

ORDINANCE NO. _____

HEALTH AND SANITATION

AN ORDINANCE OF THE TOWNSHIP OF EAST PENNSBORO, CUMBERLAND COUNTY, PENNSYLVANIA, REPEALING ORDINANCE NUMBER 662-03 HEALTH AND SANITATION, REPEALING THE CODE OF ORDINANCE 179-68, NUISANCES, CHAPTER 10, PART 1, AND REPEALING THE CODE OF ORDINANCE 282-75, VECTOR CONTROL, CHAPTER 10, PART 2; AND CREATING THE MINIMUM RULES FOR THE ESTABLISHMENT OF A BOARD OF HEALTH AND HEALTH OFFICER FOR EAST PENNSBORO TOWNSHIP; MAKING PROVISIONS FOR APPEALS; PROVIDING PENALTIES FOR VIOLATIONS THEREOF; AND REPEALING INCONSISTENT ORDINANCES.

BE IT ENACTED AND ORDAINED, by the Board of Commissioners of the Township of East Pennsboro, Cumberland County, Pennsylvania, and it is hereby enacted and ordained by the authority of same, as follows:

CHAPTER 10

HEALTH AND SANITATION

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§401. Amendments, Deletions, Modifications. The following sections of the Food Code, 2001, Recommendations of the United States Public Health Service/Food and Drug Administration are hereby revised as follows:

- §8-202.10. Trade Secrets.
- §8-301.11. Prerequisite for Operation.
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- §8-403.30. Issuing Report and Obtaining Acknowledgment of Receipt.
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- §8-805.10. Response to Notice of Hearing or Request for Hearing, Basis and Time Frame.
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SECTION I

Board of Health

§101. Creation.

A Board of Health is hereby authorized and created in and for the Township of East Pennsboro, Cumberland County, Pennsylvania, composed of five (5) members, at least one (1) of whom shall be a reputable licensed physician of not less than two (2) years experience in the practice of his/her profession, if one resides within the Township. All members of said Board of Health shall be appointed by a majority of the Board of Commissioners of the Township. At the first appointment, one (1) member shall be appointed to serve for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years and one (1) for five (5) years, and thereafter one (1) member shall be appointed each year to serve for a term of five (5) years.

§102. Organization; Membership Requirements; Compensation.

1. The members of the Board shall severally take and subscribe to the oath prescribe by the statute for Township officers and shall annually organize by electing a President from among the members of the Board, a Secretary, who may or may not be a member of the Board, and the appointed Health Officer of the Township, who shall not be a voting member of the Board.
2. The Health Officer, who shall be appointed by the Board of Commissioners, shall have had such training and experience and shall have passed such examination(s) as the Pennsylvania Department of Health and/or Department of Environmental Protection may require. The Health Officer shall not be removed from the office except for cause and after full opportunity to be heard on specific and relevant charges by and before the Board of Commissioners.
3. The Secretary and the Health Officer shall receive such salary as may be fixed by the Board of Commissioners of the Township. The members of the Board of Health, except any member elected to serve as Secretary, shall serve without compensation.

§103. Powers and Duties.

1. The Board of Health and the Health Officer shall have and exercise all the authority and perform all the duties conferred upon them by the laws of this Township, by the laws of the Commonwealth of Pennsylvania and by the rules and regulations of the Pennsylvania Department of Environmental Protection and Department of Health and shall have all such powers relating to the abatement of nuisances prejudicial to the public health and the enforcement of remedies and infliction of penalties in connection therewith as are vested by law in the Board of Commissioners of the Township.
2. The Health Officer shall carry proper identification when inspecting food establishments or premises in the performance of duties under this code.
3. The Health Officer shall issue all necessary notices or orders to ensure compliance with this code.
4. The Health Officer shall keep official records of all business and activities of the department specified in the provisions of this code.
5. Whenever in the enforcement of this code or another code or ordinance, the responsibility of more than one code official of the jurisdiction is involved, it shall be the duty of the code officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the establishment or premises shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the inspectors' authority to enforce, the inspector shall report the findings to the code official having jurisdiction.
6. The Health Officer, in accordance with the prescribed procedures of this jurisdiction and with the concurrence of the Board of Commissioners, shall have authority to appoint a deputy Health Officer, other related technical officers, inspectors and other employees.

§104. Promulgation of Rules and Regulations.

The Board of Health, with the advice, consent and approval of the Township Commissioners, shall promulgate such rules and regulations as may be necessary, from time to time, to enforce the provisions of this chapter.

§105. Liability

The Health Officer or his/her designated representative charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this ordinance shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The Health Officer, or any subordinate, shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

§106 Fees.

The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as adopted by Resolution by the Board of Commissioners from to time.

SECTION II

Nuisances/Unauthorized Activities

§ 201. Actions and Matters Prohibited as Nuisances.

The purpose of Section II Nuisances/Unauthorized Activities is to regulate abandon buildings, prevent the storage, discharge, burial of animal carcasses, human waste, or vegetable matter that will decay or become offensive or render offensive any of the drains, streams or sewers of the Township which causes such conditions to create a hazard or danger to the health, safety and welfare of the Township residents because:

- a. Such conditions create a breeding ground and haven for rodents, rats, vermin, mosquitoes, flies and other undesirable animals, reptiles and insects; and
- b. Such conditions create an attractive nuisance for children, who are not aware of the dangers involved.

The following actions and matters are hereby declared to be nuisances, and no person, firm, or corporation owning or occupying any property within the Township of East Pennsboro shall do, authorize, aid or abet any of them, such restrictions being intended to promote the general health, safety and comfort of all the citizens of East Pennsboro Township.

- 1. No person shall place or cause to be placed, thrown, harbored or maintained in or near the streets, alleys or highways of the Township any liquid or solid vegetable matter that will decay or become offensive or render offensive any of the drains, streams or sewers of the Township or any other matter or thing that will cause danger or discomfort to the inhabitants or to the traveling public of the Township.
- 2. No person, firm or corporation owning or occupying any property within the Township of East Pennsboro shall allow garbage, trash, human excrement or any other unwholesome or offensive matter to accumulate on any premises in such a manner as to create offensive odors, to contaminate

any stream or watercourse or to provide a breeding place for disease or vermin.

3. The carcass of any dead animal not killed for food shall be removed and disposed of by burial or incineration or some other sanitary method within twenty-four (24) hours after death. If the carcass is buried it shall be placed so that every part shall be covered by at least two (2) feet of earth and at a location not less than one thousand (1000) feet from any waters of the Commonwealth, and not subject to overflow by such waters. In all cases of death from communicable disease the carcass shall be thoroughly enveloped in unslaked lime.

4. No person shall maintain or permit to be maintained, any pond, privy vault, cesspool, well cistern, rain barrel or other receptacle containing water unless such receptacle is constructed or maintained in a manner to prevent the breeding of mosquitoes.

5. No person, firm or corporation shall keep or allow to remain on any premises any abandoned house, barn, shed or other structure unless such structure shall be closed up and secured so as to prevent entry by unauthorized person(s) or vermin, or to allow any such abandoned structure to remain in a dilapidated or dangerous condition.

6. No person, firm or corporation may maintain any other condition, structure or improvement that shall constitute a threat to the health, safety or welfare of the residents of the Township of East Pennsboro.

7. No person or occupant of any premises shall maintain any well, spring, cistern or other source of water supply used for drinking or household purposes to which the public has or may have access and which is polluted or which is so situated or constructed that it may become polluted in any manner which may render such water supply injurious to the health.

§ 202. Inspection; Notice to Abate.

The Health Officer and/or his/her authorized representative is hereby empowered to enter and inspect any premises upon which he/she has reasonable grounds to believe a nuisance/unauthorized activities exists. If violation of any of the provisions of this chapter constitutes a nuisance thereon or if any condition or structure thereon poses a threat to the public health, safety or welfare, he/she shall issue written notice to be served by registered or certified mail upon the owner of such premises or, if the owner's whereabouts or identity be unknown, by posting the notice conspicuously upon the offending premises. Such notice shall specify the condition or structure complained of and shall require the owner to

commence to remove or otherwise rectify the offending condition or structure within five (5) days of notification and thereafter to fully comply with the requirements of this notice within twenty (20) days.

§ 203. Abatement by Township.

If the owner of premises upon which a nuisance is found to exist does not comply with the notice and abate the nuisance within the time prescribed, the Township shall have authority to take measure to correct the conditions and collect the costs thereof, together with a penalty of ten percent (10%), in the manner provided by law for the collection of municipal claims or by any other means, or may seek to abate the nuisance by an action in equity.

§ 204. Hearing of Grievances.

Any persons aggrieved by a decision of the Health Officer in regard to any alleged nuisance may request and shall be granted a hearing before the Board of Commissioners. Such hearing shall be requested by filing a petition, in writing, stating the grounds therefore within five (5) days after notice of the Health Officer's decision. The hearing shall commence within thirty (30) days of filing of the petition unless postponed for good cause. After such hearing, the Board of Commissioners shall sustain, modify or overrule the action of the Health Officer.

§ 205. Violations and Penalties.

Any person failing to remove or abate any nuisance after due notice from the Health Officer pursuant to this chapter or within five (5) days of the denial of any appeal to the Board of Commissioners pursuant to subsection 204 hereof shall, upon summary conviction hereof, be sentenced to pay a fine of not less than three hundred dollars (\$300.00) and not more than one thousand dollars (\$1000.00) and costs of prosecution. Every day after the first offense shall be deemed a separate offense.

SECTION III

Food Establishments

§301. Adoption.

There is hereby adopted by the Board of Commissioners of the Township of East Pennsboro for the purpose of establishing rules and regulations governing the retail sale, commercial and institutional services, and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food, food establishment, safe material, sanitization and other terms; and providing standards for employee food safety knowledge, health and practices; food sources, preparation, holding temperatures and protection; equipment design, construction, installation, construction and maintenance, and storage and use of poisonous and toxic materials; requiring a permit to operate a food establishment; and providing for restriction or exclusion of employees; the examination and condemnation of food, and enforcement and penalties, that certain food code known as the Food Code, 2001, United States Public Health Service, Food and Drug Administration, as published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the Pennsylvania Department of Agriculture Food Code in Chapter 46, and that certain food code known as The Food Act (31 P. S. § 20.1 – 20.18) the Public Eating and Drinking Place Law (35 P. S. § 655.1 – 655.13); and section 1705 (d) of the Administration Code of 1929 (71 P. S. § 455(d)), unless otherwise noted, save and except such portions as are hereafter deleted, modified or amended and the same are hereby adopted and incorporated as fully as if set out in length, and from the date on which this Section III shall take effect, the provisions thereof shall be controlling in the regulating of design, construction, management and operation of food establishments, inspection of food establishments and providing for plan submissions and approval and the issuance of permits and collection of fees therefore within the limits of the Township of East Pennsboro.

§ 302. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

EATING or DRINKING PLACE – Any place within the boundaries of East Pennsboro Township where food, foodstuff or beverage is served or provided for human consumption, with or without charge, including, among others, hotels, restaurants, cafes, cafeterias, clubs, boardinghouses, ice cream parlors, soda water or soft drink fountains and bars or taverns, churches, parochial schools, private clubs, fire companies, convenience stores, grocery stores, delicatessens, spas and catering businesses.

FOOD or BEVERAGE MANUFACTURING, PROCESSING or MERCHANDISING ESTABLISHMENTS – Any establishment within the boundaries of East

Pennsboro Township where food, food products and beverages are manufactured, processed, packaged or bottled or sold for consumption off the premises of the seller, including, among others, bakeries, beverage distributors, bottlers, candy and confectionery manufacturers, dairies, frozen food locker plants, wholesalers and retailer and operators of vending machine services.

PROPRIETOR - Any person, partnership, association or corporation conducting or operating within the boundaries of East Pennsboro Township an eating or drinking place or food or beverage manufacturing, processing or merchandising establishment.

REGULATORY AUTHORITY - The Health Officer of the Township of East Pennsboro Township, unless otherwise expressly provided herein.

§ 303. Conformance to Federal and State Laws. Orders. Rules and Regulations.

All laws, orders, rules and regulations established by the Federal government and/or the Commonwealth of Pennsylvania in any food code, sanitary code, food labeling code, beverage code or similar codes shall be observed by all persons who own or operate a food establishment in East Pennsboro Township.

§ 304. Standards for Operation of Food Establishments.

Proprietors shall not operate or conduct an eating or drinking place or a food or beverage manufacturing, processing or merchandising establishment within the Township except in a clean and sanitary manner, and all foods and beverages shall be clean, wholesome, and free from spoilage, free from adulteration and safe for human consumption. The Board of Commissioners is hereby empowered to promulgate rules and regulations in furtherance of this provision.

§305. Saving Clause.

Nothing in this Section or in the Food Code hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired or liability incurred, nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this Section.

§306. Validity.

The invalidity of any Part or provision of this Section or of the Food Code hereby adopted shall not invalidate other Parts or provisions thereof, which shall remain in full force and effect.

§307. Interpretation, Purpose and Conflict.

In interpreting and applying the provisions of the Food Code, the Regulatory Authority shall be held to the minimum requirements for the promotion of the health, safety and general welfare. It is not intended to annul other rules, regulations or ordinances; provided that, where two (2) or more codes or ordinances conflict, whichever code or ordinance imposes the greatest restriction shall control.

SECTION IV

Amendments, deletions and modifications to the Food Code, 2001

The following sections of the Food Code, 2001, Recommendations of the United States Public Health Service/Food and Drug Administration are hereby revised as follows:

§ 8-202.10 Trade Secrets shall be amended to read as follows:

The Regulatory Authority shall treat as confidential, in accordance with law, information that meets the criteria under law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §§8.201.12 and 8.201.14 and is designated on such forms, plans and specifications as a trade secret.

§ 8-301.11 Prerequisite for Operation shall be amended to read as follows:

A person may not operate a food establishment without having the food establishment inspected by the East Pennsboro Township Board of Health, and procuring from said Board of Health a permit therefore which permit fee, application and form, and any other matter pertaining thereto, shall be issued by said Board of Health in accordance with the most updated version of the Food Code and the rules, regulations and laws of the Commonwealth of Pennsylvania and its various departments and boards then pertaining.

§ 8-301.12 Permit Fees shall be inserted to read as follows:

Every applicant for a permit to conduct or operate a food establishment in East Pennsboro Township pursuant to the Act of the General Assembly of May 23, 1945, P.L. 926, as amended, shall pay to the Department of Housing and Community Development a fee or fees for each such establishment which shall include the permit fee prescribed by the said Act, in accordance with the fee resolution of the Board of Commissioners.

§ 8-303.30(C) Denial of Application for Permit Notice

(C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under §8-805.10(D).

§ 8-402.20(A)(3) Refusal, Notification of Right to Access, and Final Request for Access shall be amended to read as follows:

(A)(3) If access is denied, an order pursuant to §8-802.10 issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law.

§ 8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt shall be amended to read as follows:

At the conclusion of the inspection and according to §8-701.10 hereof, the Regulatory Authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

§ 8-402.40 Inspection Order to Gain Access shall be amended to read as follows:

If denied access to a food establishment for an authorized purpose and after complying with §8-402.20, the Regulatory Authority may issue, or apply for the issuance of, an inspection order pursuant to §8-802.10 to gain access as provided under law, or may revoke or deny the Food Establishment Permit.

§ 8-501.20(C) Restriction or Exclusion of Food Employee, or Suspension of Permit Summary shall be amended to read as follows:

(C) Closing the food establishment by summarily suspending a permit to operate after having given notice of the suspension of the permit and an indication of the acts necessary in order to have the suspension lifted.

§ 8-501.30(C) Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order shall be amended to read as follows:

(C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in §8-805.10(C) and (D).

For the provisions of Parts 8-6, Constitutional Protection, 8-7, Notices and 8-8 Remedies, the phrase "Regulatory Authority" shall mean the Board of Commissioners of East Pennsboro Township, except as that term is used in §§8-701.20(B), 8-801.10, 8-802.10, 8-802.20, 8-803.10, 20, 30 (except F), 40, 51, 60, 70, 80, 90, 8-804.10, 20, 40, 50; 8-805.10 (except D); 8-809.10, 20, 30, 40, 50.

§8-602.10 Right of Recipients of Orders or Decisions shall be amended to read as follows:

A recipient of a Regulatory Authority order or decision may file a petition for judicial review in the Court of Common Pleas of Cumberland County after available administrative appeal remedies are exhausted.

§8-803.10 Hold Order, Justifying Conditions and Removal of Food shall be amended to read as follows:

The Regulatory Authority may place a hold order on a food that originated from an unapproved source or that may be unsafe, adulterated, not honestly presented, not labeled according to law or otherwise not in compliance with this Code.

§8-805.10(B) Response to Notice of Hearing or Request for Hearing, Basis and Time Frame shall be amended to read as follows:

(B) A permit applicant may request a hearing regarding the disposition of an application for a new or revised permit if the Regulatory Authority does not issue or deny the permit within thirty (30) days of the receipt by the Regulatory Authority of the application.

§8-805.40 Provided in Accordance with Law shall be amended to read as follows:

Hearings shall be conducted pursuant to the Pennsylvania Local Agency Law.

§8-805.50(A)(1) Timeliness, Appeal Proceeding Within Ten (10) Business Days, Other Proceedings Within Thirty (30) Calendar Days shall be amended to read as follows:

(A)(I) Except as provided in K (B) of this section, within ten (10) business days after receiving a written request for an appeal hearing from:

§8-805.60 Notice, Contents shall be amended to read as follows:

A notice of hearing to respondent shall contain the following information: §8-805.70 Proceeding Commences Upon Notification is deleted in its entirety. §8-805.100 Record of Proceeding

All testimony in a hearing may be stenographically recorded and a full and complete record may be kept of the proceedings. In the event all testimony is not stenographically recorded and a full and complete record of the proceedings is not provided by the Regulatory Authority, such testimony shall be stenographically recorded and a full and complete record of the proceedings shall be kept at the request of any party agreeing to pay the cost thereof.

§8-806.10 Appointment by Regulatory Authority and Purpose shall be amended to read as follows:

(B) Make a recommendation concerning administrative remedies to achieve compliance with this Code.

(C) Delete this subsection in its entirety.

§8-806.20 Qualifications shall be amended to read as follows:

A hearing officer shall be knowledgeable of the provisions of this chapter as they relate to hearings, and be:

(A) A Regulatory Authority representative other than the person who inspects the food establishment.

§8-806.30 Powers, Administration of Hearings shall be amended to read as follows:

(A) A hearing officer shall have the following powers in a hearing in which the hearing officer presides:

1. Setting and conducting the course of a hearing requested in accordance with or authorized by this Code.
2. Issuing subpoenas in the name of the Regulatory Authority at the request of a party to a hearing, administering oaths and affirmations, examining witnesses and receiving evidence.
3. Delete this subsection in its entirety.
4. Delete this subsection in its entirety.

§8-806.40 Powers, Administrative Remedies shall be deleted in its entirety.

§8-807.30 Evidence to be Excluded shall be amended to read as follows:

The Regulatory Authority or hearing officer shall not be bound by technical rules of evidence at hearings, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted.

§8-807.40 Testimony Under Oath shall be amended to read as follows:

Testimony of parties and witnesses shall be made under oath or affirmation administered by the hearing officer or ranking member of the Regulatory Authority.

§8-807.60 Documentary Evidence shall be amended to read as follows:

Documentary evidence may be received in the form of a copy or excerpt if said copy or excerpt is duly authenticated.

§8-809.10 Gaining Access to Premises and Records shall be amended to read as follows:

If any owner, operator, occupant or other person in charge of a food establishment refuses, impedes, inhibits, interferes, restricts or obstructs entry and free access to the food establishment and premises under his or her control or to any part thereof, with respect to any authorized inspection, the health officer may, upon showing probable cause exists for the inspection, file a complaint and may petition for and obtain an order directing compliance with the inspection requirements of this Part from a court of competent jurisdiction, including a magisterial district judge. Any person who refuses to comply with such an order issued pursuant to this Section shall be subject to such penalties as may be authorized by law for a violation of a court order.

§8-810.10 Institution of Proceedings shall be amended to read as follows:

(A) Proceedings to enforce this Code may be instituted by the Regulatory Authority according to law, including, but not limited to, issuing a citation or summons and by filing a complaint with a court of competent jurisdiction.

§8-811.10 Authorities, Methods, Fines and Sentences shall be amended to read as follows:

(B) A person who violates a provision of this Code or this Part, or who fails to comply with any of the requirements thereof shall, upon conviction thereof, pay a fine of not less than three hundred dollars (\$300.00) or not more than One Thousand Dollars (\$1,000) and costs of prosecution or undergo

imprisonment not exceeding thirty (30) days, or pay both the fine and costs and undergo imprisonment.

§8-813.10 Petitions, Penalties, and Continuing Violations shall be amended to read as follows:

(B) In addition to any criminal fines and sentences imposed as specified in §811.10, or to being enjoined as specified in §8-812.10, a person who violates a provision of this Code, any rule or regulation adopted in accordance with the law related to food establishments within the scope of this Code or to any term, condition, or limitation of a permit issued as specified by §§8-303.10 and 8-303.20, is subject to a civil penalty of a minimum of Three Hundred Dollars (\$300.00) and not exceeding One Thousand Dollars (\$1,000) per violation.

SECTION V

Miscellaneous Provisions

§401. Availability of Remedies.

The remedies set forth herein for the enforcement of this chapter shall not be deemed to be mutually exclusive or to preclude resort by the Township to any other remedy provided by law; rather the remedies set forth herein or any other remedy provided by law may be employed simultaneously or consecutively at the option of the Township.

§402. When Effective.

This chapter shall take effect upon the appointment of a Health Officer by the Board of Commissioners and the approval of such Health Officer by the Pennsylvania Department of Health.

SECTION VI

Repealer and Effective Date

All existing ordinances or parts thereof in conflict herewith are and the same are hereby repealed.

If any section or any part of any section is held unconstitutional, illegal or invalid for any reason, the remaining section of this ordinance, or where a part of a section is held to be unconstitutional, illegal or invalid, the

remaining part of said section and all other remaining sections of this ordinance shall not be affected by the unconstitutionality, illegality, or invalidity and shall remain in full force or effect.

This ordinance shall become effective immediately.

ENACTED AND ORDAINED this _____ day of _____, 2005.

ATTEST:

TOWNSHIP OF EAST PENNSBORO
BOARD OF COMMISSIONERS

Mr. Robert L. Gill, Secretary
President

By: _____
George A. DeMartyn,