, or any other provision of applicable law, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the power:

(i) To remove officers of the Corporation except the Chair, and from time to time to confer the powers and duties of such officers, except the Chair, upon any other person for the time being;

(ii) To confer upon any officer of the Corporation the power to appoint, remove, and suspend subordinate officers, employees, and agents;

(iii) To adopt from time to time regulations, not inconsistent with these Bylaws, for the management of the Corporation's business and affairs;

(iv) To act generally in a planning and development capacity, and in connection therewith, to hold, own, preserve, develop, improve, construct, rent, lease, sell, or

otherwise acquire or dispose of any real property, including without limitation any real property comprising the Fort DuPont Complex or any portion thereof transferred to the Corporation;

(v) To employ an executive director and such deputies and assistants as may be necessary or desirable, and to retain by contract such legal counsel, engineers, advisors, and other providers of professional services;

(vi) To borrow money or accept contributions, grants, or other financial assistance from the federal government, the State, any locality or political subdivision, any agency or instrumentality thereof, or any source, public or private, for or in aid of any project of the Corporation, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or other contracts and agreements as may be necessary or desirable;

(vii) To have and exercise any and all powers available to the Corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law;

(viii) To recover costs for the use of, or the benefit derived from, the services or facilities provided, owned, operated, or financed by the Corporation benefiting property within the Fort DuPont Complex; and

(ix) To take such other lawful actions that are consistent with the purposes of the Act as may be necessary or desirable to oversee, manage, and implement the redevelopment and preservation of the Fort DuPont Complex in accordance with the Redevelopment Plan and the provisions of this Act.

(b) Notwithstanding the generality of the foregoing, in accordance with the Act and the Certificate of Incorporation, approval of the Delaware General Assembly shall be required:

(i) To amend the Certificate of Incorporation; or

(ii) To effect a merger or dissolution of the Corporation.

Section 8. Compensation of Directors.

Directors may be reimbursed for necessary expenses to be paid only from funds of the Corporation, and may not receive any other compensation for services to the Corporation as Directors.

ARTICLE III – COMMITTEES

Section 1. Committees of the Board of Directors.

(a) The Board of Directors may from time to time establish Committees and may appoint the members of the Board to serve thereon (including, if the Board desires, Directors to serve as alternate members of any such Committee). Each Committee shall have such powers as are conferred by these Bylaws or by the Board of Directors.

(b) The Chair of the Board shall appoint the chair of any Committee from among the members of such Committee.

(c) Committees shall exist, and the members thereof shall serve, at the pleasure of the Board; provided, however, that the Chair of the Board shall serve on and as chair of any Executive Committee established by the Board of Directors.

Section 2. Executive Committee.

(a) The Board of Directors may establish an Executive Committee. The Chair of the Board shall serve on and as chair of any Executive Committee as established by the Board.

(b) Any Executive Committee established by the Board of Directors shall have and may exercise, between meetings of the Directors, all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that such Executive Committee shall not have the power to act, or recommend that the Board take action, with respect to:

(i) Any amendment to the Certificate of Incorporation, any merger or dissolution of the Corporation, or any other matter that hereafter may require the approval of the General Assembly pursuant to the Act;

(ii) The sale, lease or exchange of all or substantially all of the Corporation's property and assets;

(iii) The appointment of Directors to the Executive Committee;

(iv) The amendment or repeal of these Bylaws;

(v) Any action or matter expressly required by the Delaware General Corporation Law to be submitted to Directors of the Corporation for approval; or

(vi) Any transaction on behalf of the Corporation having a dollar value of \$50,000 or more.

Section 3. Sub-Committees.

(a) The Board of Directors may, from time to time, establish Sub-Committees as needed to assist the Corporation in fulfilling its purposes and obligations as follows:

(1) Developing plans to implement recommendations from the redevelopment plan and tracking ongoing implementation efforts;

(2) Reviewing and providing recommendations on proposals for the purchase, sale, lease or disposition of lands or buildings;

- (3) Providing guidance on updates to the redevelopment plan upon request by the Board or the executive director;
- (4) Providing recommendations on infrastructure improvement plans, budgets, or any other matters referred by the Board or the executive director; and
- (5) Recommending rules, regulations and policies to the Board; and
- (6) Performing any other function and duty as assigned or directed by the Board of Directors

(b) Unless otherwise expressly stated by the Board of Directors in the resolution constituting the Sub-Committee or in these By-Laws, any Sub-Committee formed pursuant to these By-Laws shall have advisory powers only and may not make any decisions that are binding on the Board of Directors and/or the Corporation. The Board of Directors may, in its discretion, constitute a Sub-Committee that has both an advisory and implementation purpose and, in such case, the Board of Directors shall designate which powers of the Sub-Committee are advisory in nature and which are not.

(c) The Board shall determine the number of members appointed to each Sub-Committee at the time each Sub-Committee is constituted, and nothing herein shall require each Sub-Committee to have the same number of members.

(d) The Board shall also determine, on a case by case basis, the type of individualized, specialized or other relevant expertise or experience required of members for the applicable Sub-Committee and shall make appointments accordingly.

(e) Membership on a Sub-Committee shall not be limited to members of the Board of Directors and the Board of Directors may appoint members of the Board, employees of the Corporation and/or members of the general public as the Board deems fit to serve on a Sub-Committee; provided, however, that at least one (1) member of the Board must be appointed to each Sub-Committee and shall serve as the chair of such Committee.

(f) The Board may, in its sole discretion, appoint one person to serve on more than one Sub-Committee at any period of time.

(g) Each Sub-Committee established in accordance with this Section shall have such powers as are conferred by these Bylaws and/or any rules governing such Sub-Committee as established by the Board of Directors.

(h) The Board in its discretion may change, alter or repeal any powers of any Sub-Committee at any time in its discretion.

Section 4. Conduct of Business.

(a) Each Committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or as

otherwise required by the Act or other provisions of applicable law. Adequate provision shall be made for notice to members of all meetings.

(b) For each Committee meeting, a majority of such members shall constitute a quorum, and all matters shall be determined by a majority vote of the members of the Committee present at the meeting.

(c) Action may be taken by any Committee without a majority if all members thereof consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of such Committee.

ARTICLE IV – OFFICERS

Section 1. Generally.

(a) The Officers of the Corporation shall include the Chair, Vice Chair, Treasurer, Secretary, and any other Officer duly elected, appointed, or designated in accordance with this Article IV.

(b) No later than sixty (60) days following the date of the Board’s approval of these Bylaws, the Board by majority vote shall elect a Vice Chair, Treasurer, and Secretary, who shall serve for terms of one (1) year each. Officers hereunder may be reelected.

(c) In addition to the foregoing, the Board by majority vote may elect such other Officers as may be necessary or desirable in fulfilling the purposes of the Corporation. Unless otherwise specified by the Board, such Officers shall serve for terms of one (1) year each and may be reelected.

Section 2. Vice-Chair.

The Vice-Chair shall perform the duties of the Chair in the event that the Chair is unable to perform such duties, and shall also perform such other duties as the Board may from time to time prescribe.

Section 3. Treasurer.

The Treasurer shall have the responsibility for maintaining the financial records of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. The Treasurer shall also perform such other duties as the Board of Directors may from time to time prescribe.

Section 4. Secretary.

The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the Board of Directors. He or she shall have charge of the corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe. For so long as DNREC, the sole member of the Corporation, provides staff assistance to the Corporation, the

Secretary of DNREC or his or her designee shall serve as the Secretary of the Board.

Section 5. Delegation.

The Board of Directors may from time to time delegate the powers or duties of any officer other than the Chair to any other officer or agents, notwithstanding any provision hereof.

ARTICLE V – NOTICES

Section 1. Notices.

(a) Whenever, notice is required to be given to Directors under the provisions of the Certificate, these Bylaws, the Act, or any other applicable provision of law, such notice shall be in writing and may be given:

(i) By email, which shall be the preferred form of notice, sent to the email address at which the Director has consented to receive such notice;

(ii) By personal delivery;

(iii) By courier service (including, without limitation, Federal Express);

(iv) By U.S. mail (including, without limitation Certified U.S. Mail), addressed to each such Director at his or her address as it appears on the records of the Corporation, with postage thereon prepaid; or

(b) Notice shall be deemed to have been given as follows:

(i) If by email or fax, when sent to the email address or fax number at which the Director has consented to receive notice;

(ii) If by personal delivery, courier service, or Certified U.S. Mail, upon delivery;

(iii) If by U.S. mail, three (3) business days following the date upon which same was deposited in the United States mail.

(c) An affidavit of the Secretary or other officer or agent of the Corporation that notice has been given in the form set forth in this Section 1(a), in the absence of fraud, shall be *prima facie* evidence of the facts stated therein.

Section 2. Waivers.

A written waiver of any notice signed by a Director, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such Director. Neither the business nor the purpose of any meeting need be specific in such a waiver.

ARTICLE VI – LIABILITY OF DIRECTORS AND OFFICERS

Section 1. Indemnification.

(a) No Director, Officer or member of a Committee shall be personally liable to the Corporation or any of its members for monetary damages for breach of fiduciary duty as a Director, except for liability:

(i) For any breach of the Director's, Officer's or member of a Committee's duty of loyalty to the Corporation or its members;

(ii) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(iii) For any transaction from which the Director, Officer or member of a Committee derived an improper personal benefit.

(b) Any repeal or modification of this Article by the members of the Corporation shall not adversely affect any right or protection of a Director, Officer or member of a Committee of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

Section 2. Right to Advancement of Expenses.

The right to indemnification conferred in Section 1 of this Article VI shall include the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a Director or officer (and not in any other capacity in which service was or is rendered by such indemnitee) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

The rights to indemnification and to the advancement of expenses conferred in Sections 2 and 3 of this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

Section 3. No Liability for Debts of Corporation.

No Director, Officer or member of a Committee shall be personally liable for the payments of debts of the Corporation, except such Directors, Officers or members of a Committee may be liable by reason of their own conduct or acts.

Section 4. Non-Exclusivity of Rights.

The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Certificate of Incorporation, these Bylaws, agreement, vote of disinterested directors or otherwise.

Section 5. Insurance.

The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law. The procurement of insurance by the Corporation under this section does not supersede or negate any immunity from liability provided by law.

ARTICLE VII – MISCELLANEOUS

Section 1. Applicability of Freedom of Information Act.

The Corporation shall be governed by and shall adhere to all applicable provisions of Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001 *et seq.* ("FO IA").

Section 2. Photocopy Signatures.

Photocopy signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a Committee thereof.

Section 3. Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a Committee thereof, duplicates of the seal may be kept and used by the Treasurer or any other officer designated by the board.

Section 4. Reliance Upon Books, Reports and Records.

Each Director, each member of any Committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or Committees of the Board of Directors so designated, or by any other person as to matters which such Director or Committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 5. Fiscal Year.

The fiscal year of the Corporation shall be fixed by the Board of Directors.

Section 6. Time Periods.

In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 7. Conflicts of Interest Policies.

The Board of Directors shall adopt and maintain conflict of interest policies, which shall apply to all Board members, Sub-Committee Members, employees and agents of the Corporation.

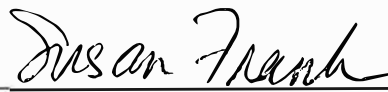
ARTICLE VIII – MEMBERS

The Corporation is a membership corporation and in accordance with the Act, DNREC shall be the sole member of the Corporation. The Member shall have no power to elect or remove Directors, as the composition of the Corporation's Board of Directors is mandated by the Act.

ARTICLE IX – AMENDMENTS

These Bylaws may be amended or repealed by the Board of Directors.

I hereby certify that these revised Bylaws were adopted by the Board of Directors on the 26th of, 2019. (July)



- Chairperson