

*Westmoreland Economic Development Initiative for Growth
WEDIG, Inc.*

BY-LAWS

ARTICLE I

INTRODUCTORY

Section 1.1 Name. The name of the Westmoreland Economic Development Initiative for Growth, Inc., hereafter referred to as Organization.

Section 1.2 Statement of Purposes. The purpose of the Organization is to work in partnership with communities who face the challenges associated with economic growth, enhancing quality of life, and revitalization in the Alle-Kiski Valley Region of Pennsylvania. The Organization will promote the development and implementation of cooperative land-use strategies to improve community growth in the Alle-Kiski Valley region.

Section 1.3 Offices. The principal and registered office of the Organization shall be located as such place as the Board of Directors may designate.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 Authority. Subject to any limitations set forth elsewhere in these By-laws or in law, the affairs of the Organization shall be under the general direction of the Board of Directors which shall administer, manage, preserve and protect the property of the Organization.

Section 2.2 Election, Number and Term. The Board, hereafter referred to as Members, shall consist of up to eighteen (18) persons. Members shall be elected by a majority of the then serving members. All members are to participate in the election in person or by

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proxy. All members shall serve for a staggered, three-year term or until his or her successor is duly appointed and takes office.

Section 2.3 Vacancies. Vacancies occurring on the Board by death, resignation, refusal to serve or otherwise shall be filled by an election of the Board. All members are to participate in the election in person or by proxy. All new members designated or elected to fill the vacancy will serve for the unexpired term of the predecessor in office.

Section 2.4 Compensation. No compensation shall be paid to any Board Member other than the Director, for services. At the discretion of the Board, a Board Member may be reimbursed for travel and actual expenses necessarily incurred by him or her in attending meetings and performing other duties on behalf of the Organization when designated by the Board.

Section 2.5 Meetings. The Board shall meet at a time designated by the Chairman upon five days notice to all Board Members. One meeting per year, as designated by the Board, shall be the annual meeting of the Board. Special meetings shall be called by the Secretary upon the order of the President or at the request of a number of Members constituting a quorum of the Members then in office and entitled to vote. A Board Member may name a designate with written notice to the Board Secretary.

Section 2.6 Notice of Special Meetings. Notice of the date, time and place of each special meeting of the Board shall be sent to all Board Members at least five (5) days in advance of the date thereof. Such notice shall set forth the date, time and place of the meeting and shall state the general nature of the business to be transacted. Such notice shall be sent at the direction of the Secretary or another designated officer of the Organization and shall be delivered to each Board Member either personally or by mail, facsimile or e-mail to his or her residence or place of business as listed on the records of the Organization. If the notice is sent by mail or e-mail, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or upon transmission to such person.

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Section 2.7 Quorum. At all meetings of the Board, the presence of Board Members representing a simple majority of the total shall constitute a quorum.

Section 2.8 Voting. All Board Members shall be entitled to one vote on each matter submitted to a vote of the Board. The acts of a majority of voting members present at a meeting at which a quorum is present are the acts of the Board, except as specifically provided by these bylaws. The acts of a majority of the Board Members entitled to vote at a meeting at which a quorum is present shall be the act of the Board. A majority of the Board Members present and entitled to vote, whether or not a quorum exists, may adjourn any meeting of the Board to another time and place. Notice of any such adjourned meeting shall be given to the Board Members who are not present at the time of adjournment.

Section 2.9 Waiver of Notice. Whenever any notice whatsoever is required to be given under the provisions of applicable law or by these By-laws, a waiver of such notice in writing signed by the person or persons entitled to notice, whether before or after the time stated in such waiver, will be deemed equivalent to the giving of such notice. In the case of a special meeting, such waiver of notice shall specify the general nature of the business to be transacted.

Section 2.10 Standard of Care and Fiduciary Duty. Each Member shall stand in a fiduciary relation to the Organization and shall perform his or her duties as a Member, including his or her duties as a member of any committee of the Board upon which she/he may serve, in good faith, in a manner she/he reasonably believes to be in the best interests of this Organization, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a Member or any failure to take any action shall be presumed to be in the best interests of the Organization. In performing his or her duties, each Member 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:

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- a.) one or more officers or employees of the Organization whom the Member reasonably believes to be reliable and competent in the matters presented;
- b.) counsel, public accountants or other persons as to matters which the Members reasonably believes to be within the professional or expert competence of such persons; and
- c.) a committee of the Board of the Organization upon which she/he does not serve, as to matters within its designated authority, which committee the Member reasonably believes to merit confidence.

A member shall be considered to be acting in good faith if she/he has knowledge concerning the matter in question that would cause his or her reliance to be unwarranted.

Section 2.11 Factors Which May Be Considered by Members. In discharging the duties of their respective positions, the Board, committees of the Board and individual Members may, in considering the best interests of this Organization, consider the effects of any action upon employees, beneficiaries and others having dealings with the Organization and all other pertinent factors. The consideration of these factors shall not constitute a violation of Section 2.12 hereof.

Section 2.13 Policies. The Members may adopt policies not inconsistent with these By-laws for the administration and conduct of the affairs of the Organization and may alter, amend or repeal any such policies adopted by it. Such policies may be amended by majority vote of the Members present and entitled to vote at a meeting of the Members where a quorum is present.

Section 2.14 Removal. A Member may be removed from the Board for any or no cause by vote of a 2/3 of all the Board Members. All members are to participate in the voting in person or by designate.

ARTICLE III

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OFFICERS

Section 3.1 Enumeration. The officers of the Organization shall consist of a President, Vice President, Secretary and Treasurer and such other officers and assist officers as the Board Members may, from time to time, designate.

Section 3.2 Election and Term of Office. Each of the officers of the Organization will be elected and appointed annually by the Board Members. Each officer will remain in office and shall serve at the pleasure of the Board Members, until his or her successor is duly elected and takes office.

Section 3.3 Vacancies. Any vacancy shall be filled by the Members entitled to vote. The President may, however, fill vacancies in the office of Secretary, Treasurer, or any other office designated by the Board for the period ending upon the date when such vacancy is filled by the Board.

Section 3.4 The President. The President shall preside at and conduct all meetings of the Board Members and of the Executive Committee. The President may sign all contracts and agreements in the name of the Organization after they have been approved by the Board, serve as the representative of the Organization in meetings and discussions with other organizations and agencies, and otherwise perform all of the duties which are ordinarily the function of the office, or which are assigned by the Members. The President shall be an ex-officio member of all committees.

Section 3.5 Vice President. The Vice President shall perform the duties of the President when the President is absent or disabled and shall undertake such other responsibilities as the Board or President may assign.

Section 3.6 Secretary. The Secretary shall make or cause to be made minutes of all meetings of the Board Members. The Secretary shall be responsible for the timely mailing or

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delivery of all notices of meetings of the Board Members, and, generally, will perform all duties incident to the office of secretary of a Organization and such other duties as may be required by law or by these By-laws, or which may be assigned from time to time by the Board Members.

Section 3.7 Treasurer. The Treasurer shall supervise the financial activities of the Organization. Specifically, she/he shall see that:

- (1) full and accurate accounts of receipts and disbursements are kept,
- (2) a system is in place such that all monies and other valuable effects are deposited in the name and to the credit of the Organization in such depositories as shall be designated by the Board.
- (3) The Members at the regular meetings of the Board or whenever they may require it, receive an account of the financial condition of the Organization and
- (4) If required, an annual audit of the Organization books and records is performed by an auditor selected by the Board. In performing these functions, the Treasurer may rely on an independent contractor hired by the Board or employees of the Organization or any affiliated corporation who possess special financial training and skills and whose employment responsibilities include management of the Organization's financial affairs.
- (5) Three persons shall be designed by the Board. Two of the three signatures will be required on all checks issued.

Section 3.8 Executive Director. The Executive Director shall represent the organization as determined by the Board and consistent with the description contained in Appendix A.

Section 3.9 Other Officers. Each other officer shall have such responsibilities and perform such duties as may be prescribed by the Board from time to time. Each assistant officer shall carry out the responsibilities and duties of the officer which she/he assists in the event such

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officer is unable to perform such responsibilities or duties, except that no assistant officer shall become a Member solely by virtue of being an assistant officer.

ARTICLE IV

COMMITTEES

Section 4.1 Executive Committee. The Executive Committee shall consist of the officers of the Organization and Executive Director. The President of the Board shall serve as the chairperson of the Executive Committee. The Executive Committee shall meet at such times as the President may call, or on petition of three (3) of the Executive Committee members. At least twenty-four (24) hours oral or written notice shall be given for such meetings. A quorum for conducting business at a meeting of the Executive Committee shall be a simple majority. The Executive Committee may act for the Board between meetings of the Board. The President shall present a full report of all Executive Committee decisions to the Board at the next meeting of the Board. Any and all actions of the Executive Committee are subject to the approval of the Board.

Section 4.2 Committees. There shall be such other standing, advisory, and ad hoc committees as the Board may deem advisable in the administration and conduct of the affairs of the Organization. Such committees of the Board shall meet as necessary to accomplish their goals. The Board is authorized in its discretion to approve reimbursement for travel and actual expenses necessarily incurred by members of committees in attending committee meetings and in performing other official duties as such. Except as otherwise provided in these By-laws, committee chairpersons and members shall be appointed annually by the President and may be reappointed to a committee for an unlimited number of terms. The chairperson(s) of each committee shall determine the date and place of all committee meetings. Each committee may adopt its own rules of procedure not inconsistent with these By-laws.

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Section 4.3 Standing Committees. The Organization will have four standing committees, which shall be chaired by members of the Board of the Organization. Membership in the Committees may include qualified individuals who are not Members of the Organization, if so designated by the Board.

The Committees are:

- (1) Quality of Life
- (2) Infrastructure
- (3) Education
- (4) Business Development

Section 4.4 Limitation on Power of Committees. No such committee shall have any power or authority as to the following:

- (1) Amendment or repeal of any resolution of the Board;
- (2) Action on matters committed by the By-laws or a resolution of the Board to another Committee of the Board.
- (3) Filling of vacancies in the Board; or
- (4) Adoption, amendment, or repeal of By-laws.

ARTICLE V

PERSONAL LIABILITY OF MEMBERS

Section 5.1 Members Personal Liability. To the extent permitted by law, a member of the Board shall not be personally liable for monetary damages for any action taken, or any failure to take any action associated with official WEDIG business.

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Section 5.2 Preservation of Rights. Any repeal or modification of this Article by the Board shall not adversely affect any right or protection existing at the time of such repeal or modification to which any Member or Former Member may be entitled under this Article. The rights conferred by this Article shall continue as to any person who has ceased to be a Member of the Organization and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE VI

INDEMNIFICATION

Section 6.1 Mandatory Indemnification of Directors and Officers. The Organization shall indemnify, to the fullest extent now or hereafter permitted by law, (including but not limited to the indemnification provided by Chapter 57, Subchapter D of the NPCL) each Member or officer (including each former member or officer) of the Organization who was or is made a party to or a witness in or is threatened, pending or completed action, suite or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that she/he is or was an authorized representative of the Organization, against all expenses (including attorneys' fees and disbursements), judgments, fines (including excise taxes and penalties) and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding.

Section 6.2 Mandatory Advancement of Expenses to Members and Officers. The Organization shall pay expenses (including attorneys' fees and disbursements) incurred by a Board Member or officer of the Organization referred to in Section 6.1 hereof in defending or appearing as a witness in any civil or criminal action, suite or proceeding described in Section 6.1 hereof in advance of the final disposition of such action, suite or proceeding. The expenses incurred by such Member or officer shall be paid by the Organization in advance of the final disposition of such action, suite or proceeding only upon receipt of an undertaking by or on behalf of such Member or officer to repay all amounts advanced if it shall ultimately be

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determined that she/he is not entitled to be indemnified by the Organization as provided in Section 6.4 hereof.

Section 6.3 Permissive Indemnification and Advancement of Expenses. The Organization may, as determined by the Board Members from time to time, indemnify to the fullest extent now or hereafter permitted by law, any person who was or is a party to or a witness in or is threatened to be made a party to or a witness in, or is otherwise involved in, any threatened, pending or completed action, suite or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that she/he is or was an authorized representative of the Organization, both as to action in his or her official capacity and as to action in another capacity while holding such office or position, against all expenses (including attorneys' fees and disbursements), judgments, fines (including excise taxes and penalties), and amounts paid in settlement actually and reasonably incurred by him or her in conjunction with such action, suit or proceeding. The Organization may, as determined by the Board Members from time to time, pay expenses incurred by any such person by reason of his or her participation in an action, suite or proceeding referred to in this Section 6.3 in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that she/he is not entitled to be indemnified by the Organization as provided in Section 6.4 hereof.

Section 6.4 Scope of Indemnification. Indemnification under this Article shall not be made by the Organization in any case where a court determines that the alleged act or failure to act giving rise to the claim for indemnification (i.e. gross negligence or willful misconduct) is expressly prohibited by Chapter 57, Subchapter D of the NPCL or any successor statute as in effect at the time of such alleged action or failure to take action.

Section 6.5 Miscellaneous. Each Board Member and officer of the Organization shall be deemed to act in such capacity in reliance upon such rights of indemnification and advancement of expenses as are provided in this Article. The rights of indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other

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rights to which any person seeking indemnification or advancement of expenses may be entitled under any agreement, vote of disinterested directors, statute or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office or position, and shall continue as to a person who has ceased to be an authorized representative of the Organization and shall inure to the benefit of the heirs, executors and administrators of such person. Indemnification and advancement of expenses from any threatened, pending or completed action by or in the right of the Organization. Any repeal or modification of this Article by the Board Members of the Organization shall not adversely affect any right or protection existing at the time of such appeal or modification to which any person may be entitled under this Article.

Section 6.6 Definition of Authorized Representative. For the purposes of this Article, the term, "authorized representative" shall mean a director, trustee, officer, employee or agent of the Organization or of any corporation controlled by the Organization, or a trustee, custodian, administrator, committeeman or fiduciary of any employee benefit plan established and maintained by the Organization or by any corporation controlled by the Organization, or person serving another corporation, partnership, joint venture, trust or other enterprise in any of the foregoing capacities at the request of the Organization. The term "authorized representative" shall not include money managers or investment advisors (or any employees thereof) hired by the Organization.

ARTICLE VII

CONFLICT OF INTEREST

Section 7.1 Purpose. The purpose of the conflict of interest article is to protect the Organization interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or member of the Organization, or the potential influence through the connections of spouses, significant others, or other family members, may result in a possible excess benefit transaction. This article is intended to supplement but not

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replace any applicable state and federal laws governing conflict of interest applicable to non-profit and charitable organizations.

Section 7.2 Definitions.

- a.) Interested person. Any Board Member, Officer, or Committee Member with Board delegated powers, who has a direct or indirect financial interest as defined below, is an interested person.
- b.) Financial interest. A person has a financial interest if the person has, directly or indirectly, through business, investment, or connections of spouses, significant others, or other family members: (1) an ownership or investment interest in any entity with which the Organization has a transaction or arrangement; (2) a compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction agreement; or (3) a potential ownership or investment interest in, or compensation arrangement with, an entity or individual with which the Organization is negotiating a transaction or agreement. Compensation includes direct and indirect remuneration as well as gifts or favors that not insubstantial. A financial interest is not necessarily a conflict of interest. Under Section 3b, a person who has a financial interest may have a conflict of interest only if the appropriate Member or committee decides that a conflict of interest exists.

Section 7.3Procedures.

- a.) 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 members and members of committees with delegated powers considering the proposed transaction or arrangement.
- b.) Determining whether a conflict of interest exists. After disclosure of the financial interests and all material facts, and after any discussion with the interested person,

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he/she shall leave the Members or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining members or committee members shall decide if a conflict of interest exists.

- c.) Procedures for addressing the conflict of interest. (1) An interested person may make a presentation at the Members 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. (2) The President of the Board or committee chairperson shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. (3) After exercising due diligence, the Members or committee shall determine whether the Organization 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. (4) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Members or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization'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.
- d.) Violations of the conflict of interest article. (1) If the Members or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts 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. (2) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Members or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 7.4 Records of proceedings. The minutes of the Board and all committees with board delegated powers shall contain: (1) the names of the persons who disclosed or

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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 taking to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict in fact existed; and (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.

Section 7.5 Compensation. (1) A voting member of the Board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation. (2) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation. (3) No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Section 7.6 Annual statements. Each Director, Officer, and Committee Member with Board delegated powers shall annually sign a statement that affirms that such person; (1) has reviewed this article of the bylaws regarding conflicts of interest, (2) has read and understands this article of the bylaws, (3) has agreed to comply with this article of the bylaws, and (4) understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

Section 7.7 Periodic reviews. To ensure that the Organization 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;

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and (2) whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization 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.

Section 7.8 Use of outside experts. When conducting the periodic reviews as provided for in Section 7, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

ARTICLE VIII

**RESTRICTIONS REGARDING THE OPERATIONS OF
THE ORGANIZATION; ADMINISTRATION OF FUNDS**

Section 8.1 No Private or Political Beneficiaries. No part of the earnings or assets of the Organization shall inure to the benefit of any private individual, and no substantial part of the activities of the Organization or of any recipient of its funds shall be to aid any political campaign on behalf of any candidate for public office.

Section 8.2 No Violation of Purposes. In no event and under no circumstances shall the Board Members make any distribution or expenditure, engage in any activity, hold any assets, or enter into any transaction whatsoever the effect of which under applicable federal laws then in force will cause the Organization to lose its status as an organization to which contributions are deductible in computing the net income of the contributor for purposes of federal income taxation.

Section 8.3 Annual Report. The Treasurer shall submit annually to the Board Members a statement containing those details required to be included under the provision of the NPCL, any successor statute governing Pennsylvania nonprofit corporations or these By-laws.

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Section 8.4 Books and Records. This Organization will keep correct and complete books and records of account and will also keep minutes of the proceedings of its Board Member and Committees. The Organization will keep at its registered office the original or a copy of its By-laws including amendments to date certified by the Secretary of the Organization.

Section 8.5 Tax Records. The Organization shall maintain at its principal office a copy of its application for exemption and all tax returned filed with the Internal Revenue Service. Such documents shall be made available during regular business hours for inspection by any person requesting to see them.

ARTICLE IX

BY-LAW AMENDMENTS

Section 9.1 Authority. These By-laws may be altered, amended and/or repealed from time to time by the affirmative vote of a two-thirds (2/3) majority of the Board of Directors or their proxy entitled to vote.

Section 9.2 Notice. The Members of the Board shall be given at least ten (10) days' prior written notice of any Board meeting at which proposed changes to the By-laws of the Organization are to be considered or acted upon. Such written notice shall identify the specific sections of the By-laws, which are under consideration and the proposed changes thereto.