

BY-LAWS OF  
WHEATFIELD LOCAL DEVELOPMENT CORPORATION

Dated: February 25, 2014

Revised: April 11, 2016

Adopted by LDC Board of Directors  
4/11/16

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# **CORPORATE BY-LAWS FOR THE WHEATFIELD LOCAL DEVELOPMENT CORPORATION**

## **ARTICLE I**

### **NAME AND TYPE**

#### Section 1.1

The name of the organization shall be the “Wheatfield Local Development Corporation” (hereinafter referred to as the “Corporation”). The organization was incorporated by the filing of a Certificate of Incorporation dated January 14, 2014 with the Secretary of State for the State of New York on January 14, 2014. The Corporation was incorporated pursuant to Section 1411 of the Not-For-Profit Corporation Law as a Corporation defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York as a Charitable organization.

## **ARTICLE II**

### **PURPOSES**

#### Section 2.1

The general purposes of the Corporation are the planning and implementation of programs to relieve and reduce unemployment, promote and provide for additional and maximum employment, improve and maintain job opportunities in the Town of Wheatfield, New York and reduce the burden of government by permitting the corporation to:

- (a) Foster the creation, retention, and expansion of jobs and economic opportunities for the benefit of the Town of Wheatfield, Niagara County, New York State and local economies; and
- (b) Construct, acquire, rehabilitate, and improve for use by others, facilities in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation, and improvement, to maintain and/or lease such facilities on its behalf or for others in such territory; to disseminate information and furnish advice, technical assistance, and liaison with federal, state, and local authorities with respect thereto; and
- (c) Acquire by purchase, lease, gift, bequest, devise, or otherwise real or personal property or interest therein; and
- (d) Apply for loans and borrow money without limits as to amount; to make, draw, accept, endorse, execute, and issue negotiable bonds, debentures, notes, and other obligations therefore; and

- (e) Sell, lease, mortgage or otherwise dispose of or encumber any such facilities or any of its real or personal property or an interest therein upon such terms as it may determine; and
- (f) Enter into covenants and agreements and to comply with all the terms, conditions, and provisions thereof, and otherwise to carry out its corporate purpose and to foster and encourage the location or expansion of facilities and related businesses in the territory in which the operations of the Corporation are principally to be conducted; and
- (g) Apply for and make grants and loans and to execute any and all documents necessary in connection therewith; and
- (h) Do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers, or any private person; and
- (i) Perform, in general, any and all acts and things, and exercise any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purposes of accomplishing any of the foregoing purposes of the Corporation, and in particular, for accomplishing the purposes set forth in Section 1141 of the New York Not-For-Profit Law; and
- (j) Undertake any other activities that affect the general purposes of the Corporation.

## **ARTICLE III**

### **CONFLICT OF INTEREST**

#### Section 3.1

No person who is a member of the Board of Directors or an officer, or an employee of the Corporation shall participate in the exercise of their duties if the same would constitute or appear to constitute a conflict of interest.

A conflict of interest arises when to the best of the Director's knowledge, any entity of which such Director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), employee, relative or related party as defined below and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the Director might have a conflicting interest.

For the purposes of these by-laws, the term relative includes spouse, ancestors, brothers and sisters (whole and half-blood) and their spouses, children (natural and adopted) and their spouses, grandchildren and their spouses, great-grandchildren and their spouses, and domestic partners as defined in Public Health Law § 2994-a.

For the purposes of these by-laws, the term related party includes any director, officer, or key employee of the corporation or any affiliate of the corporation; any relative of any director, officer, or key employee of the corporation or any affiliate of the corporation; or any entity in which any individual described above has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a director or indirect ownership interest in excess of 5%.

Should a conflict of interest or a potential conflict of interest arise, the individual should advise the Secretary of the Corporation a written statement advising of the conflict.

The individual with the conflict of interest shall not be present at or participate in a Board of Directors deliberation or vote on the matter giving rise to such conflict.

The individual with the conflict shall not attempt to influence the deliberation or voting on the matter giving rise to such conflict.

The existence and resolution of the conflict must be documented in the Corporation's records, including the minutes of any meeting at which a conflict is discussed or voted upon.

Prior to the initial election of any director, and annually thereafter, that director shall complete, sign and submit to the Secretary of the Corporation a written statement identifying, to the best of the Director's knowledge, any entity of which such Director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), employee, relative or related party as defined below and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the Director might have a conflicting interest. Each director must annually submit such a written statement. A copy of all completed statements shall be provided to the Board of Directors.

## **ARTICLE IV**

### **BOARD OF DIRECTORS**

#### Section 4.1 General Powers

The Corporation shall be managed by its Board of Directors, which shall have full power by majority vote of Directors attending a meeting, to adopt rules and regulations governing the actions of the corporation and the Board of Directors. The Board of Directors shall ensure that the Corporation adheres to the basic purposes of the corporation as set forth in Article II. Specific responsibilities include, but are not limited to; initiating, recommending, and adopting the organization's policies, serving on corporate committees if formed; planning and approving new budgetary and programmatic directions; appointing and evaluating the performance of the Executive Director, as needed.

## Section 4.2 Prohibitions

The Board of Directors shall enforce the following prohibitions:

- (a) No part of the net income of the corporation shall inure to the benefit of any person on the Board of Directors, no officer and no member of the corporation.
- (b) The Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office.
- (c) No Director of the Corporation shall, by reasons of that position, have any rights to or interests in the property or assets of the Corporation.

## Section 4.3 Number and Term

The number of Directors shall be nine (9), each of whom shall be at least 18 years of age. The Director's position available to the Town Supervisor as set forth at Section 4.4 shall be a non-expiring term. The Director's position available to the designated Member of the Town Board as set forth at Section 4.4 shall be a yearly term. All other directors appointed in 2013 shall be randomly appointed to terms expiring on January 31 of 2015, 2016 or 2017, with two expiring terms in 2015 and 2016 and three expiring terms in 2017. Thereafter, Directors other than the Town Supervisor's position shall serve terms of three years and, upon expiration of a term, each Director shall serve until a successor shall have been elected.

## Section 4.4 Composition

One Director's position shall be permanently available to the Supervisor of the Town of Wheatfield, New York (hereinafter the "Supervisor's Position"). One Director's position shall be filled by appointment by the Wheatfield Town Board, New York at the designation of the Wheatfield Town Board (hereinafter the "Town Board Position"). For all other positions, each member of the Board of Directors shall be a resident of the Town of Wheatfield, New York. However, the Board of Directors may allow no more than twenty-five percent (25%) of its composition to be members who do not reside in the Town of Wheatfield, provided that such members shall have some interest in the Town of Wheatfield that relates to the purposes of the corporation as set forth in Article II of these By-Laws, entitled Purposes.

## Section 4.5 Election of Directors

With the exception of the Supervisor's Position and the Town Board Position, Board vacancies created by the expiration of terms shall be filled at the annual meeting by a majority vote of the Directors then in office. The Chairperson may, at his/her option and with the approval of the Board, appoint an ad hoc Nominating Committee to make recommendations to the Board for nomination of Directors and Officers at the annual election and to fill vacancies as needed.

## Section 4.6 Independent Directors

The majority of the Directors will be “Independent Directors.” For purposes of these by-laws, the term “Independent Director” means a Director one who:

- (a) has not been an employee of, or does not have a relative that was a key employee of, the Corporation or an affiliate of the Corporation in the past three years;
- (b) has not received, or does not have a relative that has received, \$15,000 or more in direct compensation from the Corporation or an affiliate in the last three years (other than expense reimbursement or reasonable compensation as a director);
- (c) is not a current employee of or does not have substantial financial interest in an entity that made or received payments from the corporation or an affiliate of more than \$25,000 or 2% of the Corporation’s gross revenue for property or services (which ever is less) in any of the last three years; and
- (d) does not have a relative who is a current officer of or has a substantial interest in an entity making or receiving payments of a similar amount to the organization in any of the past three years.
- (e) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Corporation.

For purposes of these by-laws, the term “Relative” includes spouses, ancestors, brothers and sisters (whole and half-blood) and their spouses, children (natural and adopted) and their spouses, grandchildren and their spouses, great-grandchildren and their spouses, and domestic partners as defined in Public Health Law § 2994-a.

For purposes of these by-laws, the term “Affiliate” means an entity controlled by the organization, in control of the organization or under common control with the organization.

## Section 4.7 Training Requirement

The Directors of the Corporation constitute the governing body of the Corporation (the “Board”), and will have and will responsibly exercise all of the powers prescribed by Section 1411 of the New York State Not-for-Profit Corporation Law and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York (“PAAA”) as amended by the Public Authorities Reform Act of 2009 (PARA).

- (a) The Board will appoint a Chief Executive Officer and a Chief Financial Officer of the Corporation, neither of whom will be a Director of the Corporation.
- (b) Every annual financial report of the Corporation must be approved by the Board and provided to the Town.

(c) The Directors of the Corporation will:

(1) execute direct oversight of the Chief Executive Officer of the Corporation and other senior management of the Corporation in the effective and ethical management of the Corporation; and

(2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Corporation.

(3) The Board will not, directly or indirectly, including through a subsidiary, extend or maintain credit or arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, Director or employee (or equivalent thereof) of the Corporation.

(4) Directors of the Corporation will file annual financial disclosure statements with the Town Board of Wheatfield.

(d) Individuals newly appointed to the Board of the Corporation must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one year of appointment to such Board. Directors who have already completed state approved training will participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

#### Section 4.8 Vacancies

With the exception of the Supervisor's Position and the Town Board Position, any vacancy on the Board of Directors occurring prior to the expiration of a term shall be filled by a majority vote of the Directors present at a meeting. The term of a Director so elected shall be the unexpired term of his/her predecessor. If a vacancy in the Town Board Position occurs prior to the expiration of that term, the Board shall notify the Town Board of Wheatfield of such vacancy prior to the next scheduled Board meeting, and that position shall be filled by appointment of the Town Board, with the appointed Director to serve the unexpired term of his/her predecessor.

#### Section 4.9 Resignation

Any Director may resign at any time by giving written notice to the Chairperson or Secretary. Resignation shall take effect at the time specified therein or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

#### Section 4.10 Removal

Any Director may be removed by an affirmative vote of two-thirds (2/3) of the Board of Directors then in office, for cause at any time, provided there is a quorum of not less than a majority of the entire Board of Directors present at the meeting at which such action is taken.

## **ARTICLE V**

### **OFFICERS**

#### Section 5.1 Designation

The Officers of the Corporation shall be the Chairperson, the First Vice-Chairperson, Secretary and Treasurer. The Board of Directors may elect such other officers, as it shall deem desirable. Such Officers shall have the authority and perform the duties as prescribed from time to time by the Board of Directors.

#### Section 5.2 Election and Term of Office

The Officers of the Corporation shall be elected from the Board membership at the annual meeting of the Boards of Directors. If the election of Officers is not held at such a meeting, the election shall be held as soon thereafter as is practicable. Officers shall serve for a term of one year. The term of office shall be from April 1 to March 31, unless otherwise provided in these By-Laws. Each officer shall hold office until a successor shall have been duly elected and qualified.

#### Section 5.3 Vacancies

A vacancy in any office, because of resignation, removal or other reason shall be filled by a majority vote of current Directors present at a meeting for the unexpired portion of the term. Such interim Officer so elected shall serve until his/her successor has been elected and qualified.

#### Section 5.4 Removal

Any Officer of the Corporation may be removed for cause by an affirmative vote of two-thirds (2/3) of the Board of Directors then in office.

#### Section 5.5 Chairperson: Powers and Duties

The Chairperson shall, in general, supervise the business and affairs of the Corporation. He/she shall preside at all meetings of the Board of Directors. He/She may sign contracts or other instruments that the Board of Directors have authorized to be executed; and shall perform such other duties as may be assigned by the Board of Directors from time to time. The Chairperson together with the Treasurer shall be responsible for presenting an annual report showing in appropriate detail the financial information of the Corporation and a summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting within ninety (90) days after the end of the Corporation's fiscal year.

### Section 5.6 Vice-Chairperson: Powers and Duties

In the absence of the Chairperson, the Vice-Chairperson shall perform duties normally assigned to the Chairperson and, from time to time, may be assigned additional duties by the Chairperson or the Board of Directors.

### Section 5.7 Treasurer: Power and Duties

The Treasurer shall have charge of all funds and securities of the Corporation; ensure the receiving and giving of receipts for monies due and payable to the Corporation; ensure the deposit of all monies in the name of the Corporation, in banks, or other depositories, as shall be designated by the Board of Directors. The Treasurer shall oversee the financial affairs of the Corporation, report at the Annual Meeting, each regular meeting of the Board of Directors, and prepare the Annual Report of the Corporation. When required by the Board of Directors, the Treasurer shall ensure the rendering of financial statements of the Corporation's accounts, and furnish the books and records for examination by an Officer or Director of the Corporation. The Treasurer together with the Chairperson shall be responsible for presenting an annual report showing in appropriate detail the financial information of the Corporation and a summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting within ninety (90) days after the end of the Corporation's fiscal year. The Treasurer shall perform such other duties as from time to time may be assigned by the Chairperson or by the Board of Directors.

### Section 5.8 Secretary: Powers and Duties

The Secretary shall keep the minutes of the Board of Directors, including a listing of those in attendance; be responsible for giving all notices required by these By-Laws; act as custodian of the Corporation's records and seal; maintain a register of the post office and residential addresses of all Directors which shall be furnished to the Secretary by each Director. The Secretary shall be responsible for supervising the preparation and maintenance of the books and records of the Corporation. The Secretary shall prepare corporate correspondence, perform all duties customarily incidental to his or her office and perform such other duties as from time to time may be assigned by the Chairperson or Board of Directors.

### Section 5.9 Governance Committee

The Chairman will appoint a Governance Committee, to be comprised of Independent Directors. The Governance Committee will:

- (a) keep the Board informed of current best governance practices;
- (b) review corporate governance trends;
- (c) update the Corporation's corporate governance principles; and

- (d) advise the Board on the skills and experiences required of potential Directors of the Board.

#### Section 5.10 Audit Committee

The Chairman will appoint an Audit Committee, to be comprised of Independent Directors. To the extent practicable, Directors of the Audit Committee should be familiar with corporate financial and accounting practices. The Audit Committee will ensure that the Corporation arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required under the laws of New York State. The Audit Committee will recommend to the Board the hiring of a certified independent public accounting firm for the Corporation, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee will not recommend the hiring of a certified independent public accounting firm to provide audit services to the Corporation if the Chief Executive Officer, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Corporation was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Corporation during the one year period preceding the date of the initiation of the audit.

If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public accounting firm proposing to provide an annual independent audit for the Corporation, or the audit partner responsible for reviewing the audit, has performed audit services for the Corporation in each of the five previous fiscal years of the Corporation, the Audit Committee will prohibit such certified independent public accounting firm from providing an annual independent audit for the Corporation.

The Audit Committee will require that each certified independent public accounting firm that performs for the Corporation an audit required by law will timely report to the Audit Committee:

- (a) all critical accounting policies and practices to be used;
- (b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Corporation, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and
- (c) other material written communications between the certified independent public accounting firm and the management of the Corporation, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

The Audit Committee will prohibit the certified independent public accounting firm providing an annual independent audit for the Corporation from performing any non-audit services to the

Corporation contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including:

- (a) bookkeeping or other services related to the accounting records or financial statements of the Corporation;
- (b) financial information systems design and implementation;
- (c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (d) actuarial services;
- (e) internal audit outsourcing services;
- (f) management functions,
- (g) broker or dealer, investment advisor, or investment banking services; and
- (h) legal services and expert services unrelated to the audit.

Should the Corporation receive support and revenues between \$250,000 and \$500,000 in fiscal years 2014, 2015, or 2016, the Corporation shall have an accountant review the report and submit the financial reports to the Attorney General's Office for the State of New York.

Should the Corporation receive support and revenues between \$250,000 and \$750,000 in fiscal years 2017, 2018, 2019 or 2020, the Corporation shall have an accountant review the report and submit the financial reports to the Attorney General's Office for the State of New York.

Should the Corporation receive support and revenues between \$250,000 and \$1,000,000 in any fiscal year after July 1, 2021, the Corporation shall have an accountant review the report and submit the financial reports to the Attorney General's Office for the State of New York.

Should the Corporation have greater than \$1,000,000 in revenue in any fiscal year, the Audit Committee must retain an independent auditor, review the results of the audit, engage in pre-audit review, post-audit review of certain specified issues, and annual review of the auditor's independence and performance as well as any other steps necessary to comply with the Nonprofit Revitalization Act of 2013.

## **ARTICLE VI**

### **MEETINGS OF THE DIRECTORS**

#### **Section 6.1 Organization**

The Chairperson of the Corporation or, in his/her absence, the Vice-Chairperson, shall preside at all meetings of the Board of Directors, should both be absent, a Chairperson shall be chosen by designation, by the Directors who are present. The Secretary of the Corporation shall act as

Secretary at all meetings of the Board of Directors. In the absence of the Secretary, the presiding Officer may appoint any person to act as Secretary of the meeting.

#### Section 6.2 Annual Meeting

An annual meeting of the Board of Directors shall be held, upon notice, for the purposes of electing Directors and Officers and for the transcription of such other business as may come before the meeting. The meeting shall be held on the second Wednesday in March of each year at a time and place to be designated by the Chair, or at such other date, time and place as the Board of Directors may designate. At the annual meeting, the Directors shall receive the annual report and transact such other business as may properly come before the meeting. Further, at the annual meeting, the Directors shall elect by a majority vote a Chairperson of the Board of Directors (“Chairperson”).

#### Section 6.3 Regular Meetings

Regular meetings of the Board of Directors shall be held not less than annually at such date, time, and place as may be determined by the Board of Directors.

#### Section 6.4 Special Meetings

Special meetings of the Board of Directors may be called for any purposes on two (2) business days notice by any two Directors if requested in writing to the Secretary of the Corporation. Written notice of special meetings shall be delivered (via facsimile or e-mail) to each member of the Board at the address so designated by that Board Member. Such written request shall state the purpose or purposes for the proposed meeting and shall state the date, month, and location of such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of such meeting. The unanimous consent of all present, following quorum guidelines, shall be required to transact any business not stated in the meeting notice.

#### Section 6.5 Notice of Meetings

Notice stating the place, day, hour and purpose of any meeting of the Directors shall be sent by the Secretary, or by such other person as the Board of Directors may designate, to each Director, in the following manner: not less than ten (10) calendar days before the date of an annual meeting; not less than five (5) calendar days before the date of a regular meeting; and not less than two (2) business days before the date of a special meeting. Notice can be sent by U.S. mail, facsimile or e-mail provided that notice may not be sent electronically if the Corporation is unable to successfully deliver two (2) consecutive notices by facsimiles or e-mail or the Corporation becomes aware that it cannot deliver notice electronically.

#### Section 6.6 Quorum

One-half plus one of the Directors of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a quorum of the Directors is present at said meeting, a majority of Directors present may make recommendations for consideration at the next regular meeting at which a quorum is present. A majority of the Directors present at a meeting, whether or not a quorum is present, may adjourn any director meeting to another time and place. If a quorum is not present at a meeting of the Directors, the meeting must be adjourned and reschedule in accordance with these By-Laws.

Any one or more members of the Board of Directors may participate in a meeting of the Board by means of a conference telephone or video conferencing which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

#### Section 6.7 Voting

Each Director shall be entitled to one vote on each matter properly submitted to the Board of Directors for a vote. All Directors shall be voting members of the Board.

#### Section 6.8 Action by the Board

Any corporate action to be taken by the Board of Directors means action at a meeting of the Board. Each Director shall have one vote regarding any corporate action to be taken by the Board. Except as otherwise provided by law or these By-Laws, the vote of a majority of the entire Board of Directors at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board of Directors.

#### Section 6.9 Action without a Meeting

Any lawful Board action may be taken without a meeting if all members of the Board consent in writing to said action and these consents shall be filed with the minutes of the Board or its designated Committee.

#### Section 6.10 Order of Business

The order of business for all meetings of the Directors shall be as follows:

1. Roll call;
2. Reading or minutes of the preceding meeting for review and approval;
3. Committees' Reports (if any)
4. Old Business
5. New Business
6. Adjournment

## **ARTICLE VII**

### **MEMBERS**

#### Section 7.1

The members of the Corporation shall be those persons who are members of the Board of Directors.

## **ARTICLE VIII**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

#### Section 8.1 Right of Indemnification.

Each Director and Officer of the Corporation, whether or not then in office, and any person whose testator or intestate was such a Director or officer, will be indemnified by the Corporation for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Section 18 of the Public Officers Law of the State of New York or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Corporation will provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Director or officer only if such action or proceeding (or part thereof) was authorized by the Board and is not otherwise covered by professional liability insurance.

#### Section 8.2 Prohibited Indemnifications

The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith, were outside the scope of such person's authority, or were the result of active and deliberate dishonesty or gross negligence, and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. The Corporation shall not indemnify any person who commences or threatens to commence administrative or judicial litigation against the Corporation or its individual members; provided that this prohibition shall not apply where the sole basis for such litigation is whether an indemnification obligation exists pursuant to these By-Laws and where otherwise prohibited by applicable law.

#### Section 8.3 Advancement of Expenses

(a) Expenses incurred by a Director or officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article V may be paid by the corporation in advance of the final disposition of such action or proceeding upon

(1) the receipt of an undertaking by or on behalf of such Director or officer to repay such advancement in case such Director or officer is ultimately found not to be entitled to indemnification as authorized by this Article; and

(2) approval by the Board.

(b) To the extent permitted by law, the Board will not be required to find that the Director or officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Corporation makes any advance payment of expenses hereunder.

#### Section 8.4 Availability and Interpretation

Any person entitled to indemnification under these By-Laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-Laws with respect to any event, action or omission occurring prior to the date of such amendment.

### **ARTICLE IX**

#### **AMENDMENTS TO THE BY-LAWS**

##### Section 9.1 Amendment or Revocation

These By-Laws may be amended or revoked by a resolution of the Board of Directors at a regular meeting or the annual meeting, provided that the procedures of this Section, Section 8, are followed.

##### Section 9.2 Consideration at the First Meeting

The Directors may consider revisions to the By-Laws at any meeting. Any revisions proposed for adoption shall be authorized by a Resolution of the Board of Directors for placement on the agenda of the Board of Directors' next regular meeting (the Second Meeting);

##### Section 9.3 Action at the Second Meeting

Any proposed revisions to the By-Laws that have been authorized by a Resolution of the Board of Directors at a prior meeting shall be considered and acted upon by the Board of Directors at the Second Meeting. At the Second Meeting, a Resolution adopting any revisions to the By-Laws shall require approval by at least two-thirds of the Directors in attendance at the Second Meeting.

##### Section 9.4 Notice to Board of Directors

At such time as the members of the Board of Directors are given notice of the Second Meeting, each member of the Board of Directors shall receive a copy of the proposed Amendments or Revisions to the By-Laws.