

IN THE SUPREME COURT OF  
THE STATE OF DELAWARE

CA, Inc., a Delaware Corporation	§	No. 329, 2008
	§	
Petitioner Below	§	
Appellant	§	
	§	
	§	
v.	§	
	§	
AFSCME Employees Pension Plan	§	
	§	
Respondent Below	§	
Appellees.	§	

APPENDIX TO BRIEF OF APPELLEE

**GRANT & EISENHOFER P.A.**

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Dated: July 7, 2008

*Attorneys for Appellee*  
*AFSCME Employees Pension Plan*

TAB 1

AMENDED AND RESTATED

BY-LAWS

OF

BARNES & NOBLE, INC.\*  
ARTICLE I

OFFICES

SECTION 1. Delaware Office. The office of Barnes & Noble, Inc. (the "Corporation") within the State of Delaware shall be in the City of Dover, County of Kent.

SECTION 2. Other Offices. The Corporation may also have an office or offices and keep the books and records of the Corporation, except as otherwise may be required by law, in such other place or places, either within or without the State of Delaware, as the Board of Directors of the Corporation (the "Board") may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 1. Place of Meetings. All meetings of holders of shares of capital stock of the Corporation shall be held at the office of the Corporation in the State of Delaware or at such other place, within or without the State of Delaware, as may from time to time be fixed by the Board or specified or fixed in the respective notices or waivers of notice thereof.

SECTION 2. Annual Meetings. An annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly come before the meeting (an "Annual Meeting") shall be held at such place, on such date, and at such time as the Board shall each year fix, which date shall be within thirteen (13) months of the last annual meeting of stockholders or, if no such meeting has been held, the date of incorporation.

SECTION 3. Special Meetings. Special meetings of stockholders, unless otherwise provided by law, may be called at any time by the Chairman of the Board or by the Board pursuant to a resolution adopted by a majority of the then authorized number of directors. Any such call must specify the matter or matters to be acted upon at such meeting and only such matter or matters shall be acted upon thereat.

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\*Includes all amendments through April 14, 2008.

SECTION 4. Notice of Meetings. Except as otherwise may be required by law, notice of each meeting of stockholders, whether an Annual Meeting or a special meeting, shall be in writing, shall state the purpose or purposes of the meeting, the place, date and hour of the meeting and, unless it is an Annual Meeting, shall indicate that the notice is being issued by or at the direction of the person or persons calling the meeting, and a copy thereof shall be delivered or sent by mail, not less than 10 or more than 60 days before the date of said meeting, to each stockholder entitled to vote at such meeting. If mailed, such notice shall be directed to such stockholder at his address as it appears on the stock records of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices to him be mailed to some other address in which case it shall be directed to him at such other address. Notice of an adjourned meeting need not be given if the time and place to which the meeting is to be adjourned was announced at the meeting at which the adjournment was taken, unless (i) the adjournment is for more than 30 days, or (ii) the Board shall fix a new record date for such adjourned meeting after the adjournment.

SECTION 5. Quorum. At each meeting of stockholders of the Corporation, the holders of shares having a majority of the voting power of the capital stock of the Corporation issued and outstanding and entitled to vote thereat shall be present or represented by proxy to constitute a quorum for the transaction of business, except as otherwise provided by law. Where a separate vote by a class or classes is required, a majority of the shares of such class or classes in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

SECTION 6. Adjournments. In the absence of a quorum at any meeting of stockholders or any adjournment or adjournments thereof, the Chairman of the Board or holders of shares having a majority of the voting power of the capital stock present or represented by proxy at the meeting may adjourn the meeting from time to time until a quorum shall be present or represented by proxy. At any such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been present or represented by proxy thereat.

SECTION 7. Order of Business. (a) At any Annual Meeting, only such business shall be conducted as shall have been brought before the Annual Meeting (i) by or at the direction of the Board, or (ii) by any stockholder who complies with the procedures set forth in this Section 7.

(b) For business properly to be brought before an Annual Meeting by a stockholder, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the Annual Meeting; provided, however, that in the event that less than 40 days' notice or prior public disclosure of the date of the Annual Meeting is given or made to stockholders, notice by the stockholder to be timely must be received not later than the close of business on the tenth day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure was made. To be in proper written form, a stockholder's notice to the Secretary shall set forth in writing as to each matter the stockholder proposes to bring before the Annual Meeting: (i) a brief description of the business desired to be

brought before the Annual Meeting and the reasons for conducting such business at the Annual Meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business; (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholder; and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an Annual Meeting except in accordance with the procedures set forth in this Section 7. The chairman of an Annual Meeting shall, if the facts warrant, determine and declare to the Annual Meeting that business was not properly brought before the Annual Meeting in accordance with the provisions of this Section 7 and, if he should so determine, he shall so declare to the Annual Meeting and any such business not properly brought before the Annual Meeting shall not be transacted.

**SECTION 8. Proxies and Voting.** Except as otherwise provided in the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") or in a resolution of the Board adopted pursuant to the Certificate of Incorporation establishing a series of Preferred Stock of the Corporation ("Preferred Stock"), at each meeting of stockholders, every stockholder of the Corporation shall be entitled to one vote for every share of capital stock standing in his name on the stock records of the Corporation (i) at the time fixed pursuant to Section 4 of Article VII of these By-laws as the record date for the determination of stockholders entitled to vote at such meeting, or (ii) if no such record date shall have been fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given. At each meeting of stockholders, all matters (except as otherwise provided in Section 3 of Article III of these By-laws and except in cases where a larger vote is required by law or by the Certificate of Incorporation or these By-laws) shall be decided by a majority of the votes cast at such meeting by the holders of shares of capital stock present or represented by proxy and entitled to vote thereon, a quorum being present. At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 8 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. All voting, including on the election of directors but excepting where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefore by a stockholder entitled to vote or by his or her proxy, a stock vote shall be taken. Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting.

**SECTION 9. Inspectors.** For each election of directors by the stockholders and in any other case in which it shall be advisable, in the opinion of the Board, that the voting upon any matter shall be conducted by inspectors of election, the Board shall appoint an inspector or inspectors of election. If, for any such election of directors or the voting upon any such other matter, any inspector appointed by the Board shall be unwilling or unable to serve, or if the Board shall fail to appoint inspectors, the chairman of the meeting shall appoint the necessary inspector or inspectors. The inspector(s) so appointed, before entering upon the discharge of their duties, shall be sworn faithfully to execute the duties of inspectors with strict impartiality,

and according to the best of their ability, and the oath so taken shall be subscribed by them. Such inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each of the shares represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of election of directors. Inspectors need not be stockholders.

**SECTION 10. Consent of Stockholders in Lieu of Meeting.** Any action required to be taken at any Annual Meeting or special meeting of stockholders of the Corporation, or any action which may be taken at any Annual Meeting or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, 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 thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in the first paragraph of this Section.

#### ARTICLE III

#### DIRECTORS

**SECTION 1. Powers.** The business of the Corporation shall be managed under the direction of the Board. The Board may, except as otherwise required by law, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

- (1) To declare dividends from time to time in accordance with law;
- (2) To purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;

(3) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;

(4) To remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(5) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(6) To adopt from time to time such stock, option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;

(7) To adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(8) To adopt from time to time regulations, not inconsistent with these By-laws, for the management of the Corporation's business and affairs.

SECTION 2. Terms and Vacancies. The directors, other than those who may be elected by the holders of any series of the Preferred Stock pursuant to a resolution of the Board adopted pursuant to the Certificate of Incorporation establishing such series, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board, one class initially to be elected for a term expiring at the Annual Meeting to be held in 1993, another class initially to be elected for a term expiring at the Annual Meeting to be held in 1994, and another class initially to be elected for a term expiring at the Annual Meeting to be held in 1995, with the members of each class to hold office until their successors have been elected and qualified. At each Annual Meeting, the successors of the class of directors whose term expires at the Annual Meeting shall be elected to hold office for a term expiring at the Annual Meeting held in the third year following the year of their election. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

SECTION 3. Nominations of Directors; Election. The Board shall consist of not less than nine and not more than twelve members, as determined from time to time by resolution of the Board, except as may be provided pursuant to resolutions of the Board, adopted pursuant to the provisions of the Certificate of Incorporation, establishing any series of Preferred Stock and granting to holders of shares of such series of Preferred Stock rights to elect additional directors under specified circumstances. Nominations for the election of directors may be made by the Board or a committee appointed by the Board, or by any stockholder entitled to vote generally in the election of directors who complies with the procedures set forth in this Section 3. Directors shall be at least 21 years of age. Directors need not be stockholders. At each meeting of stockholders for the election of directors at which a quorum is present, the persons receiving a plurality of the votes cast shall be elected directors. All nominations by stockholders shall be

made pursuant to timely notice in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the meeting; provided, however, that in the event that less than 40 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. To be in proper written form, such stockholder's notice shall set forth in writing (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, including, without limitation, such person's written consent to being a nominee and to serving as a director if elected; and (ii) as to the stockholder giving the notice, the (x) name and address, as they appear on the Corporation's books, of such stockholder and (y) the class and number of shares of the corporation which are beneficially owned by such stockholder. At the request of the Board, any person nominated by the Board for election as a director shall furnish to the Secretary of the Corporation the information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

SECTION 4. Place of Meetings. Meetings of the Board shall be held at the Corporation's office in the State of Delaware or at such other places, within or without such State, as the Board may from time to time determine or as shall be specified or fixed in the notice or waiver of notice of any such meeting.

SECTION 5. Regular Meetings. Regular meetings of the Board shall be held in accordance with a yearly meeting schedule as determined by the Board; or such meetings may be held on such other days and at such other times as the Board may from time to time determine.

SECTION 6. Special Meetings. Special meetings of the Board may be called by a majority of the directors then in office (rounded up to the nearest whole number) or by the Chairman of the Board and shall be held at such place, on such date, and at such time as they or he shall fix.

SECTION 7. Notice of Meetings. Notice of each special meeting of the Board stating the time, place and purposes thereof, shall be (i) mailed to each director not less than five days prior to the meeting, addressed to him at his residence or usual place of business, or (ii) shall be sent to him by facsimile, telex, cable or telegram so addressed, or shall be given personally or by telephone, on 24 hours' notice.

SECTION 8. Quorum and Manner of Acting. The presence of at least a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board. If a quorum shall not be present at any meeting of the Board, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Except where a different vote is required or permitted by law or these By-laws or otherwise, the act of a majority of the directors present at any meeting at which a quorum shall



(3) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;

(4) To remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(5) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(6) To adopt from time to time such stock, option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;

(7) To adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(8) To adopt from time to time regulations, not inconsistent with these By-laws, for the management of the Corporation's business and affairs.

SECTION 2. Terms and Vacancies. The directors, other than those who may be elected by the holders of any series of the Preferred Stock pursuant to a resolution of the Board adopted pursuant to the Certificate of Incorporation establishing such series, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board, one class initially to be elected for a term expiring at the Annual Meeting to be held in 1993, another class initially to be elected for a term expiring at the Annual Meeting to be held in 1994, and another class initially to be elected for a term expiring at the Annual Meeting to be held in 1995, with the members of each class to hold office until their successors have been elected and qualified. At each Annual Meeting, the successors of the class of directors whose term expires at the Annual Meeting shall be elected to hold office for a term expiring at the Annual Meeting held in the third year following the year of their election. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

SECTION 3. Nominations of Directors: Election. The Board shall consist of not less than nine and not more than twelve members, as determined from time to time by resolution of the Board, except as may be provided pursuant to resolutions of the Board, adopted pursuant to the provisions of the Certificate of Incorporation, establishing any series of Preferred Stock and granting to holders of shares of such series of Preferred Stock rights to elect additional directors under specified circumstances. Nominations for the election of directors may be made by the Board or a committee appointed by the Board, or by any stockholder entitled to vote generally in the election of directors who complies with the procedures set forth in this Section 3. Directors shall be at least 21 years of age. Directors need not be stockholders. At each meeting of stockholders for the election of directors at which a quorum is present, the persons receiving a plurality of the votes cast shall be elected directors. All nominations by stockholders shall be

made pursuant to timely notice in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the meeting; provided, however, that in the event that less than 40 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. To be in proper written form, such stockholder's notice shall set forth in writing (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, including, without limitation, such person's written consent to being a nominee and to serving as a director if elected; and (ii) as to the stockholder giving the notice, the (x) name and address, as they appear on the Corporation's books, of such stockholder and (y) the class and number of shares of the corporation which are beneficially owned by such stockholder. At the request of the Board, any person nominated by the Board for election as a director shall furnish to the Secretary of the Corporation the information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

SECTION 4. Place of Meetings. Meetings of the Board shall be held at the Corporation's office in the State of Delaware or at such other places, within or without such State, as the Board may from time to time determine or as shall be specified or fixed in the notice or waiver of notice of any such meeting.

SECTION 5. Regular Meetings. Regular meetings of the Board shall be held in accordance with a yearly meeting schedule as determined by the Board; or such meetings may be held on such other days and at such other times as the Board may from time to time determine.

SECTION 6. Special Meetings. Special meetings of the Board may be called by a majority of the directors then in office (rounded up to the nearest whole number) or by the Chairman of the Board and shall be held at such place, on such date, and at such time as they or he shall fix.

SECTION 7. Notice of Meetings. Notice of each special meeting of the Board stating the time, place and purposes thereof, shall be (i) mailed to each director not less than five days prior to the meeting, addressed to him at his residence or usual place of business, or (ii) shall be sent to him by facsimile, telex, cable or telegram so addressed, or shall be given personally or by telephone, on 24 hours' notice.

SECTION 8. Quorum and Manner of Acting. The presence of at least a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board. If a quorum shall not be present at any meeting of the Board, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Except where a different vote is required or permitted by law or these By-laws or otherwise, the act of a majority of the directors present at any meeting at which a quorum shall

be present shall be the act of the Board. Any action required or permitted to be taken by the Board may be taken without a meeting if all the directors consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the directors shall be filed with the minutes of the proceedings of the Board. Any one or more directors may participate in any meeting of the Board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall be deemed to constitute presence in person at a meeting of the Board.

SECTION 9. Resignation. Any director may resign at any time by giving written notice to the Corporation; provided, however, that written notice to the Board, the Chairman of the Board, the President of the Corporation or the Secretary of the Corporation shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

SECTION 10. Compensation of Directors. The Board may provide for the payment to any of the directors, other than officers or employees of the Corporation, of a specified amount for services as director or member of a committee of the Board, or of a specified amount for attendance at each regular or special Board meeting or committee meeting, or of both, and all directors shall be reimbursed for expenses of attendance at any such meeting; provided, however, that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

#### ARTICLE IV

##### COMMITTEES OF THE BOARD

SECTION 1. Appointment and Powers of Executive Committee. The Board may, by resolution adopted by the affirmative vote of a majority of the authorized number of directors, designate an Executive Committee of the Board, which shall consist of such number of members as the Board shall determine. Any committee so designated may exercise the power and authority of the Board to declare dividends, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware General Corporation Law if the resolution that designates the committee or a supplemental resolution of the Board shall so provide. Except as provided by Delaware law, during the interval between the meetings of the Board, the Executive Committee shall possess and may exercise all the powers of the Board in the management and direction of all the business and affairs of the Corporation (except the matters hereinafter assigned to any other Committee of the Board), in such manner as the Executive Committee shall deem in the best interests of the Corporation in all cases in which specific directions shall not have been given by the Board. The Executive Committee may determine its manner of acting and fix the time and place of its meetings, unless the Board shall otherwise provide. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business by the committee and the act of a majority of the members of the committee present at a meeting at which a quorum shall be present shall be the act of the committee. Either the Chairman of the Board or the Chairman of the Executive Committee may call the meetings of the Executive Committee.



SECTION 2. Appointment and Powers of Audit Committee. The Board may, by resolution adopted by the affirmative vote of a majority of the authorized number of directors, designate an Audit Committee of the Board, which shall consist of such number of members as the Board shall determine. The Audit Committee shall (i) be directly responsible, in its capacity as a committee of the Board, for the appointment, compensation, retention and oversight of the work of the independent auditor; (ii) review with the independent auditor the scope of its examinations; (iii) receive the reports of the independent auditor and meet with representatives of such auditor for the purpose of reviewing and considering questions relating to its examination and such reports; (iv) review, either directly or through the independent auditor, the internal accounting and auditing procedures of the Corporation; (v) review related party transactions and (vi) perform such other functions as may be assigned to it from time to time by the Board. The Audit Committee may determine its manner of acting and fix the time and place of its meetings, unless the Board shall otherwise provide. A majority of the members of the Audit Committee shall constitute a quorum for the transaction of business by the committee and the act of a majority of the members of the committee present at a meeting at which a quorum shall be present shall be the act of the committee.

SECTION 3. Compensation Committee; Other Committees. The Board may, by resolution adopted by the affirmative vote of a majority of the authorized number of directors, designate members of the Board to constitute a Compensation Committee and such other committees of the Board as the Board may determine. Such committees shall in each case consist of such number of directors as the Board may determine, and shall have and may exercise, to the extent permitted by law, such powers as the Board may delegate to them in the respective resolutions appointing them. Each such committee may determine its manner of acting and fix the time and place of its meetings, unless the Board shall otherwise provide. A majority of the members of any such committee shall constitute a quorum for the transaction of business by the committee and the act of a majority of the members of such committee present at a meeting at which a quorum shall be present shall be the act of the committee.

SECTION 4. Action by Consent; Participation by Telephone or Similar Equipment. Unless the Board shall otherwise provide, any action required or permitted to be taken by any committee may be taken without a meeting if all members of the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of the proceedings of the committee. Unless the Board shall otherwise provide, any one or more members of any such committee may participate in any meeting of the committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting of the committee.

SECTION 5. Changes in Committees; Resignations; Removals. The Board shall have power, by the affirmative vote of a majority of the authorized number of directors, at anytime to change the members of, to fill vacancies in, and to discharge any committee of the Board. Any member of any such committee may resign at any time by giving notice to the Corporation; provided, however, that notice to the Board, the Chairman of the Board, the President of the Corporation, the chairman of such committee or the Secretary of the Corporation shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon

receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective. Any member of any such committee may be removed at any time, either with or without cause, by the affirmative vote of a majority of the authorized number of directors at any meeting of the Board called for that purpose.

#### ARTICLE V

##### OFFICERS

SECTION 1. Number and Qualification. The corporation shall have such officers as may be necessary or desirable for the business of the Corporation. The officers of the Corporation shall consist of a Chairman of the Board, a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers as may from time to time be appointed by the Board. Officers shall be elected by the Board, which shall consider that subject at its first meeting after every Annual Meeting of stockholders. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. The failure to elect a Chairman of the Board, President, Vice President, Secretary or Treasurer shall not affect the existence of the Corporation.

SECTION 2. Chairman of the Board. The Chairman of the Board shall have general and active responsibility for the management of the business of the Corporation and shall be responsible for implementing all orders and resolutions of the Board. The Chairman of the Board shall also be a director and shall preside at all meetings of the stockholders and directors.

SECTION 3. President. The President shall be the chief operating officer of the Corporation and shall supervise the daily operations of the business of the Corporation. Subject to the provisions of these By-laws and to the direction of the Board, he or she shall perform all duties and have all powers which are commonly incident to the office of President or which are delegated to him or her by the Board. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

SECTION 4. Vice President. Each Vice President shall have such powers and duties as may be delegated to him or her by the Board. One Vice President shall be designated by the Board to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

SECTION 5. Treasurer. The Treasurer shall have the responsibility for maintaining the financial records of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. The Treasurer shall also perform such other duties as the Board may from time to time prescribe.

SECTION 6. Secretary. The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board. He or she shall have

charge of the corporate books and shall perform such other duties as the Board may from time to time prescribe.

SECTION 7. Delegation of Authority. The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

SECTION 8. Removal. Any officer of the Corporation may be removed at any time, with or without cause, by the Board.

SECTION 9. Resignations. Any officer may resign at any time by giving written notice to the Corporation; provided, however, that notice to the Board, Chairman of the Board, the President or the Secretary shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 10. Vacancies. Any vacancy among the officers, whether caused by death, resignation, removal or any other cause, shall be filled in the manner prescribed for election or appointment to such office.

SECTION 11. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, the Chairman of the Board or any officer of the Corporation authorized by the Chairman of the Board shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

SECTION 12. Bonds of Officers. If required by the Board, any officer of the Corporation shall give a bond for the faithful discharge of his duties in such amount and with such surety or sureties as the Board may require.

SECTION 13. Compensation. The salaries of the officers shall be fixed from time to time by the Board, unless and until the Board appoints a Compensation Committee.

SECTION 14. Officers of Operating Companies or Divisions. The Chairman of the Board shall have the power to appoint, remove and prescribe the terms of office, responsibilities, duties and salaries of, the officers of the operating companies or divisions, other than those who are officers of the Corporation.

#### ARTICLE VI

##### CONTRACTS, CHECKS, LOANS, DEPOSITS, ETC.

SECTION 1. Contracts. The Board may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation, to enter into any contract or to execute and deliver any instrument, which authorization may be general or confined to specific instances;

and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable peculiarly for any purpose or for any amount.

SECTION 2. Checks, etc. All checks, drafts, bills of exchange or other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed in the name and on behalf of the Corporation in such manner as shall from time to time be authorized by the Board, which authorization may be general or confined to specific instances.

SECTION 3. Loans. No loan shall be contracted on behalf of the Corporation, and no negotiable paper shall be issued in its name, unless authorized by the Board, which authorization may be general or confined to specific instances. All bonds, debentures, notes and other obligations or evidences of indebtedness of the Corporation issued for such loans shall be made, executed and delivered as the Board shall authorize.

SECTION 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as may be selected by or in the manner designated by the Board. The Board or its designees may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of the Certificate of Incorporation or these By-laws, as they may deem advisable.

#### ARTICLE VII

##### CAPITAL STOCK

SECTION 1. Certificates of Stock. Each stockholder shall be entitled to a certificate signed by, or in the name of the Corporation by, the Chairman of the Board, President or a Vice President, and by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, certifying the number of shares owned by him or her. Any or all of the signatures on the certificate may be by facsimile.

SECTION 2. Stock List. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least ten (10) days prior to the meeting, either at a place within the city 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.

The stock list shall also be kept at the place of the meeting during the whole time thereof and shall be open to the examination of any such stockholder who is present. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

SECTION 3. Transfers of Stock. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents



designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 5 of Article VII of these By-laws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

SECTION 4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or 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 may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board, the record date for determining stockholders entitled to notice of 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 notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than ten (10) days after the date upon which the resolution fixing the record date is adopted. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board to fix a record date. The Board shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board and no prior action by the Board is required by the Delaware General Corporation Law, the record date 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 in the manner prescribed by Article II, Section 10 hereof. If no record date has been fixed by the Board and prior action by the Board is required by the Delaware General Corporation Law with respect to the proposed action by written consent of the stockholders, the record date for determining stockholders entitled to consent to corporate action in writing shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

SECTION 5. Lost, Stolen or Destroyed Certificates. In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such

regulations as the Board may establish concerning proof of such loss, theft or destruction and concerning the giving of satisfactory bond or bonds of indemnity.

SECTION 6. Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board may establish.

SECTION 7. Electronic Securities Recordation. Notwithstanding the foregoing provisions of this Article VII, the Corporation may adopt a system of issuance, recordation, conversion and transfer of its shares of capital stock by electronic or other means not involving any issuance of certificates, provided that the use of such system by the Corporation is permitted by applicable law.

#### ARTICLE VIII

##### NOTICES

SECTION 1. Notices. Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or with a recognized overnight delivery service or by sending such notice by prepaid telegram, mailgram or by facsimile transmission. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by overnight delivery service, or by telegram, mailgram or facsimile, shall be the time of the giving of the notice.

SECTION 2. Waivers. A written waiver of any notice, signed by a stockholder, director, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such stockholder, director, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver.

#### ARTICLE IX

##### MISCELLANEOUS

SECTION 1. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these By-laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

SECTION 2. Corporate Seal. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

SECTION 3. Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

SECTION 4. Fiscal Year. The fiscal year of the Corporation shall be as fixed by the Board of Directors.

SECTION 5. Time Periods. In applying any provision of these By-laws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

#### ARTICLE X

##### INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter, an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article X with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of the Corporation.

SECTION 2. Right to Advancement of Expenses. The right to indemnification conferred in Section 1 of this Article X shall include the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter, an "advancement of expenses"); provided, however, that, if the

Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter, an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter, a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. The rights to indemnification and to the advancement of expenses conferred in Sections 1 and 2 of this Article X shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

**SECTION 3. Right of Indemnitee to Bring Suit.** If a claim under Section 1 or 2 of this Article X is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article X or otherwise shall be on the Corporation.

**SECTION 4. Non-Exclusivity of Rights.** The rights to indemnification and to the advancement of expenses conferred in this Article X shall not be exclusive of any other right which any person may have or hereafter acquire by any statute, the Corporation's Certificate of Incorporation or By-laws, agreement, vote of stockholders or disinterested directors or otherwise.

**SECTION 5. Insurance.** The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or

another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

SECTION 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article X with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

#### ARTICLE XI

##### AMENDMENTS

These By-laws or any of them may be amended or supplemented in any respect at any time, either (i) at any meeting of stockholders, provided that any amendment or supplement proposed to be acted upon at any such meeting shall have been described or referred to in the notice of such meeting; or (ii) at any meeting of the Board, provided that any amendment or supplement proposed to be acted upon at any such meeting shall have been described or referred to in the notice of such meeting or an announcement with respect thereto shall have been made at the last previous Board meeting, and provided further that no amendment or supplement adopted by the Board shall vary or conflict with any amendment or supplement adopted by the stockholders. Notwithstanding the preceding sentence, the affirmative vote of holders of at least 80% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with, Section 3 or Section 7 of Article II of these By-laws, Section 2, Section 3, Section 8 of Article III of these By-laws, Article X of these By-laws or this sentence.

TAB 2

*BY-LAWS  
OF  
CITIGROUP INC.*

*As amended effective October 16, 2007*

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TO  
BY-LAWS  
OF  
CITIGROUP INC.

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*BY-LAWS  
OF  
CITIGROUP INC.*

*ARTICLE I  
LOCATION*

SECTION 1. The location of the registered office of the Company in Delaware shall be in the City of Wilmington, County of New Castle, State of Delaware.

SECTION 2. The Company shall, in addition to the registered office in the State of Delaware, establish and maintain an office within or without the State of Delaware or offices in such other places as the Board of Directors may from time to time find necessary or desirable.

*ARTICLE II  
CORPORATE SEAL*

SECTION 1. The corporate seal of the Company shall have inscribed thereon the name of the Company and the words "Incorporated Delaware."

*ARTICLE III  
MEETINGS OF STOCKHOLDERS*

SECTION 1. The annual meeting of the stockholders, or any special meeting thereof, shall be held either in the City of New York, State of New York, or at such other place as may be designated by the Board of Directors or group of Directors calling any special meeting.

SECTION 2. Stockholders entitled to vote may vote at all meetings either in person or by proxy authorized electronically or by an instrument in writing executed in any manner permitted by law or transmission permitted by law. All proxies shall be filed with the Secretary of the meeting before being voted upon.

SECTION 3. A majority in amount of the stock issued, outstanding and entitled to vote represented by the holders in person or by proxy shall be requisite at all meetings to constitute a quorum for the election of Directors or for the transaction of other business except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws. If at any annual or special meeting of the stockholders, a quorum shall fail to attend, a majority in interest attending in person or by proxy may adjourn the meeting from time to time, without notice other than by announcement at the meeting (except as otherwise provided herein) until a quorum shall attend and thereupon any business may be transacted which might have been transacted at the meeting originally called had the same been held at the time so called. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, to the extent required by law a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 4. The annual meeting of the stockholders shall be held on such date and at such time as the Board of Directors may determine by resolution. The business to be transacted at the annual meeting shall include the election of Directors and such other business as may properly come before the meeting. Except as otherwise set forth in the Certificate of Incorporation, each holder of voting stock shall be entitled to one vote for each share of such stock standing registered in his or her name.

SECTION 5. Notice of the annual meeting shall be given by the Secretary to each stockholder entitled to vote, at his or her last known address, at least ten days but not more than sixty days prior to the meeting.

SECTION 6. Special Meetings

(a) Special Meetings Called by Chairman or Chief Executive Officer. Special meetings of the stockholders may be called by the Chairman or the Chief Executive Officer. A special meeting shall be called at the request, in writing, of a majority of the Board of Directors or by the vote of the Board of Directors.

(b) Stockholder Requested Special Meetings. A special meeting of stockholders shall be called by the Board upon the written request to the Secretary of record holders of at least twenty-five percent of the outstanding common stock of the Company.

(1) A written request for a special meeting of stockholders shall be signed by each stockholder, or duly authorized agent, requesting a special meeting and shall set forth: (i) a statement of the specific purpose of the meeting and the matters proposed to be acted on at the meeting, the reasons for conducting such business at the meeting, and any material interest in such business of the stockholders requesting the meeting; (ii) the name and address of each such stockholder as it appears on the Company's stock ledger; and (iii) the number of shares of the Company's common stock owned of record and beneficially by each such stockholder. A stockholder may revoke the request for a special meeting at any time by written revocation delivered to the Secretary.

(2) Except as provided in the next sentence, a special meeting requested by stockholders shall be held at such date, time and place within or without the state of Delaware as may be fixed by the Board; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the receipt by the Company of a properly submitted request to call a special meeting. A special meeting requested by stockholders shall not be held if either (i) the Board has called or calls for an annual meeting of stockholders and the purpose of such annual meeting includes (among any other matters properly brought before the meeting) the purpose specified in the request, or (ii) an annual or special meeting was held not more than 12 months before the request to call the special meeting was received by the Company which included the purpose specified in the request.

(3) Business to be conducted at a special meeting may only be brought before the meeting pursuant to the Company's notice of meeting; provided however that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any stockholder requested special meeting. The Board of Directors may fix a record date to determine the holders of common stock who are entitled to deliver written requests for a special meeting.

SECTION 7. Notice of each special meeting, indicating briefly the object or objects thereof, shall be given by the Secretary to each stockholder entitled to vote at his or her last known address, at least ten days but not more than sixty days prior to the meeting. Only such business shall be conducted at a special meeting of stockholders as shall be stated in the Company's notice of the meeting.

SECTION 8. If the entire Board of Directors becomes vacant, any stockholder may call a special meeting in the same manner that the Chairman or the Chief Executive Officer may call such meeting, and Directors for the unexpired term may be elected at said special meeting in the manner provided for their election at annual meetings.

SECTION 9. The Company may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Company may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

SECTION 10. The officer presiding at any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. He or she shall have the power to adjourn the meeting to another place, date and time.

SECTION 11. A notice of a stockholder to make a nomination or to bring any other matter before a meeting shall be made in writing and received by the Secretary of the Company (a) in the event of an annual meeting of stockholders, not more than 120 days and not less than 90 days in advance of the anniversary date of the immediately preceding annual meeting provided, however, that in the event that the annual meeting is called on a date that is not within thirty days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the fifteenth day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs; or (b) in the event of a special meeting of stockholders, such notice shall be received by the Secretary of the Company not later than the close of the fifteenth day following the day on which notice of the meeting is first mailed to stockholders or public disclosure of the date of the special meeting was made, whichever first occurs.

Every such notice by a stockholder shall set forth:

- (a) the name and residence address of the stockholder of the Company who intends to make a nomination or bring up any other matter;
- (b) a representation that the stockholder is a holder of the Company's voting stock (indicating the class and number of shares owned) and intends to appear in person or by proxy at the meeting to make the nomination or bring up the matter specified in the notice;
- (c) with respect to notice of an intent to make a nomination, a description of all arrangements or understandings among the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder;
- (d) with respect to an intent to make a nomination, such other information regarding each nominee proposed by such stockholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated by the Board of Directors of the Company; and
- (e) with respect to the notice of an intent to bring up any other matter, a description of the matter, and any material interest of the stockholder in the matter.

Notice of intent to make a nomination shall be accompanied by the written consent of each nominee to serve as director of the Company if so elected.

At the meeting of stockholders, the Chairman shall declare out of order and disregard any nomination or other matter not presented in accordance with this section.

#### *ARTICLE IV DIRECTORS*

SECTION 1. The affairs, property and business of the Company shall be managed by or under the direction of a Board of Directors, with the exact number of Directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The terms of Directors shall be as provided in the Certificate of Incorporation as amended from time to time. A nominee in an uncontested election shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election. For purposes of these By-laws, an "uncontested election" means any meeting of stockholders at which directors are elected and with respect to which either (i) no stockholder has submitted notice of an intent to nominate a candidate for election pursuant to Section 11 of Article III of these By-laws or (ii) if such notice has been submitted, all such nominees have been withdrawn by stockholders on or before the tenth day before the Company first mails its notice of meeting for such meeting to the stockholders. In all director elections other than uncontested elections, directors shall be elected by a plurality of the votes cast, and stockholders shall not be permitted to vote against any nominee for director. If the holders of preferred stock of the Company are entitled to elect one or more directors in accordance with a certificate adopted pursuant to Paragraph B of Article FOURTH of the Certificate of Incorporation, such directors shall be elected in accordance with this Section unless a different vote for election is specified in such certificate. If a nominee in an uncontested election is not elected by a majority vote, then the Director shall offer to resign from his or her position as a Director. Unless the Board decides to reject the offer or to postpone the effective date of the offer, the resignation shall become effective 60 days after the date of the election. In making a determination whether to reject the offer or postpone the effective date, the Board of Directors shall consider all factors it deems relevant to the best interests of the Company. If the Board rejects the resignation or postpones its effective date, it shall issue a public statement that discloses the reason for its decision. The Board of Directors may appoint a Lead Director who shall preside at all meetings of the Board of Directors at which the Chairman is not present, including executive sessions. In addition to the powers and authorities expressly conferred upon the Board of Directors by these By-laws, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Company, but subject, nevertheless, to the provisions of the laws of the State of Delaware, of the Certificate of Incorporation and of these By-laws. For purposes of these By-laws the term "entire Board of Directors" shall mean the total number of Directors as determined by the Board of Directors from time to time whether or not there exist any vacancies in previously authorized directorships.

SECTION 2. Vacancies in the Board of Directors shall be filled as provided in the Certificate of Incorporation as amended from time to time.

SECTION 3. The Board of Directors shall have authority to determine from time to time, the amount of compensation that shall be paid to any of its members, provided, however that no such compensation shall be paid to any Director who is a salaried officer or employee of the Company or any of its subsidiaries. Directors shall be entitled to receive transportation and other expenses of attendance at meetings. Nothing herein contained shall be construed to preclude a Director or member of a committee from serving in any other capacity and receiving compensation therefor.

SECTION 4. The Company shall indemnify, to the fullest extent permissible under the General Corporation Law of the State of Delaware, or the indemnification provisions of any successor statute, any person, and the heirs and personal representatives of such person, against any and all judgments, fines, amounts paid in settlement and costs and expenses, including attorneys' fees, actually and reasonably incurred by or imposed upon such person in connection with, or resulting from any claim, action, suit or proceeding (civil, criminal, administrative or investigative) in which such person is a party or is threatened to be made a party by reason of such person being or having been a director, officer or employee of the Company, or of another corporation, joint venture, trust or other organization in which such person serves as a director, officer or employee at the request of the Company, or by reason of such person being or having been an administrator or a member of any board or committee of the Company or of any such other organization, including, but not limited to, any administrator, board or committee related to any employee benefit plan.

The Company shall advance expenses incurred in defending a civil or criminal action, suit or proceeding to any such director, officer or employee upon receipt of an undertaking by or on behalf of the director, officer or employee to repay such amount, if it shall ultimately be determined that such person is not entitled to indemnification by the Company.

The foregoing right of indemnification and advancement of expenses shall in no way be exclusive of any other rights of indemnification to which any such person may be entitled, under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, and shall inure to the benefit of the heirs and personal representatives of such person.

SECTION 5. Each Director and officer and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Company or of any of its subsidiaries, or upon information, opinions, reports or statements made to the Company or any of its subsidiaries by any officer or employee of the Company or of a subsidiary or by any committee designated by the Board of Directors or by any other person as to matters such Director, officer or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

*ARTICLE V  
MEETINGS OF THE DIRECTORS*

SECTION 1. The Board of Directors shall meet as soon as convenient after the annual meeting of stockholders in the City of New York, State of New York, or at such other place as may be designated by the Board of Directors, for the purpose of organization and the transaction of any other business which may properly come before the meeting.

SECTION 2. Regular meetings of the Directors may be held without notice at such time and place as may be determined from time to time by resolution of the Board of Directors or as determined by the Secretary upon reasonable notice to each Director.

SECTION 3. A majority of the total number of the entire Board of Directors shall constitute a quorum except when the Board of Directors consists of one Director, then one Director shall constitute a quorum for the transaction of business, but the Directors present, though fewer than a quorum, may adjourn the meeting to another day. The vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 4. Special meetings of the Board may be called by the Board of Directors, or the Chairman, on one day's notice, or other reasonable notice, to each Director, either personally, by mail or by electronic transmission, and may be held at such time and place as the Board of Directors, or the officer calling said meeting may determine. Special meetings may be called in like manner on the request in writing of three Directors. Special meetings of the full Board and executive sessions of the Board may be called in like manner by the Lead Director.

SECTION 5. In the absence of both the Secretary and an Assistant Secretary, the Board of Directors shall appoint a secretary to record all votes and the minutes of its proceedings.

*ARTICLE VI  
COMMITTEES*

SECTION 1. The Board of Directors may designate committees of the Board and may invest such committees with all powers of the Board of Directors, except as otherwise provided in the General Corporation Law of the State of Delaware, subject to such conditions as the Board of Directors may prescribe, and all committees so appointed shall keep regular minutes of their transactions and shall cause them to be recorded in books kept for that purpose in the office of the Company and shall report the same to the Board of Directors.



**ARTICLE VII  
EXECUTIVE COMMITTEE**

SECTION 1. The Executive Committee shall be composed of the Chairman and such additional Directors not less than three, appointed by the Board, who shall serve until the next annual organization meeting of the Board and until their successors are appointed. A majority of the members of the Executive Committee shall constitute a quorum. The vote of the majority of members of the Executive Committee present at a meeting at which a quorum is present shall be the act of the Executive Committee. Any vacancy on the Executive Committee shall be filled by the Board of Directors.

SECTION 2. The Executive Committee may exercise all powers of the Board of Directors between the meetings of the Board except as otherwise provided in the General Corporation Law of the State of Delaware and for this purpose references in these By-laws to the Board of Directors shall be deemed to include references to the Executive Committee.

SECTION 3. Meetings of the Executive Committee may be called at any time upon reasonable notice, either personally, by mail or by electronic transmission, by the Chairman, the Chairman of the Executive Committee, or by any two members of the Executive Committee.

SECTION 4. In the absence of both the Secretary and an Assistant Secretary, the Executive Committee shall appoint a secretary who shall keep regular minutes of the actions of the Committee and report the same to the Board of Directors.

SECTION 5. The Board of Directors may designate from the members of the Executive Committee a Chairman of the Executive Committee. If the Board of Directors should not make such designation, the Executive Committee may designate a Chairman of the Executive Committee.

**ARTICLE VIII  
OFFICERS OF THE COMPANY**

SECTION 1. The officers of the Company shall consist of a Chief Executive Officer and may include a Chairman, President, Chief Operating Officer, one or more Vice Chairmen, one or more Vice Presidents, a Secretary and a Treasurer. There also may be such other officers and assistant officers as, from time to time, may be elected or appointed by, or pursuant to the direction of, the Board of Directors.

**ARTICLE IX  
OFFICERS – HOW CHOSEN**

SECTION 1. The Directors shall appoint a Chief Executive Officer. They may also appoint a Chairman, President, Chief Operating Officer, one or more Vice Chairmen, one or more Vice Presidents, a Secretary and a Treasurer to hold office for one year or until others are appointed and qualify in their stead or until their earlier death, resignation or removal.

SECTION 2. The Directors may also appoint such other officers and assistant officers as from time to time they may determine, and who shall hold office at the pleasure of the Board. In addition, the Directors may delegate to officers of the Company, as designated by the Chief Executive Officer, the authority to appoint and dismiss assistant officers and deputy officers within the respective officer's area of supervision.

**ARTICLE X  
CHAIRMAN**

SECTION 1. The Directors shall elect a Chairman annually from among their own number. The Chairman shall preside at meetings of the Board of Directors. The Chairman shall also have such powers and duties as may from time to time be assigned by the Board of Directors.

**ARTICLE XI  
CHIEF EXECUTIVE OFFICER**

SECTION 1. The Chief Executive Officer shall have the general powers and duties of supervision, management and direction over the business and policies of the Company.

SECTION 2. The Chief Executive Officer shall see that all orders and resolutions of the Board of Directors and any committee thereof are carried into effect, and shall submit reports of the current operations of the Company to the Board of Directors at regular meetings of the Board, and annual reports to the stockholders.

**ARTICLE XII  
PRESIDENT**

SECTION 1. In the absence of the Chief Executive Officer, the President shall exercise the powers and duties of the Chief Executive Officer. The President shall have general executive powers as well as the specific powers conferred by these By-laws. The President shall also have such powers and duties as may from time to time be assigned by the Board of Directors or the Chief Executive Officer.

**ARTICLE XIII**  
**CHIEF OPERATING OFFICER**

SECTION 1. In the absence of the Chief Executive Officer and the President, the Chief Operating Officer shall exercise the powers and duties of the Chief Executive Officer. The Chief Operating Officer shall have general executive powers as well as the specific powers conferred by these By-laws. The Chief Operating Officer shall also have such powers and duties as may from time to time be assigned by the Board of Directors or the Chief Executive Officer.

**ARTICLE XIV**  
**VICE CHAIRMEN**

SECTION 1. In the absence of the Chief Executive Officer, the President and the Chief Operating Officer, and in the order of their appointment to the office, the Vice Chairmen shall exercise the powers and duties of the Chief Executive Officer. The Vice Chairmen shall have general executive powers as well as the specific powers conferred by these By-laws. Each of them shall also have such powers and duties as may from time to time be assigned by the Board of Directors or the Chief Executive Officer.

**ARTICLE XV**  
**VICE PRESIDENTS**

SECTION 1. Each Vice President shall have such powers and perform such duties as may be assigned to such officer by the Board of Directors or, subject to Section 2 of Article XVIII, by the Chief Executive Officer. The Board of Directors may add to the title of any Vice President such distinguishing designation as may be deemed desirable, which may reflect seniority, duties or responsibilities of such Vice President. The Chief Financial Officer, Treasurer, Controller and General Counsel shall have the powers and duties of a Vice President whether or not given that designation.

*ARTICLE XVI  
SECRETARY*

SECTION 1. The Secretary shall attend all sessions of the Board of Directors and act as clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the committees of the Board of Directors when required.

SECTION 2. The Secretary shall see that proper notice is given of all meetings of the stockholders of the Company and of the Board of Directors. In the Secretary's absence, or in the case of his or her failure or inability to act, an Assistant Secretary or a secretary pro-tempore shall perform his or her duties and such other duties as may be prescribed by the Board of Directors.

SECTION 3. The Secretary shall keep account of certificates of stock, uncertificated shares or other receipts and securities representing an interest in or to the capital of the Company, transferred and registered in such form and manner and under such regulations as the Board of Directors may prescribe.

SECTION 4. The Secretary shall keep in safe custody the contracts, books and such corporate records as are not otherwise provided for, and the seal of the Company. The Secretary shall affix the seal to any instrument requiring the same and the seal, when so affixed shall be attested by the signature of the Secretary, an Assistant Secretary, Treasurer or an Assistant Treasurer.

*ARTICLE XVII  
TREASURER*

SECTION 1. The Treasurer shall make such disbursements of the funds of the Company as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Company. The Treasurer shall also perform such other duties as the Board of Directors may from time to time prescribe.

*ARTICLE XVIII  
DUTIES OF OFFICERS*

SECTION 1. In addition to the duties specifically enumerated in the By-laws, all officers and assistant officers of the Company shall perform such other duties as may be assigned to them from time to time by the Board of Directors or by their superior officers.

SECTION 2. The Board of Directors may change the powers or duties of any officer or assistant officer, or delegate the same to any other officer, assistant officer or person.

SECTION 3. Every officer and assistant officer of the Company shall from time to time report to the Board of Directors, or to his or her superior officers all matters within his or her knowledge which the interests of the Company may require to be brought to their notice.

SECTION 4. Unless otherwise directed by the Board of Directors, the Chairman, the Chief Executive Officer, the President, the Chief Operating Officer, any Vice Chairman, any Vice President or the Secretary of the Company shall have power to vote and otherwise act on behalf of the Company, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which the Company may hold securities and otherwise to exercise any and all rights and powers which the Company may possess by reason of its ownership of securities in such other corporation.

**ARTICLE XIX**  
**CERTIFICATES OF STOCK, SECURITIES AND NOTES**

SECTION 1. The shares of the Company shall be represented by a certificate or shall be uncertificated and shall be entered in the books of the Company and registered as they are issued. Certificates of stock, or other receipts and securities representing an interest in the capital of the Company, shall bear the signature of the Chairman, the President or any Vice Chairman or any Vice President and bear the countersignature of the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer.

The Board of Directors may appoint one or more transfer agents and registrars, and may require all stock certificates, certificates representing any rights or options, and any written notices or statements relative to uncertificated stock to be signed by such transfer agents acting on behalf of the Company and by such registrars.

Within a reasonable time after the issuance or transfer of uncertificated stock, the Company shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the Delaware General Corporation Law or a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

SECTION 2. Nothing in this Article XIX shall be construed to limit the right of the Company, by resolution of the Board of Directors, to authorize, under such conditions as the Board may determine, the facsimile signature by any properly authorized officer of any instrument or document that the Board of Directors may determine.

SECTION 3. In case any officer, transfer agent or registrar who shall have signed or whose facsimile signature shall have been used on any certificates of stock, notes or securities shall cease to be such officer, transfer agent or registrar of the Company, whether because of death, resignation or otherwise, before the same shall have been issued by the Company, such certificates of stock, notes and securities nevertheless may be issued and delivered as though the person or persons who signed the same or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer, transfer agent or registrar of the Company.

SECTION 4. Upon surrender to the Company or the transfer agent of the Company of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Company to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate and record the transaction upon the Company's books. Upon the receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled, issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Company.

SECTION 5. The Company shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

SECTION 6. In the case of a loss or the destruction of a certificate of stock, a new certificate of stock or uncertificated shares may be issued in its place upon satisfactory proof of such loss or destruction and the giving of a bond of indemnity, unless waived, approved by the Board of Directors.

**ARTICLE XX**  
**NEGOTIABLE INSTRUMENTS AND CONTRACTS**

SECTION 1. Any of the following officers who have been appointed by the Board of Directors to wit, the Chairman, the Chief Executive Officer, the President, the Chief Operating Officer, the Vice Chairmen, the Vice Presidents, the Secretary, the Treasurer or any other person when such other person is authorized by the Board of Directors shall have the authority to sign and execute on behalf of the Company as maker, drawer, acceptor, guarantor, endorser, assignor or otherwise, all notes, collateral trust notes, debentures, drafts, bills of exchange, acceptances, securities and commercial paper of all kinds.

SECTION 2. The Chairman, the Chief Executive Officer, the President, the Chief Operating Officer, any Vice Chairman, any Vice President, the Secretary, the Treasurer or any other person, when such officer or other person has been appointed by the Board of Directors shall have authority, on behalf of and for the account of the Company, (a) to borrow money against duly executed obligations of the Company; (b) to sell, discount or otherwise dispose of notes, collateral trust notes, debentures, drafts, bills of exchange, acceptances, securities, obligations of the Company and commercial paper of all kinds; (c) to sign orders for the transfer of money to affiliated or subsidiary companies, and (d) to execute contracts, powers of attorney or other documents to which the Company is a party.

SECTION 3. The Board of Directors may either in the absence of any of said officers or persons, or for any other reason, appoint some other officer or some other person to exercise the powers and discharge the duties of any of said officers or persons under this Article, and the officer or person so appointed shall have all the power and authority hereby conferred upon the officer or person for whom he or she may be appointed to act.

**ARTICLE XXI  
FISCAL YEAR**

SECTION 1. The fiscal year of the Company shall begin the first day of January and terminate on the thirty-first day of December in each year.

**ARTICLE XXII  
NOTICE**

SECTION 1. Whenever under the provisions of the laws of the State of Delaware or these By-laws notice is required to be given to any Director, member of a committee, officer or stockholder, it shall not be construed to mean personal notice, but such notice may be given by electronic transmission or in writing by depositing the same in the post office or letter box in a post paid, sealed wrapper, addressed to such Director, member of a committee, officer or stockholder at his or her address as the same appears in the books of the Company; and the time when the same shall be mailed shall be deemed to be the time of the giving of such notice.

**ARTICLE XXIII  
WAIVER OF NOTICE**

SECTION 1. A written waiver of any notice, signed by a Director, member of a committee, officer or stockholder, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting to the timeliness of notice.

*ARTICLE XXIV*  
*AMENDMENT OF BY-LAWS*

SECTION 1. The Board of Directors, at any meeting, may alter or amend these By-laws, and any alteration or amendment so made may be repealed by the Board of Directors or by the stockholders at any meeting duly called. Any alteration, amendment or repeal of these By-laws by the Board of Directors shall require the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the entire Board of Directors.



TAB 3

BY-LAWS  
OF  
THE COCA-COLA COMPANY

AS AMENDED AND RESTATED THROUGH FEBRUARY 19, 2004

ARTICLE I

SHAREHOLDERS:

Section 1. *Place, Date and Time of Holding Annual Meetings.* Annual meetings of shareholders shall be held at such place, date and time as shall be designated from time to time by the Board of Directors. In the absence of a resolution adopted by the Board of Directors establishing such place, date and time, the annual meeting shall be held at 1209 Orange Street, Wilmington, Delaware, on the third Wednesday in April of each year at 9:00 A.M. (local time).

Section 2. *Voting.* Each outstanding share of common stock of the Company is entitled to one vote on each matter submitted to a vote. Directors shall be elected by plurality votes cast in the election for such directors. All other action shall be authorized by a majority of the votes cast unless a greater vote is required by the laws of Delaware. A shareholder may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedures established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or the transmission that could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 3. *Quorum.* The holders of a majority of the issued and outstanding shares of capital stock of the Company, present in person or represented by proxy, shall constitute a quorum at all meetings of shareholders. Where a separate vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

Section 4. *Adjournment of Meetings.* In the absence of a quorum or for any other reason, the chairman of the meeting may adjourn the meeting from time to time. If the adjournment is not for more than thirty days, the adjourned meeting may be held without notice other than an announcement at the meeting. If the adjournment is for more than thirty days, or if a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called.

Section 5. *Special Meetings.* Special meetings of the shareholders for any purpose or purposes may be called by the Board of Directors, the Chairman of the Board of Directors or the President. Special meetings shall be held at the place, date and time fixed by the Secretary.

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Section 6. *Notice of Shareholders Meeting.* Notice, stating the place, date, hour and purpose of the annual or special meeting shall be given by the Secretary not less than ten nor more than sixty days before the date of the meeting to each shareholder entitled to vote at such meeting.

Section 7. *Organization.* The Chairman of the Board of Directors shall preside at all meetings of shareholders. In the absence of, or in case of a vacancy in the office of, the Chairman of the Board of Directors, the President, or in his absence or in the event that the Board of Directors has not selected a President, any Senior Executive Vice President, Executive Vice President, Senior Vice President or Vice President in order of seniority as specified in this sentence, and, within each classification of office in order of seniority in time in that office, shall preside. The Secretary of the Company shall act as secretary at all meetings of the shareholders and in the Secretary's absence, the chairman of the meeting may appoint a secretary.

The Board of Directors of the Company shall be entitled to make such rules or regulations for the conduct of meetings of shareholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and the authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing (i) an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on participation in such meetings to shareholders of record of the Company and their duly authorized and constituted proxies, and such other persons as the chairman of the meeting shall permit, (iv) restrictions on entries to the meeting after the time affixed for the commencement thereof, (v) limitations on the time allotted to the questions or comments by participants and (vi) regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with rules of parliamentary procedure.

Section 8. *Inspectors of Election.* All votes by ballot at any meeting of shareholders shall be conducted by such number of inspectors of election as are appointed for that purpose by the Company. The Company may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

Section 9. *Record Date.* The Board of Directors, in order to determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to take action by written consent, or entitled to receive payment of any dividend or 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, shall 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 and in such case only such shareholders as shall be shareholders of record on the date so fixed, shall be entitled to such notice of or to vote at such meeting or any adjournment thereof, or entitled to take action by written consent, or be entitled to receive payment of any such dividend or

other distribution or allotment of any rights or be entitled to exercise any such rights in respect of stock or to take any such other lawful action, as the case may be, notwithstanding any transfer of any stock on the books of the Company after any such record date fixed as aforesaid.

Section 10. *Notice of Shareholder Proposals.* At any annual or special meeting of shareholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual or special meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (C) otherwise properly brought before the meeting by a shareholder. In order for business to be properly brought before an annual meeting by a shareholder, the shareholder must have given timely notice thereof in writing to the Secretary of the Company and such proposal must be a proper matter for shareholder action under the General Corporation Law of the State of Delaware. To be timely, a shareholder's notice must be delivered to or mailed and received at the principal executive offices of the Company not later than the close of business on the one hundred twentieth (120th) calendar day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days notice by the shareholder to be timely must be so received not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting or ten (10) calendar days following the date on which public announcement of the date of the meeting is first made. A shareholder's notice to the Secretary shall set forth as to each matter the shareholder proposals to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Company's books, of the shareholder proposing such business, (iii) the class and number of shares of the Company which are beneficially owned by the shareholder, (iv) any material interest of the shareholder in such business, and (v) any other information that is required to be provided by the shareholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), in his capacity as a proponent to a shareholder proposal. Notwithstanding the foregoing, in order to include information with respect to a shareholder proposal in the proxy statement and form of proxy for a shareholders' meeting, shareholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this Section 10. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Section 10, and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

Section 11. *Election of Directors.* Only persons who are nominated in accordance with the procedures set forth in this Section 11 shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Company may be made (i) at an annual or special meeting of shareholders by or at the direction of the Board of Directors or (ii) at an annual meeting by any shareholder of the Company entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this Section 11. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Company in accordance with the provisions of Section 10. Such shareholder's notice shall set forth (i) as to each person, if any, whom the shareholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the Company which are beneficially owned by such person, (D) a description of all arrangements or understandings between the shareholder and each nominee or any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the shareholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including, without limitation, such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (ii) as to such shareholder giving notice, the information required to be provided pursuant to Section 10. At the request of the Board of Directors, any person nominated by a shareholder for election as a director shall furnish to the Secretary of the Company that information required to be set forth in the shareholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Company unless nominated in accordance with the procedures set forth in this Section 11. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that nomination was not made in accordance with the procedures prescribed by these By-Laws, and if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

## ARTICLE II

### DIRECTORS:

Section 1. *Number and Term and Classes of Directors.* The whole Board of Directors shall consist of not less than ten (10) nor more than twenty (20) members, the exact number to be set from time to time by the Board of Directors. No decrease in the number of directors shall shorten the term of any incumbent director. In absence of the Board of Directors setting the number of directors, the number shall be 20. The Board of Directors shall be elected each year, at the annual meeting of shareholders, to hold office until the next annual meeting and until their successors are elected and qualified.

Section 2. *Regular Meetings.* Regular meetings of the Board of Directors shall be held at such times as the Board of Directors may determine from time to time.

Section 3. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Secretary or by a majority of the directors by written request to the Secretary.

Section 4. *Notice of Meetings.* The Secretary shall give notice of all meetings of the Board of Directors by mailing the notice at least three days before each meeting or by telegraphing or telephoning the directors, or sending notice to the directors by facsimile or other electronic transmission, not later than one day before the meeting. The notice shall state the time, date and place of the meeting, which shall be determined by the Chairman of the Board of Directors, or, in absence of the Chairman, by the Secretary of the Company, unless otherwise determined by the Board of Directors by action taken prior to the meeting.

Section 5. *Quorum and Voting.* A majority of the directors holding office shall constitute a quorum for the transaction of business. Except as otherwise specifically required by Delaware law or by the Certificate of Incorporation of the Company or by these By-Laws, any action required to be taken shall be authorized by a majority of the directors present at any meeting at which a quorum is present.

Section 6. *Participation in Meetings; Action by Unanimous Consent.* Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting. Action may be taken by the Board of Directors without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 7. *General Powers of Directors.* The business and affairs of the Company shall be managed under the direction of the Board of Directors.

Section 8. *Chairman.* At all meetings of the Board of Directors, the Chairman of the Board of Directors shall preside and in the absence of, or in the case of a vacancy in the office of, the Chairman of the Board of Directors, a chairman selected by the Chairman of the Board of Directors or, if he fails to do so, by the directors, shall preside.

Section 9. *Compensation of Directors.* Directors and members of any committee of the Board of Directors shall be entitled to such reasonable compensation and fees for their services as shall be fixed from time to time by resolution of the Board of Directors and shall also be entitled to reimbursement for any reasonable expenses incurred in attending meetings of the Board of Directors and any committee thereof, except that a director who is an officer or employee of the Company shall receive no compensation or fees for serving as a director or a committee member.

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Section 10. *Qualification of Directors.* Any director who was elected or re-elected because he or she was an officer of the Company at the time of that election or the most recent re-election shall resign as a member of the Board of Directors simultaneously when he or she ceases to be an officer of the Company.

### ARTICLE III

#### COMMITTEES OF THE BOARD OF DIRECTORS:

Section 1. *Committees of the Board of Directors.* The Board of Directors shall designate an Audit Committee, a Compensation Committee and a Committee on Directors and Corporate Governance, and whatever other committees the Board of Directors deems advisable, each of which shall have and may exercise the powers and authority of the Board of Directors to the extent provided in the charters of each committee adopted by the Board of Directors in one or more resolutions.

The Chairman of the Board shall have the power and authority of a committee of the Board of Directors for purposes of taking any action which the Chairman of the Board is authorized to take under the provisions of this Article.

Section 2. *Election of Committee Members.* The members of each committee shall be elected by the Board of Directors and shall serve until the first meeting of the Board of Directors after the annual meeting of shareholders and until their successors are elected and qualified or until the members' earlier resignation or removal. The Board of Directors may designate the Chairman and Vice Chairman of each committee. Vacancies may be filled by the Board of Directors at any meeting.

The Chairman of the Board may designate one or more directors to serve as an alternate member or members at any committee meeting to replace any absent or disqualified member, such alternate or alternates to serve for that committee meeting only, and the Chairman of the Board may designate a committee member as acting chairman of that committee, in the absence of the elected committee chairman, to serve for that committee meeting only.

Section 3. *Procedure/Quorum/Notice.* The Committee Chairman, Vice Chairman or a majority of any committee may call a meeting of that committee. A quorum of any committee shall consist of a majority of its members unless otherwise provided by resolution of the Board of Directors. The majority vote of a quorum shall be required for the transaction of business. The secretary of the committee or the chairman of the committee shall give notice of all meetings of the committee by mailing the notice to the members of the committee at least three days before each meeting or by telegraphing or telephoning the members or sending the notice to members by facsimile or other electronic transmission, not later than one day before the meeting. The notice shall state the time, date and place of the meeting. Each committee shall fix its other rules of procedure. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

### ARTICLE IV

#### NOTICE AND WAIVER OF NOTICE:

Section 1. *Notice.* Any notice required to be given to shareholders or directors under these By-Laws, the Certificate of Incorporation or by law may be given by mailing the same, addressed to the person entitled thereto, at such person's last known post office address and such notice shall be deemed to be given at the time of such mailing. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

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Section 2. *Waiver of Notice.* Whenever any notice is required to be given under these By-Laws, the Certificate of Incorporation or by law, a written waiver thereof, signed by the person entitled to notice, or a waiver given by such person by electronic transmission, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a 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 shareholders, directors or a committee of directors need be specified in any written waiver of notice.

### ARTICLE V

#### OFFICERS:

Section 1. *Officers of the Company.* The officers of the Company shall be selected by the Board of Directors and shall be a Chairman of the Board of Directors, one or more Vice Presidents, a Secretary and a Treasurer. The Board of Directors may elect a Vice Chairman, President and a Controller and one or more of the following: Senior Executive Vice President, Executive Vice President, Senior Vice President, Assistant Vice President, Assistant Secretary, Associate Treasurer, Assistant Treasurer, Associate Controller and Assistant Controller. Two or more offices may be held by the same person.

The Company may have a General Counsel who shall be appointed by the Board of Directors and shall have general supervision of all matters of a legal nature concerning the Company, unless the Board of Directors has also appointed a General Tax Counsel, in which event the General Tax Counsel shall have general supervision of all tax matters of a legal nature concerning the Company.

The Company may have a Chief Financial Officer who shall be appointed by the Board of Directors and shall have general supervision over the financial affairs of the Company. The Company may also have a Chief of Internal Audits who shall be appointed by the Board of Directors.

Section 2. *Election of Officers.* At the first meeting of the Board of Directors after each annual meeting of shareholders, the Board of Directors shall elect the officers. From time to time the Board of Directors may elect other officers.

Section 3. *Tenure of Office; Removal.* Each officer shall hold office until the first meeting of the Board of Directors after the annual meeting of shareholders following the officer's election and until the officer's successor is elected and qualified or until the officer's earlier resignation or removal. Each officer shall be subject to removal at any time, with or without cause, by the affirmative vote of a majority of the entire Board of Directors.

Section 4. *Chairman of the Board of Directors.* The Chairman of the Board of Directors shall be the Chief Executive Officer of the Company and, subject to the overall direction and supervision of the Board of Directors and committees thereof, shall be in general charge of the affairs of the Company; and shall consult and advise with the Board of Directors and committees thereof on the business and the affairs of the Company. The Chairman of the Board of Directors shall have the power to make and execute contracts on behalf of the Company and to delegate such power to others.

Section 5. *President.* The Board of Directors may select a President who shall have such powers and perform such duties as may be assigned by the Board of Directors or by the Chairman of the Board of Directors. In the absence or disability of the President, his or her duties shall be performed by such Vice Presidents as the Chairman of the Board of Directors or the Board of Directors may designate. The President shall also have the power to make and execute contracts on the Company's behalf and to delegate such power to others.

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Section 6. *Vice Presidents.* Each Senior Executive Vice President, Executive Vice President, Senior Vice President and Vice President shall have such powers and perform such duties as may be assigned to the officer by the Board of Directors or by the Chairman of the Board of Directors or the President.

Section 7. *Secretary.* The Secretary shall keep minutes of all meetings of the shareholders and of the Board of Directors, and shall keep, or cause to be kept, minutes of all meetings of Committees of the Board of Directors, except where such responsibility is otherwise fixed by the Board of Directors. The Secretary shall issue all notices for meetings of the shareholders and Board of Directors and shall have charge of and keep the seal of the Company and shall affix the seal attested by the Secretary's signature to such instruments as may properly require same. The Secretary shall cause to be kept such books and records as the Board of Directors, the Chairman of the Board of Directors or the President may require; and shall cause to be prepared, recorded, transferred, issued, sealed and cancelled certificates of stock as required by the transactions of the Company and its shareholders. The Secretary shall attend to such correspondence and such other duties as may be incident to the office of the Secretary or assigned by the Board of Directors, the Chairman of the Board of Directors, or the President.

In the absence of the Secretary, an Assistant Secretary is authorized to assume the duties herein imposed upon the Secretary.

Section 8. *Treasurer.* The Treasurer shall perform all duties and acts incident to the position of Treasurer, shall have custody of the Company funds and securities, and shall deposit all money and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Company as may be authorized, taking proper vouchers for such disbursements, and shall render to the Board of Directors, whenever required, an account of all the transactions of the Treasurer and of the financial condition of the Company. The Treasurer shall vote all of the stock owned by the Company in any corporation and may delegate this power to others. The Treasurer shall perform such other duties as may be assigned to the Treasurer and shall report to the Chief Financial Officer or, in the absence of the Chief Financial Officer, to the Chairman of the Board of Directors.

In the absence of the Treasurer, an Assistant Treasurer is authorized to assume the duties herein imposed upon the Treasurer.

Section 9. *Controller.* The Board of Directors may select a Controller who shall keep or cause to be kept in the books of the Company provided for that purpose a true account of all transactions and of the assets and liabilities of the Company. The Controller shall prepare and submit to the Chief Financial Officer or, in the absence of the Chief Financial Officer to the Chairman of the Board of Directors, such financial statements and schedules as may be required to keep the Chief Financial Officer and the Chairman of the Board of Directors currently informed of the operations and financial condition of the Company, and perform such other duties as may be assigned by the Chief Financial Officer or the Chairman of the Board.

In the absence of the Controller, an Assistant Controller is authorized to assume the duties herein imposed upon the Controller.

Section 10. *Chief of Internal Audits.* The Board of Directors may select a Chief of Internal Audits, who shall cause to be performed, and have general supervision over, auditing activities of the financial transactions of the Company, including the coordination of such auditing activities with the independent accountants of the Company and who shall perform such other duties as may be assigned to him from time to time. The Chief of Internal Audits shall report to the Chief Financial Officer or, in the absence of the Chief Financial Officer, to the Chairman of the Board of Directors. From time to time at the request of the Audit Committee, the Chief of Internal Audits shall inform that committee of the auditing activities of the Company.

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Section 11. *Assistant Vice Presidents.* The Company may have assistant vice presidents who shall be appointed by a committee whose membership shall include one or more executive officers of the Company (the "Committee"). Each such assistant vice president shall have such powers and shall perform such duties as may be assigned from time to time by the Committee, the Chairman of the Board of Directors, the President or any Vice President, and which are not inconsistent with the powers and duties granted and assigned by these By-Laws or the Board of Directors. Assistant vice presidents appointed by the Committee shall be subject to removal at any time, with or without cause, by the Committee. Annually the Committee shall report to the Board of Directors who it has appointed to serve as assistant vice presidents and their respective responsibilities.

## ARTICLE VI

### RESIGNATIONS: FILLING OF VACANCIES:

Section 1. *Resignations.* Any director, member of a committee, or officer may resign at any time. Such resignation shall be made by notice to the Chairman of the Board or the Secretary given in writing or by electronic transmission and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the Chairman of the Board of Directors or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 2. *Filling of Vacancies.* If the office of any director becomes vacant, the directors in office, although less than a quorum, or, if the number of directors is increased, the directors in office, may elect any qualified person to fill such vacancy. In the case of a vacancy in the office of a director caused by an increase in the number of directors, the person so elected shall hold office until the next annual meeting of shareholders, or until his successor shall be elected and qualified. In the case of a vacancy in the office of a director resulting otherwise than from an increase in the number of directors, the person so elected to fill such vacancy shall hold office for the unexpired term of the director whose office became vacant. If the office of any officer becomes vacant, the Chairman of the Board of Directors may appoint any qualified person to fill such vacancy temporarily until the Board of Directors elects any qualified person for the unexpired portion of the term. Such person shall hold office for the unexpired term and until the officer's successor shall be duly elected and qualified or until the officer's earlier resignation or removal.

## ARTICLE VII

### INDEMNIFICATION:

Section 1. *Indemnification of Directors, Officers, Employees and Agents.* The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a director, officer, employee, or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. Notwithstanding the foregoing, except with respect to a proceeding to enforce rights to indemnification or advancement of expenses under this Article VII, the Company shall be required to indemnify a person under this Article VII in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Company.

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The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 2. *Expenses.* To the extent that a director, officer, employee or agent of the Company has been successful on the merits or otherwise, in whole or in part, in defense of any action, suit or proceeding referred to in Section 1 or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. The entitlement to expenses under this Section 2 shall include any expenses incurred by a director, officer, employee or agent of the Company in connection with any action, suit or proceeding brought by such director, officer, employee or agent to enforce a right to indemnification or payment of expenses under this Article. If successful in whole or in part in any such action, suit or proceeding, or in any action, suit or proceeding brought by the Company to recover a payment of expenses pursuant to the terms of an undertaking provided in accordance with Section 4, the director, officer, employee or agent also shall be entitled to be paid the expense of prosecuting or defending such action, suit or proceeding.

Section 3. *Procedure for Receiving Indemnification.* To receive indemnification under this By-Law, a director, officer, employee or agent of the Company shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to him and reasonably necessary to determine his entitlement to indemnification. Upon receipt by the Company of a written request for indemnification, a determination, if required by applicable law, with respect to a claimant's request shall be made: (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, even though less than a quorum; or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum; or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (4) by the shareholders. The determination of a claimant's entitlement to indemnification shall be made within a reasonable time, and in any event within no more than 60 days, after receipt by the Company of a written request for indemnification, together with the supporting documentation required by this Section. The burden of establishing that a claimant is not entitled to be indemnified under this Article or otherwise shall be on the Company.

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Section 4. *Payment of Expenses.* Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding within 30 days after receipt by the Company of a statement requesting payment of such expenses. Such statement shall evidence the expenses incurred by the claimant and shall include an undertaking by or on behalf of the claimant to repay such expenses unless it shall ultimately be determined, by final judicial decision from which there is no further right to appeal, that he is not entitled to be indemnified by the Company as authorized by this Article. The burden of establishing that a claimant is not entitled to payment of expenses under this Article or otherwise shall be on the Company. Any such payment shall not be deemed to be a loan or extension or arrangement of credit by or on behalf of the Company.

Section 5. *Provisions Non-Exclusive; Survival of Rights.* The indemnification and payment of expenses provided by or granted pursuant to this Article shall not be deemed exclusive of any other rights to which those indemnified or those who receive payment of expenses may be entitled under any By-Law, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6. *Insurance.* The Company shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of this Article.

Section 7. *Authority to Enter into Indemnification Agreements.* The Company shall have the power to enter into contracts with any director, officer, employee or agent of the Company in furtherance of the provisions of this Article to provide for the payment of such amounts as may be appropriate, in the discretion of the Board of Directors, to effect indemnification and payment of expenses as provided in this Article.

Section 8. *Effect of Amendment.* Any amendment, repeal or modification of this Article shall not adversely affect any right or protection existing at the time of such amendment, repeal or modification in respect of any act or omission occurring prior to such amendment, repeal or modification.

Section 9. *No Duplication of Payments.* The Company's obligation, if any, to indemnify or pay expenses to any person under this Article shall be reduced to the extent such person has otherwise received payment (under any insurance policy, indemnity clause, bylaw, agreement, vote or otherwise).

#### ARTICLE VIII

##### CAPITAL STOCK:

Section 1. *Form and Execution of Certificates.* The certificates of shares of the capital stock of the Company shall be in such form as shall be approved by the Board of Directors. The certificates shall be signed by the Chairman of the Board of Directors or the President, or a Vice President, and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer. Each certificate of stock shall certify the number of shares owned by the shareholder in the Company.

A facsimile of the seal of the Company may be used in connection with the certificates of stock of the Company, and facsimile signatures of the officers named in this Section may be used in connection with said certificates. In the event any officer whose facsimile signature has been placed upon a certificate shall cease to be such officer before the certificate is issued, the certificate may be issued with the same effect as if such person was an officer at the date of issue.

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Section 2. *Record Ownerships.* All certificates shall be numbered appropriately and the names of the owners, the number of shares and the date of issue shall be entered in the books of the Company. The Company shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof, except as required by the laws of Delaware.

Section 3. *Transfer of Shares.* Upon surrender to the Company or to a transfer agent of the Company of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, it shall be the duty of the Company, if it is satisfied that all provisions of law regarding transfers of shares have been duly complied with, to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 4. *Lost, Stolen or Destroyed Stock Certificates.* Any person claiming a stock certificate in lieu of one lost, stolen or destroyed shall give the Company an affidavit as to such person's ownership of the certificate and of the facts which go to prove that it was lost, stolen or destroyed. The person shall also, if required by the Board of Directors, give the Company a bond, sufficient to indemnify the Company against any claims that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. Any Vice President or the Secretary or any Assistant Secretary of the Company is authorized to issue such duplicate certificates or to authorize any of the transfer agents and registrars to issue and register such duplicate certificates.

Section 5. *Regulations.* The Board of Directors from time to time may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares.

Section 6. *Transfer Agent and Registrar.* The Board of Directors may appoint such transfer agents and registrars of transfers as may be deemed necessary, and may require all stock certificates to bear the signature of either or both.

#### ARTICLE IX

##### SEAL:

Section 1. *Seal.* The Board of Directors shall provide a suitable seal containing the name of the Company, the year of its creation, and the words, "CORPORATE SEAL, DELAWARE," or other appropriate words. The Secretary shall have custody of the seal.

#### ARTICLE X

##### FISCAL YEAR:

Section 1. *Fiscal Year.* The fiscal year of the Company shall be the calendar year.

## ARTICLE XI

### AMENDMENTS:

Section 1. *Directors May Amend By-Laws.* The Board of Directors shall have the power to make, amend and repeal the By-laws of the Company.

Section 2. *By-laws Subject to Amendment by Shareholders.* All By-Laws shall be subject to amendment, alteration, or repeal by the shareholders entitled to vote at any annual meeting or at any special meeting.

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## ARTICLE XII

### EMERGENCY BY-LAWS:

Section 1. *Emergency By-laws.* This Article XII shall be operative during any emergency resulting from an attack on the United States or on a locality in which the Company conducts its business or customarily holds meetings of its Board of Directors or its shareholders, or during any nuclear or atomic disaster or during the existence of any catastrophe or other similar emergency condition, as a result of which a quorum of the Board of Directors or, if one has been constituted, the Executive Committee thereof cannot be readily convened (an "emergency"), notwithstanding any different or conflicting provision in the preceding Articles of these By-laws or in the Certificate of Incorporation of the Company. To the extent not inconsistent with the provisions of this Article, the By-laws provided in the preceding Articles and the provisions of the Certificate of Incorporation of the Company shall remain in effect during such emergency, and upon termination of such emergency, the provisions of this Article XII shall cease to be operative.

Section 2. *Meetings.* During any emergency, a meeting of the Board of Directors, or any committee thereof, may be called by any officer or director of the Company. Notice of the time and place of the meeting shall be given by any available means of communication by the person calling the meeting to such of the directors and/or Designated Officers, as defined in Section 3 hereof, as it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the person calling the meeting, circumstances permit.

Section 3. *Quorum.* At any meeting of the Board of Directors, or any committee thereof, called in accordance with Section 2 of this Article XII, the presence or participation of two directors, one director and a Designated Officer or two Designated Officers shall constitute a quorum for the transaction of business.

The Board of Directors or the committees thereof, as the case may be, shall, from time to time but in any event prior to such time or times as an emergency may have occurred, designate the officers of the Company in a numbered list (the "Designated Officers") who shall be deemed, in the order in which they appear on such list, directors of the Company for purposes of obtaining a quorum during an emergency, if a quorum of directors cannot otherwise be obtained.

Section 4. *By-laws.* At any meeting called in accordance with Section 2 of this Article XII, the Board of Directors or the committees thereof, as the case may be, may modify, amend or add to the provisions of this Article XII so as to make any provision that may be practical or necessary for the circumstances of the emergency.

Section 5. *Liability.* No officer, director or employee of the Company acting in accordance with the provisions of this Article XII shall be liable except for willful misconduct.

Section 6. *Repeal or Change.* The provisions of this Article XII shall be subject to repeal or change by further action of the Board of Directors or by action of the shareholders, but no such repeal or change shall modify the provisions of Section 5 of this Article XII with regard to action taken prior to the time of such repeal or change.

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### QuickLinks

[EXHIBIT 3.2](#)

[BY-LAWS OF THE COCA-COLA COMPANY](#)

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TAB 4

THE SOUTHERN COMPANY  
BY-LAWS

As Amended Effective February 17, 2003

OFFICES.

1. The principal office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

The Corporation shall also have an office in Atlanta, Georgia.

The Corporation may have offices at such other places as the Board of Directors may from time to time determine.

SEAL.

2. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware."

STOCKHOLDERS' MEETINGS.

3. All meetings of the stockholders shall be held at the office of the Corporation in the City of Wilmington, County of New Castle, State of Delaware, except such meetings as the Board of Directors expressly determine shall be held elsewhere in which case meetings may be held upon notice as hereinafter provided, at such other place or places within or without the State of Delaware as said Board of Directors may determine.

4. The annual meeting of the stockholders shall be held at 11:00 o'clock A.M. Eastern Standard Time on the fourth Wednesday in the month of May in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 11:00 o'clock A.M. Eastern Standard Time, when the stockholders entitled to vote thereon shall elect the Board of Directors and transact such other business as may be brought before the meeting. At the annual meeting any business may be transacted, irrespective of whether the notice calling such meeting shall have contained a reference thereto.

The time and place named in these By-Laws for the annual meeting at which the Board of Directors is to be elected shall not be changed within sixty (60) days next before the day on which said election is to be held. A notice of any change shall be given to each stockholder twenty days before the election is held, in person or by letter mailed to his last known post-office address.

5. At all meetings of the stockholders, the holders of a majority of the shares of the stock issued and outstanding and entitled to vote thereat present in person or represented by proxy shall constitute a quorum requisite for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws. If, however, a quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or by proxy, shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until the requisite amount of voting stock shall be present. At such adjourned meeting at which the requisite amount of voting stock shall be represented, any business may be transacted which might have been transacted at the meeting as originally notified.

6. Each stockholder entitled to vote in accordance with the Certificate of Incorporation or any amendment thereof and in accordance with the provisions of these By-Laws or of any action taken pursuant thereto shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholder, but no proxy shall be voted on after three years from its date unless such proxy provides for a longer period. Except where the transfer books of the corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as hereinafter provided, no share of stock shall be voted on at any election for directors which shall have been transferred on the books of the Corporation within twenty days next preceding such election of directors. The vote for directors, and, upon the demand of any stockholder, the vote upon any question before the meeting, shall be by ballot. At all elections of directors of the Corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right when exercised, shall be termed cumulative voting. All other questions shall be decided by plurality vote except as otherwise provided by the Certificate of Incorporation and/or by the laws of the State of Delaware.

7. Written notice of the annual meeting shall be mailed to each stockholder entitled to vote thereat, at such address as appears on the stock books of the Corporation, at least ten days prior to the meeting. It shall be the duty of every stockholder to furnish to the Secretary of the Corporation or to the Transfer Agent, if any, of the class or series of stock owned by him, his post-office address and to notify said Secretary or Transfer Agent of any change therein.

8. At least ten days before every election of directors, the Secretary shall prepare and make or cause to be prepared and made, a complete list of the stockholders entitled to vote at said election, arranged in alphabetical order, with the residence of each, and the number of voting shares held by each. Such list shall be open at the place where said election is to be held for said ten days, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present.

9. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Chairman of the Board or the President, and shall be called by the Chairman of the Board or President or Secretary upon the order in writing of a majority of or by resolution of the Board of Directors, or at the request in writing of stockholders owning ten percentum of the entire capital stock of the Corporation issued and outstanding and entitled to vote. Such request or order shall state the purpose or purposes of the proposed meeting. On failure by the Chairman of the Board or President or Secretary to call such special meeting when duly requested, the makers of such request or order may call such special meeting over their own signatures.

10. Written notice of a special meeting of stockholders, stating the time and place and object thereof, shall be mailed, postage prepaid, or delivered, at least ten days before such meeting, to each stockholder entitled to vote thereat at his last known post-office address appearing on the books of the Corporation. No business may be transacted at such meeting except that referred to in said notice, or in a supplemental notice given also in compliance with the provisions hereof.

JUDGES.

11. At each meeting of the stockholders, the polls shall be opened and closed, the proxies and ballots shall be received and taken in charge of, all questions touching on the qualifications of voters and the validity of proxies and the acceptance and rejection of votes shall be decided, the number of shares voted shall be counted, the manner of voting said shares shall be ascertained, and the result of the voting shall be declared by two judges. Such judges shall be appointed by the Board of Directors before or at the meeting, and if no such appointment shall have been made, then by the meeting. If for any reason any of the judges previously appointed shall fail to attend or refuse or be unable to serve, judges in place of any so failing to attend or refusing or unable to serve shall be appointed either by the Board of Directors or by the stockholders' meeting.

DIRECTORS.

12. The business of the Corporation shall be managed by a Board of Directors. The number of directors which shall constitute the whole Board shall be fixed from time to time by resolution of the Board of Directors, but in no case shall be less than three. Directors need not be stockholders. Each director (whether elected at an annual meeting, or to fill a vacancy or newly created directorship or otherwise) shall hold office until his successor is elected and qualified or until his earlier resignation or removal.

Any director of this Corporation may resign at any time by giving written notice to the Chairman of the Board or President or Secretary of the Corporation. Such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

13. In case of any vacancies in the Board of Directors through death, resignation, disqualification, removal or other cause, the remaining directors if less than a quorum, by affirmative vote of a majority thereof, or, if a quorum, by a majority vote of such quorum, may elect a successor or successors, and the director or directors so chosen shall hold office until the next annual election and until their successor or successors shall be elected and qualified.

14. The Board of Directors may hold their meetings and have one or more offices, and keep the books of the Corporation, at such place or places as they may from time to time determine.

15. A person being a full-time executive employee of the Corporation or any of its subsidiaries when first elected a director of the Corporation (an "employee-director") shall not be eligible to serve as a director when not an executive employee, whether by reason of resignation, retirement or other cause; and a person not an employee-director shall not be eligible for election or re-election as a director of the corporation after his 70th birthday.

Any employee-director not eligible to serve as a director by reason of the foregoing provision shall be eligible to serve as an advisory director, as hereinafter provided for in Section 24 of these By-Laws, until his 70th birthday. The foregoing provisions with respect to the eligibility of a person not an employee-director to serve as a director shall not apply to any person so long as such person shall serve as a member of the Independent Litigation Committee established and designated by the Board of Directors on September 17, 1986.

In addition to the powers and authorities expressly conferred upon it by statute, by the Certificate of Incorporation and by these By-Laws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as may be done by the Corporation as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

#### FEES OF DIRECTORS.

16. Directors shall be reimbursed for expenses, if any, incurred in attending meetings of the Board of Directors and in otherwise performing duties as such directors. Directors who perform no paid duties, as an officer, employee or otherwise than as a director, for the Corporation or any of its subsidiaries, may be paid by the Corporation such compensation for their services as directors or as members of a committee authorized by the Board of Directors as may from time to time be fixed by vote of a majority of the members of the Board of Directors or by the vote of the holders of a majority of that part of the capital stock of the Corporation having voting powers which is represented in person or by proxy at any annual meeting of stockholders or at any special meeting called for that purpose (provided that a lawful quorum of stockholders be there represented in person or by proxy).

#### MEETINGS OF THE BOARD.

17. The newly elected Board may meet at such place and time as shall be fixed by the vote of the stockholders at the meeting at which such newly elected Board was elected, for the purpose of organization or otherwise, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present, or they may meet at such place and time as shall be stated in a notice given to such directors either personally or by mail or telegram two days prior to such meeting or as shall be fixed by the consent in writing of all the directors.

18. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board.

19. Special meetings of the Board may be called by the Chairman of the Board or the President, on two days' notice to each director, by delivered letter, by mail or by telegram or by personal communication either over the telephone or otherwise; special meetings shall be called by the Secretary in like manner and on like notice, on the written request of two directors or on the request of the Chairman of the Board or the President.

20. At all meetings of the Board of Directors, one-half of the number of directors then in office, or, if there shall be an odd number of directors, then a majority thereof, shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically permitted or provided by statute, or by the Certificate of Incorporation, or by these By-Laws. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at said meeting which shall be so adjourned.

#### COMMITTEES OF THE BOARD.

21. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which to the extent provided in the resolution, shall have and may exercise powers of the Board of Directors in the management of the business and affairs of the Corporation. The Board of Directors may designate one or more advisory directors to be a member or members of any such committee but no such advisory director shall have power to vote as a member of such committee. The Board of Directors may also, by resolution adopted by a majority of a quorum of the Board, designate one or more committees with solely advisory functions, each such committee to consist of two or more of the directors and of such other persons as shall be specified in such resolution. Such committee or committees shall have such name or names as may be determined from time to time by the Board of Directors.

22. The term of office of each member of any such committee shall be for such period as may be from time to time determined by the Board of Directors but any member of any such committee may be removed at any time by the Board of Directors and shall cease to hold such office upon his ceasing to be a director (or advisory director) or upon his resignation. Vacancies in the membership of any such committee may be filled by the Board of Directors. Except as otherwise determined by the Board of Directors, each such committee may establish its own rules of procedure but shall make a written report or recommendation to the Board of Directors upon completion of its duties or whenever requested by the Board.

#### OFFICERS.

23. The officers of the Corporation shall be chosen by the Board of Directors at its first meeting after each annual meeting of stockholders. The executive officers shall be the President, such one or more Vice Presidents and such other officers as the Board of Directors may from time to time determine. The administrative officers shall be a Secretary and a Treasurer, and such one or more Assistant Secretaries and Assistant Treasurers as the Board may from time to time determine. Any two or, except for the offices of President and Secretary, more offices may be held by the same person. The President shall be chosen from among the members of the Board of Directors, but the other officers need not be members of the Board.

24. The Board of Directors may at any time appoint or reappoint as an advisory director any person eligible to serve as such under the second paragraph of Section 15 of these By-Laws whose services as such will be, in the opinion of the Board of Directors, of value to the Corporation. An advisory director shall be entitled to notice of and to attend and advise at, but not to vote at, meetings of the Board of Directors, and any committees thereof to which he shall be designated, and for his services may be paid, in the discretion of the Board of Directors, compensation and reimbursement of expenses on the same basis as if he were a director. The term of office of each advisory director shall terminate on the earlier of the date when he ceases to be eligible for such position under said paragraph of Section 15 or, subject to reappointment, the date of the first meeting of the Board of Directors after the annual meeting of stockholders next following his appointment.

25. The Board of Directors may appoint such other officers and agents as it shall deem necessary, who shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

26. Except as otherwise determined by the Board of Directors, the officers of the Corporation shall hold office until their successors are chosen and qualified. Any officer may be removed at any time by the Board of Directors. In the event of any vacancy occurring in any office of the Corporation by reason of

death, resignation, removal or otherwise, such vacancy may be filled by, or in the manner prescribed by, the Board of Directors. The Board of Directors may assign, or provide for the assignment or devolution of, the powers and duties of any officer to any other officer or agent of the Corporation.

POWERS AND DUTIES OF THE CHAIRMAN OF THE BOARD.

27. The Board of Directors may from time to time in its discretion appoint from among the members of the Board of Directors a Chairman of the Board with such powers and duties as may be assigned to him from time to time by the Board.

POWERS AND DUTIES OF THE PRESIDENT.

28. The President, subject to action by the Board of Directors, shall be the chief executive officer of the Corporation, shall have supervision and charge of all of the affairs of the Corporation, shall preside at all meetings of the Board of Directors and of stockholders, unless a Chairman of the Board has been appointed under Section 27; and shall perform and do all acts and things incident to the position of President and shall have such other powers and duties as may be assigned to him, from time to time, by the Board of Directors.

POWERS AND DUTIES OF VICE-PRESIDENTS.

29. The Vice-Presidents shall exercise such of the powers and perform such of the duties of the President on behalf of the Corporation as may be respectively assigned to them from time to time by the Board of Directors or the President. In the absence or inability of the President to act, the Executive Vice-President, if there shall be a Vice-President designated as such by the Board of Directors, or such Vice-President as shall have been designated by the Board of Directors for the purpose, or, in the event of the failure of the Board of Directors so to designate, then the Vice-President senior in service, or, in the absence or inability of such Vice-President to act, any Vice-President shall have and possess all of the powers and discharge all of the duties of the President, subject however to the Board of Directors.

POWERS AND DUTIES OF THE TREASURER.

30. It shall be the duty of the Treasurer to have the care and custody of all the funds and securities of the Corporation which may come into his hands as Treasurer, and to endorse checks, drafts and other instruments for the payment of money for deposit or collection when necessary or proper and to deposit the same to the credit of the Corporation in such bank or banks or depository as the Board of Directors may designate, and he may endorse all commercial documents requiring endorsements for or on behalf of the Corporation. He may sign all receipts and vouchers for the payments made to the Corporation. He shall render an account of his transactions to the Board of Directors as often as the Board shall require the same. He shall enter regularly in the books to be kept by him for that purpose, full and adequate account of all moneys received and paid by



him on account of the Corporation. He shall have charge of the supervision of the accounting system of the Corporation, including the preparation and filing of all reports required by law to be made to any and all public authorities and officials. He shall perform all acts incident to the position of Treasurer, subject to the control of the Board of Directors. He shall when requested, pursuant to vote of the Board of Directors, give a bond to the Corporation conditioned for the faithful performance of his duties, the expense of which bond shall be borne by the Corporation.

#### POWERS AND DUTIES OF THE SECRETARY.

31. The Secretary shall be sworn to the faithful discharge of his duty. He shall act as custodian of the minutes of all meetings of the Board of Directors and of the stockholders; he shall attend to the giving and serving of all notices of the Corporation; and he shall attest the seal of the Corporation upon all contracts and instruments executed under such seal. He shall have charge of the stock certificate book, transfer book and stock ledger, and such other books and papers as the Board of Directors may direct. He shall, in general, perform all the duties of Secretary, subject to the control of the Board of Directors.

#### ASSISTANT SECRETARIES AND ASSISTANT TREASURERS.

32. An Assistant Secretary or an Assistant Treasurer shall, in the absence or disability or at the request of the Secretary or Treasurer respectively, perform the duties of the Secretary or Treasurer respectively, and shall perform such other duties as may from time to time be imposed upon him by the Board of Directors or by the President. The performance of any such duty shall be conclusive evidence of his right to act.

#### DUTIES OF OFFICERS MAY BE DELEGATED.

33. In case of the absence of any officer of the Corporation, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director.

#### TRANSFER AGENT AND REGISTRAR.

34. The Board of Directors may appoint one or more Transfer Agents or Transfer Clerks and Registrars, and may require all stock certificates, certificates representing any rights or options and any written notices or statements relative to uncertificated stock to be signed by such Transfer Agents or Transfer Clerks acting on behalf of the Corporation and by such Registrars.

#### CERTIFICATES FOR SHARES.

35. The shares of the Corporation shall be represented by a certificate or shall be uncertificated and shall be entered in the books of the Corporation and registered as they are issued. Certificates shall be signed by, or in the name of the Corporation by, the President or a Vice-President or any other officer authorized by law and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary.

Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the Delaware General Corporate Law or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Any of or all the signatures on a certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

#### TRANSFER OF STOCK

36. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate and record the transaction upon the Corporations books. Upon the receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled, issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Corporation.

#### CLOSING TRANSFER BOOKS AND FIXING RECORD DATE.

37. The Board of Directors shall have power to close the stock transfer books of the Corporation for a period not exceeding sixty days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect or for a period of not exceeding sixty days in connection with obtaining the consent of stockholders for any purpose; provided, however, that in lieu of closing the stock transfer books, the Board of Directors may fix in advance a date, not exceeding sixty days preceding the

date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting or any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

#### REGISTERED STOCKHOLDERS.

38. The Corporation shall be entitled to treat the holder of record of any share or shares of stock or of any right or rights or option or options as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share, right or option on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware.

#### LOST, STOLEN OR DESTROYED CERTIFICATES.

39. The Corporation may issue a new certificate or certificates of stock or uncertificated shares in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the such issue of a new certificate or certificates or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

#### ANNUAL REPORT AND INSPECTION OF BOOKS.

40. The President shall make and present to the annual meeting of stockholders a report showing a Balance Sheet and an Income Statement for the preceding fiscal year. A copy of such report shall be mailed to each stockholder of the Corporation at least fifteen days in advance of the annual meeting of the Corporation. Such report may also contain such other information and may be in such detail as the President and the Board of Directors may determine in their absolute discretion.

The stockholders of the Corporation by a majority vote at any meeting of stockholders duly called, or in case the stockholders shall fail to act, the Board of Directors shall have power from time to time to determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation (other than the stock ledger) or any of them, shall be open to the inspection of stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by statute or authorized by the Board of Directors or by a resolution of the stockholders.

#### CHECKS.

41. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

#### FISCAL YEAR.

42. The fiscal year shall begin the first day of January in each year, and shall end on the thirty-first day of December of such year.

#### NOTICES.

43. Whenever under the provisions of these By-Laws notice is required to be given to any director, officer or stockholder, it shall not be construed to mean personal notice, unless otherwise provided in these By-Laws, but such notice may be given in writing, by mail, by depositing the same in a post-office or letterbox, in a post-paid wrapper, addressed to such stockholder, officer or director at such address as appears on the books of the Corporation, or, in default of other address, to such director, officer or stockholder at the General Post Office in the City of Wilmington, Delaware, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Notice need not be given of any adjourned meeting, special or regular of stockholders or directors other than by announcement at the meeting which is being adjourned.

Any stockholder, director or officer may waive any notice required to be given by statute or under the provisions of the Certificate of Incorporation or under these By-Laws, and such waiver shall be deemed equivalent to the notice so required; provided, always, that such waiver shall be in writing and signed by such stockholder, officer or director, or by his duly authorized attorney, whether before or after the meeting or the time stated therein notice of which is being waived.

ACTION IN RELIANCE UPON ORDERS OF REGULATORY BODIES.

44. No present or future director or officer of the Corporation (or his heirs, executors and administrators) shall be liable for any act, omission, step or conduct taken or had in good faith which (whether by condition or otherwise) is required, authorized or approved by any order or orders issued pursuant to: the Public Utility Holding Company Act of 1935; the Federal Power Act; or any state statute regulating the Corporation or its subsidiaries by reason of their being public utility companies or public utility holding companies; or any amendment to any thereof. In any action, suit or proceeding based on any act, omission, step or conduct, as in this By-Law described, the provisions hereof shall be brought to the attention of the Court. In the event that such provisions are found by the Court not to constitute a valid defense on the grounds of not being applicable to the particular class of plaintiff, each such director and officer (and his heirs, executors and administrators) shall be reimbursed for, or indemnified against, all expenses and liabilities incurred by him or imposed on him, in connection with, or arising out of, any such action, suit or proceeding based on any act, omission, step or conduct taken or had in good faith as in this By-Law described. Such expenses and liabilities shall include, but shall not be limited to, judgments, court costs and attorneys' fees. The foregoing rights shall not be exclusive of any other rights to which any director or officer may otherwise be entitled and shall be available whether or not the director or officer continues to be a director or officer at the time of incurring such expenses and liabilities.

INDEMNIFICATION AND RELATED MATTERS.

45. Each person who is or was a director or officer of the Corporation and who was or is a party or was or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall be indemnified by the Corporation as a matter of right against any and all expenses (including attorneys' fees) actually and reasonably incurred by him and against any and all claims, judgments, fines, penalties, liabilities and amounts paid in settlement actually incurred by him in defense of such claim, action, suit or proceeding, including appeals, to the full extent permitted by applicable law. The indemnification provided by this Section shall inure to the benefit of the heirs, executors and administrators of such person.

Expenses (including attorneys' fees) incurred by a director or officer of the Corporation with respect to the defense of any such claim, action, suit or proceeding may be advanced by the Corporation prior to the final disposition of such claim, action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation under this Section or otherwise; provided, however, that the advancement of such expenses shall not be

deemed to be indemnification unless and until it shall ultimately be determined that such person is entitled to be indemnified by the Corporation.

The Corporation may purchase and maintain insurance at the expense of the Corporation on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or any person who is or was serving at the request of Corporation as a director (or the equivalent), officer, employee, agent or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability or expense (including attorneys' fees) asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability or expense under this Section or otherwise.

The foregoing rights shall not be exclusive of any other rights to which any such director or officer may otherwise be entitled and shall be available whether or not the director or officer continues to be a director or officer at the time of incurring any such expenses and liabilities.

If any word, clause or provision of the By-Laws or any indemnification made under Section 44 or Section 45 hereof shall for any reason be determined to be invalid, the provisions of the By-Laws shall not otherwise be affected thereby but shall remain in full force and effect. The masculine pronoun, as used in the By-Laws, means the masculine and feminine wherever applicable.

#### AMENDMENTS.

46. The By-Laws of the Corporation may be altered, amended or repealed (a) at any meeting of the Board of Directors by the vote of a majority of the entire Board then in office, or (b) by the vote of the holders of a majority of that part of the capital stock of the Corporation having voting powers which is represented in person or by proxy at any annual meeting of stockholders or at any special meeting called for that purpose (provided that a lawful quorum of stockholders be there represented in person or by proxy), or (c) without a meeting by the written consent of the holders of all of the issued and outstanding capital stock of the Corporation having voting powers; provided, however, that the Board of Directors shall not have power to alter, amend or repeal the provisions of Sections 5, 44 or 46 of the By-Laws and provided, further, that an alteration, amendment or repeal of any other provision of the By-Laws by the Board of Directors shall cease to be effective unless submitted to and ratified or approved at the next annual or special meeting at which a lawful quorum of stockholders is represented in person or by proxy by the vote of the holders of a majority of that part of the capital stock of the Corporation having voting powers which is represented in person or by proxy at such meeting.

TAB 5

**ABM INDUSTRIES INCORPORATED**  
**BYLAWS**  
As Amended May 30, 2007  
**ARTICLE I**  
**OFFICES**

**Section 1.1. Registered Office.** The registered office shall be located in the City of Wilmington, County of New Castle, State of Delaware.

**Section 1.2. Other Offices.** The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II**  
**MEETINGS OF STOCKHOLDERS**

**Section 2.1. Place of Meeting.** All meetings of stockholders shall be held at the principal executive office of the Corporation or at any other place, either within or without the State of Delaware, as may be designated by the Board of Directors.

**Section 2.2. Annual Meeting.** The annual meeting of stockholders shall be held on such date and at such time as the Board of Directors may designate. At each annual meeting the stockholders shall elect directors to succeed those whose terms expire in that year and to serve until their successors are elected, and shall transact such other business as may properly be brought before the meeting.

**Section 2.3. Notice of Shareholder Meetings.** Written notice of an annual or special meeting shall be given to each stockholder entitled to vote, not less than ten nor more than sixty days prior to the meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage pre-paid, directed to the stockholder at his or her address as it appears on the records of the Corporation.

**Section 2.4. Business at Annual Meetings.** At an annual meeting of stockholders, only such business shall be conducted as shall have been brought properly before the meeting to be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (c) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder (other than the nomination of a person for election as a director, which is governed by Section 3.7 of these Bylaws), the stockholder must have given timely notice in writing

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to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received, at the principal executive offices of the Corporation not less than 60 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the meeting is advanced by more than 30 days or delayed by more than 60 days from such meeting's anniversary date, notice by the stockholder must be received not later than the close of business on the later of the 60th day prior to such date of mailing of proxy materials or the 10th day following the day on which public announcement of the date of the annual meeting is first made. Such stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business to be brought before the annual meeting and the reasons for conducting such business at such meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made; (iii) the class and number of shares of the Corporation's stock which are beneficially owned by the stockholder, and by the beneficial owner, if any, on whose behalf the proposal is made; and (iv) any material interest of the stockholder, and of the beneficial owner, if any, on whose behalf the proposal is made, in such business. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Bylaw. The chairman of the meeting may, if the facts warrant, determine that the business was not properly brought before the meeting; and if the chairman should so determine, the chairman shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted.

**Section 2.5. Special Meetings.** Special meetings of the stockholders, for any purpose or purposes, may be called at any time by the Board of Directors, or by a committee of the Board of Directors that has been duly designated by the Board of Directors and whose power and authority, as provided in a resolution of the Board of Directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons. The business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

**Section 2.6. List of Stockholders.** The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of the stockholder and the number of shares registered in the name of each stockholder. 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 where the meeting is to be held, or, if not so specified, at the place where the meeting is

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to be held. The list shall also be produced and kept at the time and place of the meeting during the entire meeting, and may be inspected by any stockholder who is present.

**Section 2.7. Conduct of Meetings.** The Board of Directors may adopt by resolution such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chair of any meeting of shareholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

**Section 2.8. Presiding Officer and Secretary.** The chairman of the Board of Directors if present, calls the meetings of the stockholders to order and shall act as the presiding officer thereof. The secretary of the Corporation, if present, shall act as secretary of all meetings of the stockholders. In the absence of the secretary, an assistant secretary if present shall act as secretary of the meetings of the stockholders. In the absence of the secretary or any assistant secretary, the presiding officer may appoint a person to act as secretary of such meeting.

**Section 2.9. Adjourned Meetings and Notice.** Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but in the absence of a quorum, no other business may be transacted at such meeting, except as provided in Section 2.10 of these bylaws. When a stockholders' meeting is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place are announced at the meeting at which the adjournment is taken; except that if the adjournment is for 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. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

**Section 2.10. Quorum.** The holders of a majority of the shares issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation.

**Section 2.11. Voting.** At all stockholders meetings for elections or votes for any purpose, there must be a quorum present. All elections for directors shall be determined by a plurality of the votes cast. Except as may otherwise be required by law, by the rules or regulations of any stock exchange on which the securities of the Corporation are listed, or by the Certificate of Incorporation, all other matters shall be decided by a majority of the votes cast affirmatively or negatively. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until

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adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

**Section 2.12. Voting Rights.** Except as otherwise provided in the certificate of incorporation and subject to Section 8.4 of these bylaws, each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock having voting power held by such stockholder, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office but, if the stockholder fails to specify the number of shares such stockholder is voting affirmatively, it shall be conclusively presumed that the stockholder's approving vote is with respect to all shares said stockholder is entitled to vote.

**Section 2.13. Stockholder Action and Waiver of Notice.** Any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; provided, that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law or these bylaws to be included in the notice but not so included if such objection is expressly made at the meeting.

**Section 2.14. Confidential Voting.**

(a) Proxies and ballots that identify the votes of specific stockholders shall be kept in absolute confidence by the tabulators and the inspectors of election unless (i) there is an opposing solicitation with respect to the election or removal of Directors, (ii) disclosure is required by applicable law, (iii) a stockholder expressly requests or otherwise authorizes disclosure of the vote(s) cast by that stockholder, or (iv) the Corporation concludes in good faith that a bona fide dispute exists as to the authenticity of one or more proxies, ballots or votes, or as to the accuracy of any tabulation of such proxies, ballots or votes. Otherwise, no person, group or entity (including but not limited to any past, present or prospective director, officer, employee, agent or stockholder of the Corporation) shall be shown, told or given any information about the vote(s) cast by any specific stockholder.

(b) Comments written on proxies, consents or ballots shall be transcribed and provided to the secretary of the Corporation with the name and address of the stockholder. The vote of the stockholder shall not be disclosed at the time any such comment is provided to the secretary except where such vote is included in the comment or disclosure is necessary, in the opinion of the inspector, for an understanding of the comment.

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(c) The tabulators and inspectors of election and any authorized agents or other persons engaged in the receipt, count and tabulation of proxies and ballots shall be advised of this Bylaw and instructed to comply herewith.

(d) The inspectors of election shall certify, to the best of their knowledge based on due inquiry, that proxies and ballots have been kept in confidence as required by this Section 2.14.

(e) Nothing in this Bylaw shall prohibit the inspector from making available to the Corporation, during the period prior to any annual or special meeting, information as to which stockholders have not voted and periodic status reports on the aggregate vote.

### ARTICLE III DIRECTORS

**Section 3.1. Number of Directors, Election and Term of Office.** The number of directors which shall constitute the whole board shall be not less than eight nor more than eleven, the exact number within such limits to be fixed from time to time by resolution of the Board, acting by the vote of not less than a majority of the directors then in office. The Board of Directors shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board of Directors, one class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1986, another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1987, and another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1988, with the members of each class to hold office until their successors are elected and qualified. At each annual meeting of stockholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

**Section 3.2. Vacancies.** If the office of any director becomes vacant for any reason or any new directorship is created by any increase in the authorized number of directors, a majority of the directors then in office, although less than a quorum, may choose a successor or successors to fill the vacancy or newly created directorship. Any director so chosen shall hold office until the next election of the class for which he or she was chosen and until his or her successor is fully elected and qualified, unless sooner removed. The term "entire board" as used in these bylaws means the total number of directors which the Corporation would have if there were no vacancies.

**Section 3.3. Powers.** The business and affairs of the Corporation shall be managed by its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

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**Section 3.4 The Chairman of the Board of Directors.** The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors and stockholders of the Corporation. The Chairman of the Board of Directors shall be a member of the Executive Committee. If an employee of the Corporation, the Chairman shall be an officer of the Corporation. At the request of the President and Chief Executive Officer, the Chairman shall assist him in communications with stockholders, the press and the investment community. The Chairman shall exercise and perform such other powers and duties as may, from time to time, be assigned to him by the Board of Directors or prescribed by these bylaws. In the absence of the Chairman of the Board, or in the event of his inability or refusal to act, the President, if a director of the Corporation, shall perform such duties and exercise such powers.

**Section 3.5. Compensation of Directors.** The Board of Directors shall have the authority to fix the compensation of directors.

**Section 3.6. Resignation.** Any director may resign effective upon giving notice in writing or by electronic transmission to the chief executive officer, the secretary, or the Board of Directors of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

**Section 3.7. Nominations of Directors.** Only persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible for election as directors. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders (i) by the Board of Directors or a committee appointed by the Board of Directors authorized to make such nominations or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Bylaw, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Bylaw. Nominations by stockholders shall be made pursuant to notice in writing, delivered or mailed, postage prepaid, to the Secretary of the Corporation and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 60 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders, provided, however, that in the event that the date of the meeting is advanced by more than 30 days or delayed by more than 60 days from such anniversary date, notice by the stockholder must be received not later than the close of business on the later of the 60th day prior to such date of mailing of proxy materials or the 10th day following the day on which public announcement of the date of the meeting is first made; or (ii) in the case of a special meeting at which directors are to be elected, not later than the close of business on the later of the 60th day prior to such special meeting or the 10th day following the day on which public announcement of the date of the meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made. Such stockholder's notice shall set forth (i) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (ii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such

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meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (iv) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated by the Board of Directors; and (v) the written consent of such nominee to serve as a director of the Corporation if elected. At the request of the Board of Directors, or any committee appointed by the Board of Directors authorized to make such nominations, any person nominated by the Board of Directors, or such committee, for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination that pertains to the nominee. Notwithstanding anything in this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public statement naming all the nominees for Director or specifying the size of the increased Board of Directors made by the Corporation at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in these Bylaws. The chairman of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed in this Bylaw; and if the chairman should so determine, the chairman shall so declare to the meeting, and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act, and the rules and regulations thereunder with respect to the matters set forth in this Bylaw.

#### ARTICLE IV MEETINGS OF THE BOARD OF DIRECTORS

**Section 4.1. Place of Meeting.** The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

**Section 4.2. Organization Meeting.** Immediately after each annual meeting of stockholders, the Board of Directors shall hold a regular meeting for the purpose of organization, electing officers and transacting other business. No notice of such meeting need be given. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereafter provided for special

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meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

**Section 4.3. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and at such place as shall from time to time be determined by the Board of Directors; provided, however, that if the date so designated falls upon a legal holiday, then the meeting shall be held at the same time and place on the next succeeding day which is not a legal holiday. Such regular meetings may be held without notice.

**Section 4.4. Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, Chairman of the Executive Committee of the Board of Directors, the President or on the written request of any two directors.

**Section 4.5. Notice of Special Meetings.** Notice of the time and place of special meetings of the Board of Directors shall be delivered to each director by overnight delivery service sent 48 hours before the meeting or by notifying each director of the meeting at least 24 hours prior to the time personally, by telephone, or by electronic transmission. Such notice shall not be necessary if appropriate waivers, consents and/or approvals are filed in accordance with Section 4.6 of these bylaws.

**Section 4.6. Waiver of Notice.** Notice of a meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though, transacted at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present, signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 4.7. Quorum.** At all meetings of the board, the presence of a majority of the entire board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meetings at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present may adjourn the meeting without notice other than announcement at the meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

**Section 4.8. Adjournment.** Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the vote of a majority of the directors present. Notice of the time and place of the adjourned meeting need not be given to absent directors if said time and place are fixed at the meeting adjourned.

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**Section 4.9. Action Without Meeting.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

**ARTICLE V  
COMMITTEES OF DIRECTORS**

**Section 5.1. Committees of Directors.** The Board of Directors may, by resolution passed by a majority of the entire board, establish committees of the Board with such powers, duties and rules of procedures as may be provided by the resolutions of the Board establishing such committees. The Board of Directors 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 a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors who meets the criteria for membership on such Committee to act at the meeting in the place of any such absent or disqualified member.

**Section 5.2. Committee Minutes.** Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors

**Section 5.3. Audit Committee.** There shall be an Audit Committee comprised of at least three members of the Board. The members will be appointed by and serve at the pleasure of the Board. The Audit Committee shall oversee the corporate financial reporting process and the internal and external audits of the Corporation. The Audit Committee will undertake those specific duties, responsibilities and processes described in the Audit Committee Charter adopted by this Board and such other duties as the Board of Directors from time to time may prescribe.

**Section 5.4 Executive Committee.** There shall be an Executive Committee of the Board of Directors that shall include a minimum of any three directors, one of whom shall be an independent director, appointed from time to time by the Board. The functions of the Executive Committee shall be to exercise all power and authority of the Board in the management of the business and affairs of the Corporation, except as may be provided in the resolution establishing the Executive Committee, delegated to another Committee of the Board in that Committee's Charter or in another resolution of the Board or as limited by the General Corporation Law of the State of Delaware.

**Section 5.5. Compensation Committee.** There shall be a Compensation Committee of the Board of Directors that shall include a minimum of any three independent directors appointed from time to time by the Board. The functions of the Executive Officer

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Compensation & Stock Option Committee shall be to review and recommend to the Board the compensation and other contractual terms and conditions for employment of the Corporation's executive officers and administer the Corporation's equity-based compensation plans. The Compensation Committee will undertake those specific duties, responsibilities and processes described in the Compensation Committee Charter adopted by this Board and such other duties as the Board of Directors from time to time may prescribe.

**Section 5.6 Governance Committee.** There shall be a Governance Committee of the Board of Directors that shall include a minimum of any three independent directors appointed from time to time by the board. The functions of the Governance Committee shall be to: review and make recommendations with respect to the nomination of director candidates and executive officer succession and planning and oversee corporate governance for the Corporation. The Governance Committee will undertake those specific duties, responsibilities and processes described in the Governance Committee Charter adopted by this Board and such other duties as the Board of Directors from time to time may prescribe.

#### **ARTICLE VI OFFICERS**

**Section 6.1 Officers.** The officers of the Corporation shall be a chief executive officer, a president, one or more vice presidents (any one or more of whom may be designated executive vice president or senior vice president), a chief financial officer, a treasurer, a secretary, and a controller. The Chairman of the Board, if an employee, shall be an officer of the Corporation with the duties set forth in Section 3.4 of these Bylaws. The Corporation may also have such other officers as the Board of Directors may in its discretion elect or as may be appointed under Section 6.3 of these Bylaws. Any two or more offices may be held by the same person.

**Section 6.2 Election.** The Board of Directors at its first meeting after each annual meeting of stockholders shall elect all executive officers for the ensuing year. Any vacancy occurring in any principal office of the Corporation by death, resignation, removal or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**Section 6.3 Other Officers.** In addition to the officers enumerated in Section 6.1, the Corporation may have one or more other officers which may include staff or division officers, as the Board may appoint. The Board may delegate its authority to appoint other officers to a Board Committee or the president. Each such other officer shall hold office for such period and have such title and responsibilities as the Board or its delegate shall determine and may be removed in accordance with Section 6.4.

**Section 6.4 Term.** Each officer shall hold office until his successor shall have been chosen and shall have been qualified or until his earlier death, resignation or removal.

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Any officer may be removed at any time with or without cause by the Board of Directors. Any officer appointed by a delegate of the Board may be removed at any time with or without cause by such delegate. Any officer may resign at any time by giving written notice to the Board of Directors or to the Secretary of the Corporation.

**Section 6.5. Salaries.** The salaries of all executive officers of the Corporation shall be fixed by the Compensation Committee and the salaries of all other officers shall be fixed by the Compensation Committee or pursuant to its direction.

**Section 6.6 The President.** The president shall be the chief executive officer of the Corporation, and, subject to the control of the Board of Directors, shall have general and active management over the business and affairs of the corporation. In the absence of the Chairman of the Board, the President shall preside at all meetings of the stockholders and the Board of Directors. In general he shall perform all other duties normally incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 6.7 Vice Presidents.** In the absence of the President, or in the event of his inability or refusal to act, any Vice President designated by the Board of Directors shall perform the duties and exercise the powers of the President. The Vice Presidents shall perform such other duties as from time to time may be assigned to them by the President or the Board of Directors.

**Section 6.8. Chief Financial Officer.** The Chief Financial Officer shall be the principal financial officer of the Corporation and shall consider the adequacy of, and make recommendations to the Board of Directors concerning, the capital resources available to the Corporation to meet its projected obligations and business plans; report periodically to the Board of Directors on financial results and trends affecting the business; and, in general, shall perform all other duties normally incident to the office of Chief Financial Officer and shall have such powers and perform such other duties as may from time to time be granted or assigned to such officer by the President or the Board of Directors.

**Section 6.9 The Secretary.** The Secretary shall (a) keep or cause to be kept the minutes of the meetings of the stockholders, the Board of Directors and committees of the Board of Directors; (b) see that all notices are duly given in accordance with the provisions of these bylaws and as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) have general charge of the stock transfer books of the Corporation; and (e) in general, perform all duties normally incident to the office of Secretary and such other duties as from time to time may be assigned to such officer by the President or the Board of Directors.

**Section 6.10 The Controller.** The Controller of the Corporation shall be the principal accounting officer of the Corporation and shall be the general manager of the accounting, tax and internal audit functions of the Corporation and its subsidiaries, subject to the control of the Chief Financial Officer. The controller shall have such other powers and

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perform such other duties as from time to time may be prescribed by the Board of Directors or Chief Financial Officer.

**Section 6.11 The Treasurer.** The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all monies and other valuables in the name and to the credit of the Company. The treasurer shall also have such other powers and perform such other duties as may be prescribed by the Executive Committee of the Board of Directors.

**ARTICLE VII  
INDEMNIFICATION OF DIRECTORS,  
OFFICERS, EMPLOYEES AND AGENTS**

**Section 7.1. Actions, Suits or Proceedings Other Than by or in the Right of the Corporation.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges, expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided, however, that the foregoing indemnity shall not be applicable as to any person who is or was or agreed to become an employee or agent of the Corporation (other than employees or agents who are or were also officers or directors of the Corporation), or is or was serving or agreed to serve at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise (other than employees or agents who are or were also officers or directors of any such other corporation, partnership, joint venture, trust or enterprise), unless and until such indemnity is specifically approved by the Board of Directors. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**Section 7.2. Actions or Suits by or in the Right of the Corporation.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to

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any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection with the defense or settlement of such action or suit and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such costs, charges and expenses which the Court of Chancery or such other court shall deem proper; provided, however, that the foregoing indemnity shall not be applicable as to any person who is or was or agreed to become an employee or agent of the Corporation (other than employees or agents who are or were also officers or directors of the Corporation), or is or was serving or agreed to serve at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise other than employees or agents who are or were also officers or directors of any such other corporation, partnership, joint venture, trust or enterprise), unless and until such indemnity is specifically approved by the Board of Directors.

**Section 7.3. Indemnification for Costs, Charges and Expenses of Successful Party.** Notwithstanding the other provisions of this Article, to the extent that a present or former director, officer, employee or agent of the Corporation has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any action, suit or proceeding referred to in Sections 7.1 and 7.2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against all costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection therewith.

**Section 7.4. Determination of Right to Indemnification.** Any indemnification under Sections 7.1 and 7.2 of this Article (unless ordered by a court) shall be paid by the Corporation unless a determination is made (1) by the Board of Directors by a majority vote of the quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders, that indemnification of the director, officer, employee or agent is not proper in the circumstances because he has not met the applicable standard of conduct set forth in Sections 7.1 and 7.2 of this Article.

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**Section 7.5. Advance of Costs, Charges and Expenses.** To the extent permitted by law, costs, charges and expenses (including attorneys' fees) incurred by a person referred to in Sections 7.1 and 7.2 of this Article in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon such terms and conditions, if any, as the Board of Directors deems appropriate; provided, however, that the payment of such costs, charges and expenses incurred by a director or officer in his capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer) in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by or on behalf of the director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation as authorized in this Article. The Board of Directors may, in the manner set forth above, and upon approval of such director, officer, employee or agent of the Corporation, authorize the Corporation's counsel to represent such person, in any action, suit or proceeding, whether or not the Corporation is a party to such action suit or proceeding.

**Section 7.6. Procedure for Indemnification.** Any indemnification under Sections 7.1, 7.2 or 7.3 shall be made promptly, and in any event within 30 days, upon the written request of the director, officer, employee or agent. The right to indemnification as granted by this Article shall be enforceable by the director, officer, employee or agent in any court of competent jurisdiction, if the Corporation denies such request, in whole or in part, or if no disposition is made within 30 days. Such persons, costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of costs, charges and expenses under Section 7.5 of this Article where the required undertaking, if any, has been received by the Corporation) that the claimant has not met the standard of conduct set forth in Sections 7.1 or 7.2 of this Article, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel, and its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 7.1 or 7.2 of this Article, nor the fact that there has been an actual determination by the Corporation (including its Board of Directors, its independent legal counsel, and its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

**Section 7.7. Other Rights; Continuation of Right to Indemnification.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any law (common or statutory), agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, and shall continue as to a

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person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification under this Article shall be deemed to be a contract between the Corporation and each director, officer, employee or agent of the Corporation who serves or served in such capacity at any time while this Article is in effect. Any repeal or modification of this Article or any repeal or modification of relevant provisions of the Delaware General Corporation Law or any other applicable laws shall not in any way diminish any rights to indemnification of such director, officer, employee or agent or the obligations of the Corporation arising hereunder.

**Section 7.8. Insurance.** The Corporation shall purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him or on his behalf in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article, provided that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the entire Board of Directors.

**Section 7.9. Savings Clause.** If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director, officer, employee and agent of the Corporation as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the full extent permitted by applicable law.

#### **ARTICLE VIII GENERAL PROVISIONS**

**Section 8.1. Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

**Section 8.2. Seal.** The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the name of the state of its incorporation. The seal may be used by causing it or a facsimile to be impressed or affixed or reproduced or otherwise.

**Section 8.3. Direct Registration System.** Notwithstanding any other provision in these Bylaws, the Corporation may adopt a system of issuance, recordation and transfer of its shares by electronic or other means not involving any issuance of certificates, including provisions for notice to purchasers in substitution for any required statements on certificates, and as may be required by applicable corporate securities laws, which system

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has been approved by the United States Securities and Exchange Commission. Any system so adopted shall not become effective as to issued and outstanding certificated securities until the certificates therefor have been surrendered to the Corporation.

**ARTICLE IX  
AMENDMENTS**

**Section 9.1. Amendments.** Subject to the provisions of the Certificate of Incorporation, these bylaws may be altered, amended or repealed at any regular meeting of the stockholders (or at any special meeting duly called for that purpose) by a vote of not less than 70% of the outstanding stock entitled to vote at such meeting; provided that in the notice of such special meeting, notice of such purpose shall be given. Subject to the laws of the State of Delaware, the certificate of incorporation and these bylaws, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present amend these bylaws, or enact such other bylaws as in their judgment may be advisable for the regulation of the conduct of the affairs of the Corporation.