*Delaware Military Heritage & Education Foundation, Inc.*

*First Regiment Road*

*Wilmington, DE 19808*

**BY-LAWS**

PREAMBLE

The Delaware Military Heritage and Education Foundation, Inc., is established to collect and preserve material evidence associated primarily with Delaware-related units and individuals in the uniformed services of the State and United States, and to interpret it so that coming generations will understand the values of courage, loyalty and responsibility that inspire such service. A major component of this mission will be through the establishment and management of the Delaware Military Museum.

To implement this vision, these By-laws are adopted to provide for the governance of the Foundation and its operation through a professionally qualified staff in a suitable facility and in accordance with established museum standards and requirements of Section 501(c) (3) of the Internal Revenue Code, in furtherance of the Foundation’s mission.

The affairs of the Museum shall be vested to the Management and Officers as stipulated in the Foundation By-laws.

The Foundation will actively seek out and acquire material artifacts associated with Delaware-related units, individuals, places, events, ships and aircraft of the uniformed services to include Army and Air National Guard, active and reserve components of the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, Public Health Service and the National Oceanic Atmospheric Administration Corps. It will display and interpret items from its collection to the public generally, and cooperate with other institutions by displaying material on loan from them or by loaning material to them, in order to create better understanding of the personal values that underlie service in the uniformed forces of the State and Nation, and better appreciation for how that service has contributed to the safety and security of American freedom. The Foundation will consider present, retired and former members of the uniformed services as a special group for its outreach programs and activities.

The Delaware Military Heritage and Education Foundation, Inc., serving at the pleasure of the Adjutant General of the State of Delaware, will conduct historic affairs in accordance with these By-laws to maintain and preserve the proud heritage of the uniformed services related to the State of Delaware. This shall be the Foundation’s first and principal objective.

In pursuit of the above purposes, the Foundation will always give foremost consideration to the interests of the State of Delaware and of the uniformed services associated with it.

ARTICLE I

NAME

Section 1.1 This Corporation shall be known by the name, style and title as the Delaware Military Heritage and Education Foundation, Inc. (“Foundation”). In support of the Preamble and By-laws the Foundation establishes The Delaware Military Museum, hereafter referred to as the “Museum”.

Section 1.2 The purpose of the Foundation is to engage in any lawful act or activity, for which corporations may be organized, including charitable and educational purposes. This Foundation shall be a not-for-profit corporation.

Section 1.3 No part of the net earnings of the Foundation shall inure to the benefit of any Director, member or individual. The assets and revenues of the Foundation shall be used exclusively for educational and charitable purposes. The activities of this Foundation shall not participate nor promote ideas or statements that attempt to promote or influence any political campaign or carry on propaganda or otherwise attempt to influence legislation, or political campaign on behalf of or against any candidate for public office.

Section 1.4 The Foundation shall engage in no activity which, under the United States Internal Revenue Code or the laws of Delaware, as now existing and as amended in the future, will either (1) deprive it of tax-exempt status, or (2) prevent those who contribute to the Corporation from obtaining tax deductions for said contributions.

Section 1.5 In the event of the dissolution of the Foundation, all assets remaining after all debts and obligations of the Foundation have been discharged shall be distributed by the Foundation to another nonprofit foundation whose primary purpose is education or other charitable purpose.

ARTICLE II

MANAGEMENT

Section 2.1 The Board shall have the authority to manage the affairs and resources of the Foundation.

Section 2.2 The Foundation shall consist of a Board of Directors (“Board”) to include a minimum of seven (7) Directors and a maximum of twenty-one (21) Directors, but in any event an odd number of members all of whom will be appointed by the Adjutant General of the State of Delaware. A diverse membership is a goal, to include Directors who have the skills necessary to be helpful to the Foundation and Museum. Included are persons with a historical knowledge of the uniformed services, museum planning, marketing, public relations, fund raising, and community outreach.

Section 2.3 Immediately following the initial appointment of the Directors, the Foundation Board shall proceed to organize in accordance with these By-laws. The positions of Chairman, Vice-Chairman, Curator, Executive Director, Secretary, Financial Officer, and Treasurer will be nominated by the Board and appointed by the Adjutant General and constitute the Executive Committee. All Directors shall serve at the pleasure of the Adjutant General by the terms of these By-laws

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Section 2.4 Vacancies that may occur in the Foundation Board will be filled by nominees who are then appointed by the Adjutant General.

Section 2.5 The Foundation Directors may, by resolution, provide for classes of non-voting membership to serve as advisors who have expertise in a specific area, under such conditions and with such privileges, other than that of voting, as may be specified in the resolution.

Section 2.6. As necessary, the Foundation Board may appoint assistants to Officers. Such appointments need not be Directors.

Section 2.7 Ex officio members of the Board may include legislators, community leaders, past Chairs of the Board, and any person designated a Director Emeritus. If the ex-officio is a member of a standing committee, that person shall have the rights and obligations of membership of the Board or committee to which they serve. Rights include making motions, speaking in debate and voting.  The obligations include attending meetings and being an active and contributing member. Ex-officio members who are not actual members of the Foundation but who hold some position of relevance to the Foundation possess the privileges associated with membership but do not share any of the obligations.  Therefore, these members should not be included when determining the number of members needed for a quorum or counted when determining if a quorum is present.

Section 2.8 The Board may appoint persons as Directors Emeritus for life, if in the opinion of the Board, such person can provide a valuable role as mentors and consultants to the Board. The candidate must have served as a Director for at least ten (10) years. Persons designated as a Director Emeritus may attend Board meetings, at the discretion of the Board, and may be entitled to vote at any meeting of the Board,

Section 2.9. Compensation. The assets of the Foundation shall not inure to the benefit of any officer, employee, or agent of the Foundation: provided, however, that the Board may authorize the payment of compensation or reimbursement to the Executive Director and/or any employee or agent of the Foundation on such terms as the Board deems proper.

ARTICLE III

DUTIES OF OFFICERS

Section 3.1 The Chairman is the executive primarily responsible for the overall functioning of the Delaware Military Heritage and Education Foundation. The Chair shall: preside at all meetings of the Foundation and Museum; execute deeds, bonds, mortgages, and all expenditures and other contracts requiring the seal of the Foundation. The Chair shall be an ex-officio member of all committees.

Section 3.2 The Vice-Chair shall assist the Chair and perform the duties of Chair and perform duties in the absence of the Chair. In the absence of the Chair and Vice-Chair, the Directors may elect a Chairman *Pro Tem*, who shall have the same powers and authority as the Chair during the Chair's and Vice-Chair’s absence.

Section 3.3 The Curator enables the Museum to fulfill the Foundations commitment to the Preamble. The Museum Curator reports to the Foundation Chair. The Curator is responsible for acquisition, creation, interpretation, display, restoration, archiving, and disposition of artifacts, documents, and artwork collections. Committees and Sub-Committees established by ARTICLE XII, will coordinate and assist the Curator. The Curator will serve as ex-officio on any standing Museum Committees.

Section 3.4 The Executive Director maintains and guides the Foundations mission as determined by the Board of Directors. The Executive Director shall report to the Board Chair to carry out the operations of the Foundation and the Curator for Museum operations, to include: authority to sign and execute in the name of the Foundation or the Museum contracts, and obligations, provided by the Chair, Curator and Board. The Board may limit the authority to sign and execute any contract or obligation without prior authorization by the Executive Committee. The Executive Director shall be hired by the Board, serve as at the pleasure of the Board and may be removed from office by the Board, with or without cause. The Executive Director shall promptly report all significant issues concerning the operation of the Foundation and the Museum to the Chair, Curator, and Executive Committee. Significant operations will be reported to the Board at regularly scheduled meetings, or more frequently, if circumstances warrant. Other duties and powers may be assigned by the Board. The Executive Director shall be an ex officio member of all committees.

Section 3.5 The Secretary will be a Director and shall announce notices of Board meetings. The Secretary takes minutes of Board meetings and provides copies to Board members in sufficient time for Directors to review Minutes prior to meetings. Minutes shall be filed electronically and by hard copy. The Secretary will assist the Chair in preparation and dissemination of meeting agendas, as requested by the Chair. The Secretary will maintain records pertaining to the By-law's. He will assist Committees, which are described in Article XII, with communication and coordination of plans and operations. Will keep the Executive Committee informed of Committee plans andinitiatives.

Section 3.6 The Financial Officer oversees financial resources to achieve the year’s revenue and budget goals; develops budgets, monitors transactions, and prepares quarterly and annual financial reports; prepares for the annual financial audit, and submits annual tax returns. The Financial Officer will recommend check-signing authority by name and amounts. The Chair shall approve all expenditures. The Financial Officer supervises and assists the Treasurer, as required. The Financial Officer will be a member of the Finance Committee.

Section 3.7 The Treasurer tracks and manages financial data to include financial transactions of receipts and disbursements. She ensures deposit of all money, securities and other valuable effects in the name of the Foundation and shall render account of these transactions whenever required, by the Chair and Directors. The Chair shall approve all expenditures. The Treasurer prepares balance sheets, processes invoice’s, reconciles bank statements, tracks deposits and payments, and assists the Financial Officer, Chair and Executive Committee with budget preparation. Based on the most current bank and financial transactions the Treasurer will prepare and present a budget report at Board meetings. The Treasurer will be a member of the Finance Committee.

ARTICLE IV

FOUNDATION BOARD MEETINGS

Section 4.1 Regular Foundation Board meetings will be called by the Chair. Careful consideration of the selection of the dates and times will be made to allow the greatest participation by the Directors.

Section 4.2 The Adjutant General or his designee may call meetings of the Foundation Board to consider special requests.

ARTICLE V

NOTICE OF FOUNDATION BOARD MEETINGS

Section 5.1 At the discretion of the Chair, routine Board meetings may be pre-scheduled for the same date of prescribed months throughout the year. Notice of all regular Foundation Board meetings will be provided by electronic or regular mail.

ARTICLE VI

QUORUM AT FOUNDATION BOARD MEETING

Section 6.1 A quorum shall consist of one-third of the actual membership of the Board. Absent members of the Board may be counted toward the quorum by participation on virtual means, internet, conference telephone, or by proxy. A quorum shall be six (6) members if the Board membership is 16-18 and seven (7) if membership is 19-21, except as prescribed in Article VII. With a quorum present, binding business can be approved by a majority of the Directors present.

ARTICLE VII

SPECIAL MEETINGS OF FOUNDATION: EXECUTIVE COMMITTEE

Section 7.1 Special meetings of the Foundation Board may be called by the Adjutant General, or by the Chair, who must call a meeting on the request, in writing of three (3) Directors. The notice must state the time and place of the meeting, and must specify the subjects to be acted upon. Written notice of all special meetings shall be e-mailed or mailed each Director. No business shall be transacted except that for which the special meeting was called.

Section 7.2 There shall be an Executive Committee of the Board, consisting of the officers described in Article III, which shall have and may exercise between meetings of the Board all the powers and authority of the Board in the management of the Foundation as permitted by law, subject to ratification at the next meeting of the Board.

Section 7.3 The Chairman or a designated member of the Executive Committee may conduct informal non-binding polls by virtual, e-mail, telephone or other means of communication to determine whether Board members concur with a proposed action between Board meetings, thus facilitating communication and coordination at the time of regularly scheduled Board meetings.

Section 7.4 An effort to contact all members of the Foundation Board must be made and minutes of the Executive Committee meetings described in Section 3.5.

Section 7.5 With well spelled out and understood issues, proxy voting by written ballot will be permitted if approved in advance by a special or regular meeting of the Foundation Board.

ARTICLE VIII

ATTENDANCE

Section 8.1 Directors are expected, at a minimum, to attend seventy percent (70%) of all regular and special meetings of the Foundation, to include Committees, Sub-Committees and Ad- hoc Committees to which they are assigned. Board members who fail to attend at least 70% of Board meetings may be asked to resign by the Chair.

ARTICLE IX

TERMS OF OFFICE

Section 9.1 Beginning upon their election, Directors will hold office for a term limit for two (2), three (3) year terms. Directors may be eligible for reelection after an absence of one (1) year. In the event a Director is unable to complete his/her term of office resulting from death, termination, or resignation, the Nominating Committee may nominate a candidate to fill the unexpired term. The interim Director, if he/she so desires, may be elected to permanently fill the vacated position at the next formal Board meeting.

Section 9.2 The Board at its discretion may, with concurrence of the Adjutant General, appoint Emeritus Directors, in accordance with the provisions of ARTICLE II, Section 2.8.

Section 9.3 At the time of appointment as Chair, if a current member of the Board, shall have the Board term extended for five (5) years following such appointment. If serving a first term, shall be eligible for reappointment to a second term of three (3) years. If a newly appointed Chair is not a Board member at the time of appointment, the initial Board term shall be for five (5) years following such appointment, rather than the three (3) year term applicable to other members, with eligibility for a second term of three (3) years.

ARTICLE X

APPOINTMENT OF BOARD OF DIRECTORS

Section 10.1 All Directors will be appointed by the Adjutant General. The Adjutant General shall make every effort to assure representation of all components of the Uniformed Services, as well as appropriate diversity.

ARTICLE XI

RESPONSIBILITIES

Section 11.1 The Foundation Board shall have the management of the mission outlined in the Preamble and Articles of these By-laws and shall have such powers of the Foundation by the laws of the State of Delaware and do all such lawful acts as are not required to be exercised or done by other components of the Delaware National Guard, other military services or agencies.

Section 11.2 All Directors shall immediately declare and provide notice of any potential conflict of interest at the time such subject comes before the Foundation Board for discussion. The Foundation Board, by majority vote, will determine if such a conflict exists. Should a conflict be affirmed the affected Director(s) may or may not be excused from the meeting, at the discretion of the Foundation Board. The affected Director(s) will not be permitted to vote on the subject.

Section 11.3 All Directors hold a fiduciary responsibility to the Foundation to declare and provide notice of any potential conflict of interest they may identify as regards any member of the Foundation Board.

Section 11.4 Upon appointment, Officers and Directors will be provided the Foundation Conflict of Interest Policy. **Officers and Directors will sign the Policy. The original will be maintained by the Foundation and a copy provided to the signatory. Officers and Directors must avoid** any possible conflict of interest or the appearance of a conflict of interest. Allegations shall be disclosed to the Board. When any such interest becomes a matter requiring Board action, such Director shall recuse himself/herself from discussion and voting except to make a brief statement disclosing the existence and nature of the conflict requiring his or her not participating in said discussion, vote or action. The Director shall not be included as present in determining a quorum for a meeting at which action by the Board is to be taken on the matter. The minutes of all actions should clearly reflect that these requirements have been met.

ARTICLE XII

COMMITTEES

Section 12.1 Committees are mandated by the Chair, Executive Committee, and the Board of Directors to facilitate planning, coordination, and communication among elements of the Museum. There will be three Primary Committees with Sub Committees attached to each of the Primary Committees. The Executive Committee will assign a Chair to each of the Primary Committees whose responsibility will be to communicate and coordinate suggestions, plans and initiatives to the Executive Committee and the Board. Primary Committee Chairs must be a Board Director. Primary Committees are permanent and provide oversight to the Sub-Committees, which are advisory in nature. Primary Committee Chairs will represent the Sub-Committees to the Executive Committee and the Board of Directors. Sub-Committee members will have an expertise or interest in the Sub-Committee to which they are assigned. Persons may participate in more than one Sub-Committee. Ad-hoc (Working Group) Committees may be appointed by the Chair, Curator, or Executive Committee to address a particular issue(s), programs, or assigned initiatives. Ad-hoc Committees are limited in scope and temporary. All Committee members must be in good standing with respect to the mission of the Foundation.

Section 12.2 The Chair, Executive Director, and Curator will serve as *ex offici*o on any standing Committees or Ad-hoc Committees.

Section 12.3 Primary Committees

a. Administration: The Administration Committee will oversee, and coordinate Strategic Planning, Facilities, Nominating, and Office Management responsibilities.

b. Operations: The Operations Committee will oversee and coordinate Collections and Exhibits, Development, Education and Events, Outreach, Marketing, Membership, Social Networking & Publicity.

c. Finance: Shall consist of the Financial Officer, Treasurer, and at least two other Directors, appointed by the Chair. The Finance Committee will review, oversee funds, investments, fiscal policies, and financial reports. The Committee will establish internal controls to assure reliability of financial management.

Section 12.4 Sub-Committees will be identified and assigned to Primary Committees to assist with exchange of ideas, provide suggestions and recommendations, promote proper discussion on issues, and propose solutions. Sub-Committee responsibilities and procedures will be specified in a "Guide for Sub-Committee Members". Sub-Committees may be added, modified or deleted based on requirements at the recommendation by the Executive Committee.

ARTICLE XIII

COMPLAINTS

Section 13.1 Complaints and concerns on the activities of the Foundation and Museum may be accepted from any source. Such complaints or concerns must be sent, in writing, to the Chair. Upon receipt of a complaint or concern, the Chair take necessary action to resolve the complaint. If the unresolved, Chair shall submit the complaint or concern to the Foundation Board at the next regular or special meeting to assist in resolution. If complaints or concerns still exist, the issue will be forwarded to the Adjutant General.

ARTICLE XIV

REMOVAL FROM OFFICE

Section 14.1 All Directors serve at the pleasure of the Adjutant General.

Section 14.2 Any Director or Officer may, in writing, resign his office, and if no date is fixed in said writing, such resignation shall take effect when acknowledged by the Foundation Board.

Section 14.3 Any Director may be removed for cause by a two-thirds vote of the Foundation Board at any regular or special meeting. Such action requires thirty (30) days' notice to the involved Director to enable him/her, if so desired, to prepare for their presentation at the scheduled meeting. If the finding for removal is upheld by the Foundation Board, the involved Director may appeal the finding to the Adjutant General.

ARTICLE XV

AMENDMENTS

Section 15.1 The Foundation Board shall have the power to propose, alter or amend these By-laws.

Section 15.2 Proposed changes to the By-laws must be submitted to the Chair thirty (30) days prior to the meeting scheduled to vote on the changes.

Section 15.3 The proposed changes to the By-laws must be submitted to the Directors with the notice of the meeting date during which the Foundation Board is scheduled to vote on the changes.

ARTICLE XVI

COMMUNITY ASSISTANCE

Section 16.1 The Foundation Board will provide assistance, whenever possible, to all communications and inquiries concerning its activities and the history of the military in the State of Delaware.

ARTICLE XVII

REPEAL OF PREVIOUS BY-LAWS AND MOTIONS

Section 17.1 Proposed amendments to the By-laws will be forwarded to the Board for final approval by a majority vote of the Board. This vote will be done during a scheduled committee meeting or via electronic means at the discretion of the Chair. A simple majority vote of the Board is required for approval. Once approved, updated By-laws will be provided to each Board member. It shall be the responsibility of the Board Secretary to maintain all records pertaining to the purpose of the amendments and the days of approval.

Section 17.2 On adoption of these By-laws all previous By-laws and motions of record and rules and regulations in conflict with these By-laws are hereby repealed. All officers and Directors currently in office shall continue their incumbency until their successors are duly appointed as provided in these By-laws.

ARTICLE XVIII

INDEMNIFICATION

Section 18.1 Right to Indemnification: The Foundation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may be hereafter amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any suit or proceeding. This applies whether civil, criminal, administrative or investigative (a “proceeding”) by reason of the fact that he, or a person for whom he is the legal representative, is or was a Director or office of the Foundation, serving at the request of the Foundation. Included are Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney’s fees) reasonably incurred by such person. The Foundation shall be required to indemnify a person in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was authorized by the Foundation Board.

Section 18.2 Prepayment of Expenses: The Foundation shall pay all expenses (including attorney’s fees) incurred in defending any proceeding in advance of its final disposition provided however, that the payment of expenses incurred by a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this article or otherwise.

Section 18.3 Claims: If a claim for indemnification or payment of expenses under this Article is not paid in full within sixty (60) days after a written claim thereof has been received by the Foundation, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Foundation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 18.4 Non exclusively of Rights: The rights conferred on any person by Article XVIII shall not be exclusive of any other rights which such person may have or hereafter acquire under any statue, provision of the certificate of incorporation, these By-laws, an agreement, vote of Directors, or disinterested directors or otherwise.

Section 18.5 Other Indemnification: The Foundation’s obligation, if any, to indemnify any person who was or is serving as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification form such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.

Section 18.6 Liability Insurance: The Foundation may purchase and maintain insurance on behalf of any person who was or is a Director, officer, employee, agent of the Foundation, or is or was serving at the request of the Foundation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or nonprofit entity against any liability asserted against him and incurred by him in any such capacity, or arising from of his status as such, whether or not the Foundation would have the power or the obligation to indemnify him against such liability under the provision of this Article.

Section 18.7 Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XIX

CORPORATE SEAL

Section 19.1 The Delaware Military Heritage and Education Foundation shall provide a corporate seal that maintains the authenticity and identity of the Foundation.

Section 19.3 The Delaware Military Museum shall provide a seal that maintains the authenticity and identity of the Museum.

ARTICLE XX

GIFTS

Section 20.1 The Foundation may accept any contribution, gift, bequest or device for the general purpose, or any special purpose of the Foundation.

ARTICLE XXI

FISCAL YEAR

Section 21.1 The fiscal year of the Foundation shall commence on the first day of January each year.

APPROVED:

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Terry L. Wiley

BG, DENG, Retired

Chairman of the Board DMHEF

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Michael R. Berry

MG, DENG

The Adjutant General

DATE:

Original: 10 July 2007

Revised: 11 July 2023