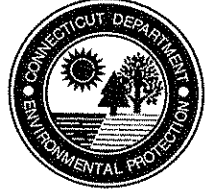


# STATE OF CONNECTICUT

## DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT :  
V. :  
ELECTRIC BOAT CORPORATION :

CONSENT ORDER No. WC 5699

Date of Issuance: December 30, 2010

A. With the agreement of Electric Boat Corporation ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") finds:

1. Respondent is a corporation engaged in submarine design and construction located at 75 Eastern Point Road, Groton, Connecticut ("the site").
2. On June 22, 1998, the Commissioner issued wastewater discharge Permit No. CT0003824 to the Respondent for the discharge of wastewaters from Respondent's operations to the Thames River. The Commissioner reissued wastewater discharge Permit No. CT0003824 ("NPDES Permit") to the Respondent on July 5, 2006 and issued modifications of such reissued NPDES Permit on October 3, 2006, April 17, 2008, and August 10, 2010.
3. On December 8, 2008, the Commissioner issued wastewater discharge Permit No. SP0000440 to the Respondent for the discharge of wastewaters from Respondent's operations to the City of Groton Publicly Owned Treatment Works ("POTW").
4. On January 5, 2010, the Respondent opened equalization valves in the caisson (dock end gate) of Graving Dock 3 ("GD3") which remained open until January 19, 2010. Respondent asserts such discharge was permitted under discharge serial number ("DSN") 002-1 of the NPDES Permit. The sampling results from a January 6, 2010 sampling event of the wastewater in GD3 indicate the discharge contained elevated levels of Free Available Oxidants and Total Copper, and the discharge showed low survival rates for Aquatic Toxicity test species. The sampling results also showed the presence of several other parameters. A summary of the sampling results is described in Attachment 1, Table A attached hereto.
5. On July 30, 2010, the Department of Environmental Protection ("Department") received information from the Respondent which indicates that Free Available Oxidants were present in the wastewater in GD3 beginning on or about January 6, 2010 through and including January 13, 2010. A summary of the sampling results is described in Attachment 1, Table B attached hereto.

6. Based on Attachment O to the Respondent's NPDES permit application no. 200204316, Free Available Oxidants, Copper, and other parameters listed in Attachment 1, Table A (attached hereto) are not expected to be present in the discharge of DSN002-1.
7. The discharge of pollutants described in paragraphs A.4, A.5 and A.6 of this consent order is not authorized under the NPDES Permit.
8. On January 13, 2010, the Respondent submitted a written report to the Department identifying the cause of the elevated levels of Free Available Oxidants, Total Copper, and low survival rates for Aquatic Toxicity test species was the recently installed Impressed Current Cathodic Protection ("ICCP") system, which the Respondent later stated was installed and operational in November 2009.
9. Therefore, the Respondent failed to obtain prior approval for the installation of the ICCP system in violation of Section 22a-430-3(i) of the Regulations of Connecticut State Agencies ("RCSA").
10. On January 19, 2010, the caisson of GD3 was removed, which constitutes a DSN002A discharge, but a representative sample was not taken of DSN002A prior to the removal of the caisson, as required by the NPDES Permit.
11. Therefore, the Respondent failed to monitor DSN002A, in violation of Section 4, Table I of the NPDES Permit.
12. On March 31, 2010, the Respondent submitted a written report to the Department indicating exceedances of the pH limitation of DSN 007B on February 23, 2010 and March 17, 2010, and the Respondent identified the cause of the exceedances as the addition of amine, a new chemical, in the boiler feedwater. The Respondent did not notify or seek approval from the Department prior to using the new chemical. The reported results and NPDES Permit effluent limitations are described in Attachment 1, Table C attached hereto.
13. Therefore, the Respondent violated the effluent limitation for pH in Section 4, Table O of the NPDES Permit and failed to obtain prior approval for the addition of amine to the boiler feedwater in violation of Section 22a-430-3(i) of the RCSA.
14. Subsequent to March 31, 2010, the Respondent submitted a request for approval for the addition of amine to the Department on July 13, 2010.
15. From December 1, 2007 to September 30, 2010, the Respondent reported in its Discharge Monitoring Reports and letters to the Department that it had thirty additional exceedances of one or more effluent limitations contained in the permits described in paragraphs A.2 and A.3 for phenols, pH, copper, zinc, oil & grease and flow. Each of the effluent limitation violations is described in Attachment 1, Table D.
16. By virtue of the above, the Respondent has initiated, created or maintained a discharge into the waters of the state without a permit or has violated a permit issued under Section

22a-430 of the Connecticut General Statutes and the regulations adopted thereunder, and the Respondent has created or is maintaining a facility or condition which reasonably can be expected to create a source of pollution to the waters of the state.

17. By agreeing to the issuance of this consent order, Respondent makes no admission of fact or law with respect to the matters addressed herein other than the facts asserted in paragraphs A.1, A.2 and A.3.
- B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-425, §22a-427, §22a-430, §22a-432 and §22a-438 of the Connecticut General Statutes, orders Respondent as follows:
1. On or before ninety (90) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a plan ("Plan") to ensure compliance with copper effluent limitations in each of the Graving Docks.
  2. On or before forty-five (45) days after receiving approval for the Plan, Respondent shall perform the actions specified in the approved Plan and submit written certification to the Commissioner that such actions have been completed or best management practices have been implemented.
  3. Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.
  4. Penalty. Respondent agrees to the assessment of a penalty of **ninety-six thousand dollars (\$96,000.00)** as the total penalty to be sought by the Commissioner for past violations described in paragraphs A.4 through A.13, A.15 and A.16 of this consent order to be satisfied by the following:
    - a. On or before **thirty (30) days** after the date of issuance of this consent order, Respondent shall pay a civil penalty of **twenty-five thousand dollars (\$25,000.00)**.
    - b. Supplemental Environmental Project. In addition to the civil penalty referenced in paragraph B.4.a, Respondent has agreed to fund a supplemental environmental project or projects ("SEP") as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects" as follows:
      - i. On or before **thirty (30) days** after the date of issuance of this consent order, Respondent shall pay **seventy-one thousand dollars (\$71,000.00)** to the Statewide SEP Account. The payment shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon "Statewide SEP Account" and "Consent Order No. WC 5699."

- ii. If Respondent fails to fund the SEP in accordance with paragraph B.4.b.i, Respondent shall immediately pay a civil penalty of seventy-eight thousand one-hundred dollars (\$78,100.00). Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.5 of this consent order.
  - iii. Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
  - iv. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
5. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face, "***Bureau of Materials Management and Compliance Assurance, Water Permitting and Enforcement Division***, civil penalty, Consent Order WC 5699. A copy of any check used for payment and any transmittal letter for such a payment shall also be sent to the individual identified in paragraph B.19 of this consent order.
6. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
7. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
8. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the

individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."

9. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
10. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
11. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
12. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
13. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
14. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance or prevent or abate pollution.

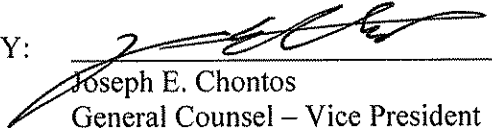
15. Access to site. Any representative of the Department of Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
16. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.
17. Notice to Commissioner of changes. Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
18. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
19. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Sarah Ely, Sanitary Engineer 1  
Department of Environmental Protection  
Bureau of Materials Management and Compliance Assurance  
Water Permitting and Enforcement Division  
79 Elm Street, 2<sup>nd</sup> floor  
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order. A corporate resolution granting such authorization is attached hereto as Exhibit A.

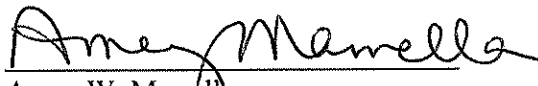
Electric Boat Corporation

BY: \_\_\_\_\_

  
Joseph E. Chontos  
General Counsel – Vice President

12/21/10  
Date

Issued as a final order of the Commissioner of Environmental Protection.

  
Amey W. Marrella  
Commissioner

12/29/10  
Date

DEP/WPC 059-012  
TOWN OF GROTON LAND RECORDS

ATTACHMENT 1

Table A: Sampling Results from 1/6/2010

Date	Parameter	Reported Value	Permit Limit
1/6/2010	Oxidants, Free Available	1480 ug/l	-
1/6/2010	Copper, Total	104 ug/l	-
1/6/2010	Oil & Grease	2.5 mg/l	-
1/6/2010	Oxidants, Total Residual	1540 ug/l	-
1/6/2010	Solids, Total Suspended	6.1 mg/l	-
1/6/2010	Zinc, Total	313 ug/l	-
1/6/2010	Aquatic Toxicity ( <i>Mysidopsis bahia</i> )	4%	-
1/6/2010	Aquatic Toxicity ( <i>Cyprinodon variegates</i> )	0%	-

Table B: Monitoring of Free Available Oxidants

Date	Parameter	Sampling Height		
		5'	20'	40'
1/6/2010	Oxidants, Free Available		1.48	
1/6/2010	Oxidants, Free Available		1.84	
1/7/2010	Oxidants, Free Available		1.64	
1/7/2010	Oxidants, Free Available	0.31	1.71	1.44
1/7/2010	Oxidants, Free Available		1.74	
1/7/2010	Oxidants, Free Available		1.68	
1/7/2010	Oxidants, Free Available		1.77	
1/7/2010	Oxidants, Free Available		1.53	
1/7/2010	Oxidants, Free Available		1.56	
1/8/2010	Oxidants, Free Available	.98	1.54	1.5
1/8/2010	Oxidants, Free Available	0.72	1.62	1.61
1/8/2010	Oxidants, Free Available	0.44	1.62	1.64
1/8/2010	Oxidants, Free Available	0.15	1.35	0.55
1/8/2010	Oxidants, Free Available	0.25	1.52	1.52
1/8/2010	Oxidants, Free Available			1.22
1/9/2010	Oxidants, Free Available	0.31	1.39	1.15
1/9/2010	Oxidants, Free Available	0.26	1.26	1.24
1/10/2010	Oxidants, Free Available	0.25	0.99	0.76
1/10/2010	Oxidants, Free Available	0.19	0.88	0.78
1/11/2010	Oxidants, Free Available	0.23	0.65	0.55
1/12/2010	Oxidants, Free Available	0.05	0.36	0.27
1/13/2010	Oxidants, Free Available	<0.03	0.12	0.12

Table C: Exceedances of DSN007B

Date	Parameter	Reported Value	Permit Limit
2/23/2010	pH	9.65	6-9.5 S.U.
3/17/2010	pH	9.73	6-9.5 S.U.



Table D: Additional Exceedances of Effluent Limitations from 12/1/2007 to 9/30/2010

Date	Permit No.	DSN	Parameter	Permit Limit	Reported Value
6/2009	SP0000440	201-1	Phenols (monthly avg.)	5.0 mg/l	5.1 mg/l
9/2009	SP0000440	201-1	pH, Continuous	6-10 S.U.	10.6 S.U.
3/2010	SP0000440	201-1	Phenols (monthly avg.)	5.0 mg/l	5.6 mg/l
12/2009	SP0000440	202-1	Copper, total (max. daily)	2.0 mg/l	3.57 mg/l
12/2009	SP0000440	202-1	Zinc, total (max. daily)	2.0 mg/l	2.05 mg/l
1/2009	SP0000440	203-1	pH, Day of sampling	6-10 S.U.	5.3 S.U.
6/2009	SP0000440	203-1	pH, Continuous	6-10 S.U.	5.68 S.U.
8/11/2010	SP0000440	203-1	pH, Continuous	6-10 S.U.	5.989 S.U.
8/18/2010	SP0000440	203-1	pH, Continuous	6-10 S.U.	5.562 S.U.
9/3/2010	SP0000440	203-1	pH, Continuous	6-10 S.U.	5.914 S.U.
5/2008	CT0003824	001A	Flow, Instantaneous	60000 gpm	64847 gpm
11/2008	CT0003824	001A	Flow, Instantaneous	60000 gpm	71962 gpm
12/2008	CT0003824	001B	Copper, total (monthly avg.)	48 ug/l	84 ug/l
8/2010	CT0003824	001B	Copper, total (monthly avg.)	48 ug/l	130 ug/l
8/2010	CT0003824	001B	Copper, total (max. daily)	96 ug/l	130 ug/l
12/2008	CT0003824	001C	Flow, Instantaneous	60000 gpm	87430 gpm
7/2010	CT0003824	001C	Flow, Instantaneous	60000 gpm	66254 gpm
12/2007	CT0003824	001F	Flow, Average Daily	0.3 Mgd	0.715 Mgd
12/2007	CT0003824	001F	Flow, Maximum Daily	0.6 Mgd	0.864 Mgd
1/2008	CT0003824	001F	Flow, Average Daily	0.3 Mgd	0.488 Mgd
1/2008	CT0003824	001F	Flow, Maximum Daily	0.6 Mgd	0.77 Mgd
7/2008	CT0003824	002A	Oil and Grease (max. daily)	10 mg/l	11.2 mg/l
7/2008	CT0003824	002A	Copper, total (monthly avg.)	48 ug/l	79 ug/l
1/2008	CT0003824	002B	Flow, Maximum Daily	8.25 Mgd	17.495 Mgd
9/2010	CT0003824	002B	Copper, total (monthly avg.)	48 ug/l	50 ug/l
8/2009	CT0003824	0031	Flow, Average Daily	1.037 Mgd	1.467 Mgd
8/2009	CT0003824	0031	Flow, Maximum Daily	1.741 Mgd	2.06 Mgd
9/2009	CT0003824	0031	Flow, Average Daily	1.037 Mgd	1.798 Mgd
9/2009	CT0003824	0031	Flow, Maximum Daily	1.741 Mgd	2.22 Mgd
10/2009	CT0003824	0031	Flow, Maximum Daily	1.741 Mgd	1.89 Mgd

## EXHIBIT A

## Corporate Resolution

### Electric Boat Corporation

I, Henry Teskey, Assistant Secretary of Electric Boat Corporation, do hereby certify that on December 21, 2010, Joseph E. Chontos was employed by Electric Boat Corporation, and that he remains as Vice President / General Counsel at this time.

I further certify that as such, Joseph E. Chontos, is duly authorized by Article V, Section 3 of the by-laws of the company (true and correct copy attached) to execute, in the name of Electric Boat Corporation, any and all contracts and other written obligations, including, but not limited to administrative consent orders with the Connecticut Department of Environmental Protection with respect to environmental matters. In addition, such Joseph E. Chontos, is duly authorized by Article V, Section 3 of the by-laws of the company to submit documents to the Department of Environmental Protection on behalf of the company.

Date: December 21, 2010

A handwritten signature in black ink, appearing to read "H. Teskey", with a stylized flourish at the end.

Subscribed and sworn to before me this 21st day of December, 2010.

Notary Public  
My Commission Expires:

**SECRETARY'S CERTIFICATE  
ELECTRIC BOAT CORPORATION**

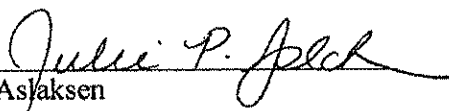
The undersigned, being the Secretary of Electric Boat Corporation, a Delaware corporation (the "Corporation"), hereby certifies that:

Joseph E. Chontos is the duly elected Vice President, General Counsel and Assistant Secretary of the Corporation; and

Attached hereto is a copy of the Amended and Restated By-Laws of the Corporation which has not been amended, altered, or repealed and are in full force and effect on the date hereof; and

Pursuant to Article V, Section 6 of the attached Amended and Restated Bylaws of the Corporation, Joseph E. Chontos, as the duly elected Vice President, General Counsel and Assistant Secretary of the Corporation has been delegated the appropriate authority to sign and present a Consent Order on behalf of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this 21<sup>st</sup> day of December, 2010.

  
Julie P. Aslaksen  
Secretary

SEAL

**AMENDED & RESTATED BY-LAWS**  
**OF**  
**ELECTRIC BOAT CORPORATION**  
**ADOPTED AS OF SEPTEMBER 15, 2000**

**ARTICLE I**

**OFFICES**

Section 1. Registered Office and Agent. The name of the corporation's registered agent and the office of its registered office in the State of Delaware are as follows:

Corporation Service Company

Section 2. Principal Office. The address of the principal office of the corporation is as follows:

2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

Section 3. Other Offices. The corporation may also have an office or offices at such other place or places, within or without the State of Delaware, as the board of directors may from time to time designate or the business of the corporation may require.

**ARTICLE II**

**STOCKHOLDERS**

Section 1. Annual Meetings. The annual meeting of the stockholders shall be held at such time and place and on such date in each year, within or without the State of Delaware, as may be determined by the board of directors and as shall be designated in the notice of the meeting.

Section 2. Purposes of Annual Meeting. The annual meeting of the stockholders shall be held for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting, notice of which shall be given in the notice of the meeting.

Section 3. Failure to Elect Directors at Annual Meeting. If the election of directors shall not be held on the day designated for any annual meeting, or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the stockholders as soon thereafter as convenient. At such meeting, the stockholders may elect directors and transact other business with the same force and effect as at an annual meeting.

Section 4. Special Meetings. Special meetings of the stockholders shall be held at such time and place and on such date in each year, within or without the State of Delaware, as may be determined by the person or persons calling the meeting and as shall be designated in the notice of the meeting. Special meetings of the stockholders may be called by the board of directors, the Chairman of the Board of Directors (sometimes hereafter in these by-laws, the "Chairman"), or the President and shall be called by the Chairman, the President, or the Secretary at the request in writing of stockholders owning

at least one-fifth of the issued and outstanding shares of capital stock of the corporation entitled to vote. Calls for such meetings shall specify the purposes thereof and no business other than that specified in the call shall be considered at any special meeting.

Section 5. Notice of Meetings and Adjourned Meetings. Unless waived as provided below, and except as provided in Section 230 of the General Corporation Law of the State of Delaware, not less than ten nor more than sixty days before any stockholders' meeting, the Chairman, the President, the Secretary, or an Assistant Secretary shall give each stockholder entitled to vote at the meeting written notice of the place, date, and hour of the meeting and the purpose or purposes for which the meeting is called. Such notice shall be mailed to each stockholder at his address as it appears on the corporation's records. When a meeting is adjourned to another time or place, notice need not be given if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken. If the adjournment is for a period of more than thirty days, or if, after the adjournment, a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote. Except as otherwise expressly provided by statute, no publication of any notice of a stockholders' meeting shall be required. Any stockholder, either before or after any meeting, may waive any notice required to be given by law or pursuant to these by-laws.

Section 6. Quorum. Except as otherwise provided by law or the Certificate of Incorporation, the presence, in person or by proxy, of the holders of record of a majority of the shares of the capital stock of the corporation then issued and outstanding and entitled to vote at the meeting shall constitute a quorum for the transaction of business to be considered at such meeting; provided, however, that no action required by law or by the Certificate of Incorporation or these by-laws to be authorized as taken by the holders of a designated proportion of a particular class or series of shares may be authorized or taken by a lesser proportion and provided, further, that if a separate class vote is required with respect to any matter, the holders of a majority of the outstanding shares of such class, present in person or by proxy, shall constitute a quorum of such class, and, except as otherwise provided by law or the Certificate of Incorporation, the affirmative vote of a majority of shares of such class so present shall be the act of such class. In the absence of a quorum at any meeting or any adjournment thereof, a majority of those present, in person or by proxy and entitled to vote, may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted.

Section 7. Organization. Meetings of the stockholders shall be presided over by the Chairman, or if he is not present, by the President, or, if neither the Chairman nor the President is present, by a chairman to be chosen by a majority of the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the corporation, or in the Secretary's absence, an Assistant Secretary, shall act as secretary of every meeting of the stockholders but, if neither the Secretary nor an Assistant Secretary is present, the meeting shall choose any person present thereat to act as secretary of the meeting.

Section 8. Voting. Except as otherwise provided by law or the Certificate of Incorporation, and subject to the provisions of Sections 4 and 5 of Article VI of these by-laws, at every meeting of the stockholders, each stockholder of the corporation entitled to vote at the meeting shall have one vote, in person or by proxy, for each share of stock having voting rights held by the stockholder. Any stockholder entitled to vote may do so either in person or by proxy appointed by an instrument in writing, subscribed by such stockholder or by the stockholder's attorney thereunto authorized and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted on after three years from its date unless the proxy provides for a longer period. Except as otherwise required by law, the Certificate of Incorporation or these by-laws, all matters coming before any meeting of the stockholders shall be decided by the vote of a majority in interest of the stockholders present, in person or

by proxy, at the meeting and entitled to vote, a quorum being present. Unless otherwise provided in the Certificate of Incorporation, voting at all elections for directors need not be by ballot and shall not be cumulative.

**Section 9. Voting of Shares by Certain Holders.**

A. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the by-laws of the other corporation may prescribe, or, in the absence of an appropriate provision, as the board of directors of the other corporation may determine.

B. Shares standing in the name of a deceased person may be voted by the decedent's administrator or executor. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by such fiduciary without a transfer of such shares into the fiduciary's name.

C. Shares standing in the name of a receiver may be voted by the receiver. Shares held by or under the control of a receiver may be voted by the receiver without transfer thereof into the receiver's name if the authority so to do is contained in an appropriate order of the court by which the receiver was appointed.

D. A stockholder whose shares are pledged shall be entitled to vote the pledged shares unless, in the transfer by the pledgor on the corporation's books, the pledgor has expressly empowered the pledgee to vote thereon, in which case only the pledgee may vote thereon.

E. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor counted for quorum purposes; provided, however, that nothing herein shall be construed as limiting the right of the corporation to vote stock, including but not limited to its own capital stock, held by it in a fiduciary capacity.

F. If shares are registered in the names of two or more persons, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing such persons or creating the relationship so providing, their acts with respect to voting shall have the following effect:

- (a) if only one votes, the voter's act binds all;
- (b) if more than one votes, the act of the majority so voting binds all;
- (c) if the vote is evenly split, each faction may vote on the stock proportionately unless otherwise ordered by a court pursuant to the laws of the State of Delaware.

If an instrument showing that tenancy is held in unequal shares is filed with the Secretary, a majority or even-split shall be determined by interest.

**Section 10. List of Stockholders.** A complete list of the stockholders entitled to vote at each meeting of the stockholders, arranged in alphabetical order and the number of shares registered in the name of each stockholder, shall be prepared by the Secretary or other officer of the corporation having charge of the stock ledger, at least ten days before the meeting. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city, town, or village where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held, and the list shall be produced and kept at the time

and place of the meeting during the whole time thereof for inspection by any stockholder who may be present.

Section 11. Inspectors. At any meeting of the stockholders, the chairman of the meeting may, or upon the request of any one or more stockholders or proxies holding or representing not less than ten percent of the outstanding shares shall, appoint one or more persons as inspectors for such meeting. Such inspectors shall ascertain and report the number of shares represented at the meeting, based upon their determination of the validity and effect of proxies; count all votes and report the results; and do all such other acts as are proper to conduct the election and voting with impartiality and fairness. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there be more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 12. Informal Action by Stockholders. Except as otherwise provided by the Certificate of Incorporation, any action required to be taken at a meeting of the stockholders, or any other action which may be taken at a meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a written consent, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote were present and voted. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

### ARTICLE III

#### DIRECTORS

Section 1. Power, Number, and Term of Directors. Except as otherwise provided by law or the Certificate of Incorporation, the property, affairs, and business of the corporation shall be managed by its board of directors, consisting of not less than one nor more than ten persons, as fixed from time to time by resolution of the board of directors or stockholders. Subject to Section 3 of Article II above, directors shall be elected at the annual meeting of the stockholders and each director shall be elected to serve for one year and until the director's successor is elected and qualified or until the director's earlier resignation or removal. The directors shall have power, from time to time and at any time when the stockholders as such are not assembled in a meeting, to increase or decrease their own number by an amendment to these by-laws. If the number of directors is increased, the additional directors may be elected by a majority of the directors in office at the time of the increase, or if not so elected prior to the next meeting of the stockholders, the additional directors shall be elected by the stockholders. Directors need not be stockholders of the corporation.

Section 2. Quorum. A majority of the members of the board of directors in office shall constitute a quorum for the transaction of business; provided, however, a majority of directors then in office shall constitute a quorum for filling a vacancy on the board. If at any meeting of the board of directors a quorum shall not be present, a majority of the directors present may, without further notice, adjourn the meeting from time to time until a quorum shall have been obtained.

Section 3. Vacancies. In case one or more vacancies shall occur in the board of directors by reason of death, resignation, or otherwise, except insofar as otherwise provided in the case of a vacancy or vacancies occurring by reason of removal by the stockholders, the remaining directors,



although less than a quorum, may by a vote of the majority of the directors then in office elect a successor or successors for the unexpired term or terms.

Section 4. Meetings. Meetings of the board of directors, annual, regular, and special, shall be held at such place within or without the State of Delaware as may from time to time be fixed by resolution of the board of directors or as may be specified in the notice of meeting. Regular meetings of the board of directors shall be held at such times as may from time to time be fixed by resolution of the board of directors, and no notice (other than the resolution) need be given as to any regular meeting. Special meetings may be held at any time upon the call of the Chairman, the President, any Vice President, or the Secretary, or any two directors, by oral, telegraphic, or written notice duly served on or sent or mailed to each director not less than two days before the meeting. An annual meeting of the board of directors shall be held without notice immediately after, and at the same place as, the annual meeting of the stockholders. Meetings may be held at any time without notice if all the directors are present or if, at any time before or after the meeting, those not present waive notice of the meeting in writing.

Section 5. Attendance by Communications Equipment. Unless otherwise restricted by the Certificate of Incorporation, members of the board of directors or of any committee designated by the board may participate in a meeting of the board or any such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation in any meeting by such means shall constitute presence in person at such meeting.

Section 6. Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to the action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward his written dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action.

Section 7. Committees. The board of directors may, in its discretion, by the affirmative vote of a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of the absent or disqualified member. Except as otherwise provided by law or these by-laws, any committee, to the extent provided by resolution of the board of directors, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation. No committee shall have or exercise the powers and authority of the board of directors with respect to filling vacancies among the directors or in any committee of the directors; amending the Certificate of Incorporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets; recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution; amending the by-laws; or, unless the resolution of the board of directors expressly so provides, declaring a dividend or authorizing the issuance of stock. A majority of the members of a committee may determine its action and fix the time and place of its meetings, unless the board of directors shall otherwise provide. The board of directors shall have the power at any time to fill vacancies in, to change the membership of, or to discharge any committee.

Section 8. Dividends and Reserves. Subject to the laws of the State of Delaware and the Certificate of Incorporation, the board of directors shall have full power to determine whether any, and if any, what part of any, funds legally available for the payment of dividends shall be declared in dividends and paid to the stockholders. The division of the whole or any part of funds legally available shall rest wholly within the lawful discretion of the board of directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise. The board of directors may set apart out of funds legally available for the payment of dividends a reserve or reserves for any proper purpose, and may from time to time, in its absolute judgment and discretion, increase, abolish, diminish, and vary any reserve or reserves so set apart.

Section 9. Removal of Directors. At any duly called and held special meeting of the stockholders, any director or directors may, by the affirmative vote of the holders of a majority of all the shares of stock outstanding and entitled to vote in an election of directors, be removed from office, either with or without cause; provided, however, that, if the stockholders of the corporation are entitled under the provisions of the Certificate of Incorporation to exercise cumulative voting rights in the election of directors, then no removal shall be effective if the holders of that proportion of the shares of stock outstanding and entitled to vote for an election of directors as could elect to the full board as then provided by these by-laws the director or directors sought to be removed shall vote against removal. The successor or successors to any director or directors so removed may be elected by the stockholders at the meeting at which removal was effectuated. The remaining directors may, to the extent vacancies are not filled by election by the stockholders, fill any vacancy or vacancies created by the removal.

Section 10. Informal Action. Any action required or permitted to be taken at any meeting of the board of directors or any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the board or of the committee, as the case may be, and such written consent is filed with the minutes of proceedings of the board or the committee.

#### ARTICLE IV

##### WAIVER OF NOTICE

Whenever, by law, the Certificate of Incorporation, or these by-laws, notice is required to be given, a written waiver thereof, signed by the person entitled to notice, whether before or after the date of the meeting, shall be deemed equivalent to notice. Attendance of a person at a meeting of the stockholders, the board of directors, or any committee designated by the board of directors shall constitute a waiver of notice of the meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or any committee designated thereby need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation, or these by-laws.

#### ARTICLE V

##### OFFICERS

Section 1. Number. The board of directors shall elect a President and a Secretary and, from time to time, may elect a Chairman of the Board of Directors, a Treasurer, one or more Vice Presidents, and such Assistant Secretaries, Assistant Treasurers and other officers, agents, and employees

as it may deem proper. Unless the Certificate of Incorporation otherwise provides, any number of offices may be held by the same person.

**Section 2. Term and Removal.** The term of office of each officer shall be one year and until the officer's successor is elected, but any officer may be removed from office, either with or without cause, at any time by the affirmative vote of a majority of the members of the board of directors then in office. A vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the board of directors.

**Section 3. Delegation.** The officers of the corporation will from time to time receive written grants of authority from the corporation's parent to engage in certain transactions on behalf of the corporation (a "Delegation"). All actions taken by the officers of the corporation pursuant to a Delegation will at all times be subject to the limitations set forth therein. The officers of the corporation may subdelegate in writing the authority granted to them by a Delegation to the officers of the corporation's subsidiaries.

**Section 4. Chairman of the Board of Directors.** The Chairman of the Board of Directors, if a Chairman of the Board of Directors has been elected and is serving, shall be the chief executive officer of the corporation and shall in general supervise and control all of the business and affairs of the corporation. The Chairman shall preside at all meetings of the stockholders and of the board of directors. The Chairman shall have the authority to sign certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which require the Chairman's signature, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation or shall be required by law to be otherwise signed or executed. In general, the Chairman shall perform all duties incident to the office of Chairman of the Board of Directors and chief executive officer of the corporation and such other duties as may be prescribed by the board of directors from time to time.

**Section 5. The President.** The President shall be the chief operating officer of the corporation and shall, subject to the direction and control of the board of directors, in general supervise and control all of the operations of the corporation. In the absence of the Chairman, the President shall preside at all meetings of the stockholders and of the board of directors. In the absence of the Chairman or in the event of the Chairman's inability or refusal to act, the President shall perform the duties of the Chairman and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The President may sign certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which require the President's signature, except in cases where the execution thereof shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation or shall be required by law to be otherwise executed. In general, the President shall perform all duties incident to the office of President and chief administrative officer of the corporation and such other duties as may be prescribed from time to time by the board of directors or the Chairman.

**Section 6. Vice Presidents.** In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, including, without limitation, the duties of the Chairman if and as assumed by the President as a result of the absence of the Chairman or the Chairman's inability or refusal to act, and the Vice President, when so acting, shall have all of the powers and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties as from time to time may be assigned to the Vice President by the Chairman, the President, or the board of directors. The authority of Vice Presidents to sign in the name of the Corporation certificates for

shares of the Corporation and deeds, mortgages, bonds, contracts, or other instruments shall be coordinate with like authority of the President.

Section 7. Treasurer. If required by the board of directors, the Treasurer shall give a bond for the faithful discharge of the Treasurer's duties in such sum and with such surety or sureties as the board of directors shall determine. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation, receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these by-laws. The Treasurer shall in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Chairman, the President, or the board of directors.

Section 8. Secretary. The Secretary shall: (a) keep records of corporate action, including the minutes of meetings of the stockholders and the board of directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation; (d) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (e) sign, with the Chairman, the President, or a Vice President, certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the board of directors; (f) have general charge of the stock transfer books of the corporation; and (g) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Chairman, the President, or the board of directors.

Section 9. Assistant Treasurers and Assistant Secretaries. The Assistant Treasurers shall, if required by the board of directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the board of directors shall determine. The Assistant Secretaries as thereunto authorized by the board of directors may sign, with the Chairman, the President, or a Vice President, certificates for shares of the corporation, the issuance of which shall have been authorized by a resolution of the board of directors. The Assistant Treasurers and Assistant Secretaries in general shall perform such duties as shall be assigned to them by the Treasurer or the Secretary, respectively, or by the President, the Chairman, or the board of directors.

## ARTICLE VI

### STOCK CERTIFICATES

Section 1. Form of Stock Certificates. The interest of each stockholder of the corporation shall be evidenced by certificates for shares of stock, certifying the number of fully-paid shares represented thereby and in such form, not inconsistent with the Certificate of Incorporation, as the board of directors may from time to time prescribe.

Section 2. Execution and Issuance of Certificates of Stock. Stock certificates shall be signed by the Chairman or a Vice-Chairman of the Board of Directors or the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary and be sealed with the seal of the corporation. Such seal may be a facsimile, engraved or printed. If any stock certificate is signed by a transfer agent or a registrar, other than the corporation or its employees, the signatures of the Chairman, the President, a Vice President, the Secretary, or an Assistant Secretary upon such certificate may be facsimiles, engraved or printed. In case any such officer who has signed, or whose facsimile signature has been placed upon, a stock certificate shall have ceased to be such before

such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to be such at the time of its issuance.

Section 3. Transfer of Certificates of Stock. Except as otherwise provided by the Certificate of Incorporation or these by-laws, any certificate for shares of the Corporation shall be transferable in person or by attorney upon the surrender thereof to the corporation or any transfer agent therefor properly endorsed for transfer and accompanied by such assurances as the corporation or such transfer agent may require as to the genuineness and effectiveness of each necessary document.

Section 4. Fixing the Date for Determination of Stockholders of Record. To determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or any other distribution or allotment of any rights, or entitled to exercise any rights, in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix in advance a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. To determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix in advance a record date, which shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. No record date shall precede the date upon which the resolution fixing such date is adopted by the board of directors. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting unless the board of directors fixes a new record date for the adjourned meeting.

Section 5. Failure to Fix Record Date. If no record date is fixed in accordance with Section 4 of this Article VI:

A. The record date for determining stockholders entitled to notice or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or if the notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

B. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to the place where the proceedings of the corporation are recorded and the custodian of such proceedings. When prior action by the board of directors is required by law, the record date shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

C. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Section 6. Lost, Stolen, or Destroyed Stock Certificates. No stock certificate representing shares of the corporation shall be issued in place of any certificate alleged to have been lost, stolen, or destroyed except upon delivery to the corporation of such evidence as the board of directors may in its discretion require. The board of directors may also require a bond to be delivered to the corporation upon such terms and secured by such surety as the board shall deem fit.

Section 7. Transfer Agent and Registrar. The board of directors may appoint one or more transfer agents or one or more transfer clerks and one or more registrars and may require all stock certificates to bear the signature or signatures of any of them.

Section 8. Examination of Books by Stockholders. The board shall have power to determine, from time to time, whether and to what extent and at what times and places and under what conditions and regulations the accounts and books and documents of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the corporation except as otherwise, and only to the extent, provided by law.

## ARTICLE VII

### INTEREST OF DIRECTORS OR OFFICERS IN CERTAIN TRANSACTIONS

Section 1. Action or Criteria Required. No contract or transaction between the corporation and one or more of its directors or officers, and no contract or transaction between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction, or solely because the vote of an interested director is counted for such purposes, if:

A. the material facts as to the director's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

B. the material facts as to the director's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

C. the contract or transaction is fair as to the corporation as to the time it is authorized, approved, or ratified, by the board of directors, a committee thereof, or the stockholders.

Section 2. Effect of Quorum. Common or interested directors may be counted in determining the presence of a quorum at any meeting of the board of directors or of a committee thereof.

## ARTICLE VIII

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

Section 1. Power to Indemnify. The corporation shall indemnify any person who is or was a director or officer of the corporation to the fullest extent permitted by law. The corporation shall have the power to indemnify any person who is or was an employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise (including an employee benefit plan), to the fullest extent permitted by law. For purpose of this Article VIII, the term "officer" shall mean the Chairman of the Board, President, Treasurer, Secretary, any Vice President of the corporation, and such other officers as are determined to be entitled to indemnification by resolution of the board of directors.

Section 2. Advancement of Expenses. Expenses (including attorneys' fees) incurred by a current or former director or officer in defending any civil, criminal, administrative, or investigative action, suit, or proceeding shall be paid by the corporation in advance of the final disposition of such

action, suit, or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall be ultimately determined that such person is not entitled to be indemnified by the corporation. Such expenses (including attorneys' fees) incurred by employees or agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 3. Insurance. The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise (including an employee benefit plan), against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under applicable law.

Section 4. Other Rights. The rights to indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

#### ARTICLE IX

##### FISCAL YEAR

The fiscal year of the corporation shall be as determined by the board of directors of the corporation. In the absence of such determination, the fiscal year of the corporation shall be the calendar year.

#### ARTICLE X

##### CORPORATE SEAL

The board of directors may provide a suitable seal, including duplicates thereof, containing the name of the Corporation.

#### ARTICLE XI

##### AMENDMENTS

These by-laws shall be subject to alteration, amendment, or repeal, and new by-laws, not inconsistent with any provision of law or the Certificate of Incorporation, may be made, either by the affirmative vote of a majority of the whole board of directors at any meeting thereof or, if the power to make, amend, alter or repeal the by-laws shall not have been granted to the board of directors in the Certificate of Incorporation, by the affirmative vote of the holders of a majority in interest of the stockholders of the corporation present in person or by proxy at any annual or special meeting and entitled to vote thereat, a quorum being present. Notice of the proposal to make, alter, amend, or repeal the by-laws of the corporation shall be included in the notice of such meeting of the board of directors or of the stockholders, as the case may be.