

# THE HENLOPEN ACRES PROPERTY OWNERS CORPORATION

## CONFLICT OF INTEREST POLICY

### ARTICLE I PURPOSE

It is important for this tax-exempt Corporation (the “**Corporation**”), its members of the Board of Governors, members of committees of the Board of Governors, and staff to be aware that both real and apparent conflicts of interest or dualities of interest sometimes occur in the course of conducting the affairs of the Corporation and that the appearance of conflict can be troublesome even if there is in fact no conflict whatsoever. Conflicts occur because the many persons associated with the Corporation should be expected to have and do in fact generally have multiple interests and expected to have and do in fact generally have multiple interests and affiliations and various positions of responsibility within the community. In these situations, a person will sometimes owe identical duties of loyalty to two or more parties. Such conflicts are undesirable because they often reflect adversely upon the person involved and upon the institutions with which they are affiliated, regardless of the actual facts or motivations of the parties. However, the long-range best interests of the Corporation do not require the termination of all associations with persons who may have a real or apparent conflict that are harmless to all individuals or entities involved. Each member of the Board of Governors, committees, and staff, has a duty of loyalty to the Corporation. The duty of loyalty generally requires a member of the Board of Governors, committees, and staff, prefer the interests of the Corporation over the member’s interest or the interest of others. In addition, members of the Board of Governors, committees, and staff shall avoid acts of self-dealing which may adversely affect the tax-exempt status of the Corporation or cause there to arise any sanction or penalty by a governmental authority. Lastly, members of the Board of Governors shall be recused from voting on any matters relating to any other organization they serve.

The purpose of this conflict-of-interest policy (the “**Policy**”) is to protect the Corporation’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a member of the Board of Governors might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable Corporations.

### ARTICLE II DEFINITIONS

#### 1. Interested Person

Any member of the Board of Governors who has a direct or indirect financial interest, as defined below, is an interested person.

#### 2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (a) An ownership or investment interest in any entity with which the



Corporation has a transaction or arrangement,

(b) A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

(c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate Board of Governors or committee decides that a conflict of interest exists.

### **ARTICLE III PROCEDURES**

#### **1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board of Governors considering the proposed transaction or arrangement.

#### **2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested person shall leave the Board of Governors' meeting or the committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining members of the Board of Governors or committee members shall decide if a conflict of interest exists.

#### **3. Procedures for Addressing the Conflict of Interest**

(a) An interested person may make a presentation at the meeting of the Board of Governors or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

(b) The President of the Board of Governors or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(c) After exercising due diligence, the Board of Governors or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Governors or committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether



to enter into the transaction or arrangement.

#### **4. Violations of the Conflict-of-Interest Policy**

(a) If the members of the Board of Governors or committee has reasonable cause to believe a member has failed to disclose an actual or possible conflict of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the members of the Board of Governors or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

### **ARTICLE IV RECORDS OF PROCEEDINGS**

The minutes of the Board of Governors and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Governor's or committee's decision as to whether a conflict of interest in fact existed.

2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

### **ARTICLE V COMPENSATION**

1. A voting member of the Board of Governors who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

2. A voting member of any committee of the Board of Governors whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

3. No voting member of the Board of Governors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, is prohibited from providing information to the Board of Governors or to any committee regarding compensation.

## **ARTICLE VI ANNUAL STATEMENTS**

Each member of the Board of Governors and each member of a committee of the Board of Governors shall annually sign a statement which affirms such person:

1. Has received a copy of the conflicts of interest policy,
2. Has read and understands the policy,
3. Has agreed to comply with the policy, and
4. Understands the Corporation is a not-for-profit organization and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **ARTICLE VII PERIODIC REVIEWS**

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
2. Whether partnerships, joint ventures, and arrangements with management Corporations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

## **ARTICLE VIII USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for in Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Governors of its responsibility for ensuring periodic reviews are conducted.

**ADOPTED as written** the 4<sup>th</sup> of June, 2022




## CERTIFICATE OF ADOPTION OF CONFLICT-OF-INTEREST POLICY

### I HEREBY CERTIFY THAT:

1. I am the duly elected President of Henlopen Acres Property Owners Corporation, a Delaware nonprofit corporation (the "***Corporation***"); and
2. Attached hereto as **Exhibit A** is a complete and accurate copy of the Conflict-of-Interest Policy of the Corporation as duly adopted by the Board of Governors at its meeting held on June 4, 2022, and said Conflict of Interest Policy is presently in effect.

IN WITNESS WHEREOF, I have hereunto ascribed my name this 4<sup>th</sup> day of June, 2022.

A handwritten signature in cursive script, reading "Beatrix D. Richards", written over a horizontal line.

Name: Beatrix Richards  
President