

AMENDED AND RESTATED BY-LAWS
OF
TONAWANDA TITANS SWIM CLUB, INC.

A corporation governed by the
Not-for-Profit Corporation Law of New York

ARTICLE I
MEMBERSHIP

Section 1. Generally. Tonawanda Titans Swim Club, Inc. (the “Corporation” or the “Titans Swim Club”) is a membership corporation formed for the non-profit purposes set forth in its Certificate of Incorporation, as the same may be amended from time to time. Subject to and in furtherance of those purposes, the philosophy of the Titans Swim Club shall reflect the following ideals:

- Improvement and progression of competitive swimming.
- To afford swimmers professional coaching and amateur experiences with swimmers of similar ability.
- To further the interest and education of parents and swimmers in competitive swimming.
- To encourage and develop good sportsmanship, individual integrity and team play.
- To involve parents in the functioning and ongoing requirements of running a national goal-oriented swim program.
- To abide by the United States Swimming Rules and Regulations.
- To provide a swimming environment that permits enjoyment for both the recreational or less competitive child, as well as the competitive child, and their families.
- To provide an environment that makes it both fun and safe to be involved in swimming, with the emphasis on fun instead of "winning at all cost" especially at lower age levels.
- To assure ensure that all members of the board and coaching/consulting staff use positive reinforcement and motivational techniques and set good examples as citizens.

Section 2. Terms of Membership.

- (a) Swimmers shall be accepted as associate members of the Titans Swim Club at the discretion of the Head Coach and/or the Board upon application and payment of dues. Associate members shall show a sincere desire to comply with the purposes, objectives and philosophy of the Titans Swim Club. Associate members will be required to affiliate with United States Swimming under the name of the Tonawanda Titans Swim Club, Inc. All USA Swimming rules and requirements will apply to Titans Swim Club.
- (b) Only (i) associate members age 18 and over; and (ii) for associate members under the age of 18, a parent or guardian of the swimmer, are entitled to vote as a member of the Titans Swim Club (“Voting Members”). Associate Members and Voting Members shall be collectively referred to as the “Membership.”
- (c) There is no residency requirement concerning membership. Titans Swim Club members practicing regularly at the Town of Tonawanda Aquatic and Fitness Center will be required to be members of the facility.
- (d) The swim program year shall run from September 1 to August 31 (the Swim Year”); and the financial year of the corporation shall be on a calendar year.

Section 3. Evidence of Membership. Membership in the corporation shall be evidenced by the inclusion of the Member's name and classification, whether voting or associate, in a list of Members to be maintained under the direction of the Secretary. In addition, the Board of Directors may authorize the President of the corporation to issue a certificate of Membership to each Member.

Section 4. Fees and dues.

- (a) The Board of Directors may levy dues on the membership, as determined by the Board of Directors prior to each Swim Year.
- (b) Membership shall be deemed to terminate upon the expiration of the Swim Year for which dues are paid. The corporation shall provide reasonable notice of termination of membership for non-payment of fees, dues or assessments. Members shall not have distributive rights in the assets of the corporation upon dissolution.

Section 5. Suspension or termination. Any member or coach of the Titans Swim Club may present to the Board written charges against any member for unseemly conduct likely to endanger the good order and welfare of the Corporation, or for violation of the requirements of the Constitution or By-Laws; and after the accused shall have been notified of such and given an opportunity to be heard on such charges, the Board may suspend such member from all rights and privileges of membership, or may declare their membership forfeited. A resignation, death or forfeiture of membership for any cause shall operate as an assignment and release to the Board as trustee of the Titans Swim Club, all the rights, title and interest of such member in and to the property and assets of the Club

ARTICLE II
MEETINGS OF VOTING MEMBERS

Section 1. Annual Meeting. The annual meeting of the Voting Members of the corporation, for the election of directors and for the transaction of such other business as may be set forth in the notice of meeting, shall be held in April of each year at such time and at such place within or without the State of New York as the President or Vice President shall determine and the notice of the meeting shall specify.

Section 2. Special Meetings. Special meetings of the Voting Members may be called by the Board of Directors or by the President or Vice President. Each special meeting of the Voting Members shall be held at such time and at such place within or without the State of New York as the Board of Directors or the person calling the meeting shall determine and the notice of the meeting shall specify.

Section 3. Notice of Meetings. Written notice of each meeting of the Voting Members shall be given, personally, by mail, by facsimile telecommunications, or by electronic mail not less than 10 or more than 50 days before the date of the meeting, to each Voting Member. If mailed, such notice shall be deposited in the United States mail, with first-class postage thereon prepaid, directed to the Voting Member at his or her address as it appears on the record of Voting Members. If sent by facsimile telecommunication or electronic mail, such notice is given when directed to the Voting Member's fax number or electronic mail address as it appears on the record of members, or, to such fax number or other electronic mail address as filed with the secretary of the corporation. Notwithstanding the foregoing, such notice shall not be deemed to have been given by facsimile telecommunication or electronic mail (a) if the corporation is unable to deliver two consecutive notices to the Voting Member by facsimile telecommunication or electronic mail or (b) the corporation otherwise becomes aware that notice cannot be delivered to the Voting Member by facsimile telecommunication or electronic mail. The notice shall state the place, date and hour of the meeting, the purpose or purposes for which the meeting is called and, unless it is the annual meeting, indicate that the notice is being issued by or at the direction of the person calling the meeting. The notice need not refer to the approval of minutes or to other matters normally incident to the conduct of the meeting. Except for such matters, the business which may be transacted at the meeting shall be confined to business which is related to the purpose or purposes set forth in the notice.

Section 4. Waiver of Notice. Whenever under any provision of these by-laws, the certificate of incorporation, the terms of any agreement or instrument, or law, the Voting Members are authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken, or by his or her duly authorized attorney-in-fact, submit a signed waiver of such notice or time requirements. The waiver must be signed by the Voting Member or, if the Voting Member is not a natural person, the Voting Member's authorized officer, director, employee, or agent, by signing such waiver or causing the signature to be affixed to such waiver by any reasonable means, including, but not limited to facsimile signature. The transmission of the waiver may be sent by electronic mail as

long as it sets forth, or is submitted with, information from which it can reasonably be determined that the transmission was authorized by the Voting Member.

Section 5. Quorum. At each meeting of Voting Members for the transaction of any business, a quorum for the transaction of business shall consist of Voting Members, present in person or by proxy, entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast, whichever is lesser.

Section 6. Procedure. The order of business and all other matters of procedure at every meeting of Voting Members may be determined by the presiding officer.

Section 7. Voting. Each Voting Member in good standing shall be entitled at every meeting of Voting Members to one vote on all matters appropriate for consideration by the corporation's Membership. Directors elected at any meeting of the Voting Members shall, except as otherwise provided by law or the certificate of incorporation, be elected by a plurality of the votes cast. All other corporate action to be taken by vote of the Voting Members shall, except as otherwise provided by law, the certificate of incorporation or these by-laws, be authorized by a majority of the votes cast. The vote for directors, or upon any question before a meeting of the Voting Members, shall not be by ballot unless the person presiding at such meeting shall so direct or any Voting Member shall so demand.

Section 8. Reports. The Board of Directors shall present at each annual meeting a report, verified by the President and Treasurer or by a majority of the directors, showing in appropriate detail the following:

- (a) The assets and liabilities, including the funds, of the corporation as of the end of twelve-month fiscal period of the corporation terminating not more than six months prior to said meeting.
- (b) The principal changes in assets and liabilities, including trust funds, during said fiscal period.
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, during said fiscal period.
- (d) The expenses or disbursements of the corporation, for both general and restricted purposes, during said fiscal period.
- (e) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and places of residence of the current members may be found.

Such report shall be filed with the records of the corporation and a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting at which the report is presented.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Management of Corporate Affairs. Except as otherwise provided by law, the certificate of incorporation of the corporation or these by-laws, the activities, property and affairs of the corporation shall be managed by the Board of Directors.

Section 2. Number and Qualifications. The Board of Directors shall consist of thirteen directors, who shall be elected by the Voting Members at the annual meeting of the Members. The directors may increase or decrease the number of directors of the corporation by a vote of the majority of the entire Board, but the number of directors constituting the entire Board shall at no time be less than three. No decrease in the number of directors shall shorten the term of any incumbent director. All of the directors shall be at least eighteen (18) years of age. At the discretion of the current President, a representative of the Town of Tonawanda Parks and Recreation Department and/or the immediate past president (provided he or she is no longer a Director) may serve on the Board in an advisory capacity with no vote.

Section 3. Classes of Directors; Term of Office; Elections. The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall be as nearly equal in number as possible. At the first annual meeting of Voting Members for the election of directors pursuant to this section, Class I, Class II and Class III directors shall initially be elected for terms expiring at the second, third and fourth annual meetings, respectively. At each succeeding annual meeting of the Voting Members commencing with the second annual meeting, successors to the class of directors whose terms then expire shall be elected for terms that shall expire at the third succeeding annual meeting of the Voting Members. Newly created directorships or any decrease in directorships shall be so apportioned among the classes of directors as to make all classes as nearly equal in number as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director. When the number of directors is increased by the Board of Directors and such newly created directorships are filled by the Board, there shall be no classification of the additional directors until the next annual meeting of Voting Members.

Section 4. Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board of Directors for any reason may be filled by a vote of a majority of the directors then in office, although less than a quorum exists, or any such newly created directorships and vacancies occurring in the Board of Directors for any reason may be filled by vote of the Voting Members at any meeting of Voting Members, notice of which shall have referred to the proposed election. If any such newly created directorships or vacancies occurring in the Board of Directors for any reason shall not be filled prior to the next annual meeting of Voting Members, they shall be filled by vote of the Voting Members at the annual meeting. A director elected to fill a vacancy, unless elected by the Voting Members, shall hold office until the next meeting of Voting Members at which the election of directors is in the regular order of business, and until his or her successor has been elected and qualified.

Section 5. Resignation. Any director of the corporation may resign at any time by giving his or her resignation to the Chairman, the President, the Vice President or the Secretary. 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.

Section 6. Removal. Any director may be removed with or without cause by the affirmative vote of the Voting Members or with cause by the affirmative vote of a majority of the Board of Directors at any meeting of the Board, notice of which shall have referred to the proposed action. Unexcused absence from two regular meetings in any 12-month period shall, without limitation, be cause for removal.

Section 7. Compensation. No director of the corporation shall receive, directly or indirectly, salary, compensation or emolument from the corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the corporation.

Section 8. Special Advisors. From time to time, the Board of Directors may designate as special advisors a chosen number of outstanding persons from the community who are interested in the objectives of the corporation to assist the corporation in its operations. Selection as a special advisor shall not confer upon those selected any right to vote or to participate in the management of the corporation, nor any liability with respect thereto.

ARTICLE IV

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly on the second Tuesday of the month, or as otherwise agreed upon at 6:30 pm.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called at any time by the President, or in his or her absence or disability, the Vice-President, and must be called by such officer on written request by one-fifth of the entire Board of Directors. Such request shall state the purpose or purposes for which the meeting is to be called. Each special meeting of the Board of Directors shall be held at such time and place as the person calling the meeting shall determine and the notice of the meeting shall specify.

Section 3. Annual Meeting. The annual meeting of the Board of Directors shall be the regular meeting held immediately following the annual meeting of the Members, or such other regular meeting as the Board of Directors shall designate.

Section 4. Notice of Meetings. Notice of each regular or special meeting of the Board of Directors stating the time and place thereof shall be given by the President, the Vice-President or the Secretary to each member of the Board not less than three (3) days before the meeting, by mailing the notice, postage prepaid, addressed to each member of the Board at his or her residence or usual place of business, or not less than two (2) days before the meeting, by delivering the notice, postage prepaid, addressed to each member of the Board at his or her residence or usual place of business, or not less than two (2) days before the meeting, by delivering the notice to each member of the Board personally, by electronic mail, by facsimile telecommunication, or by telephone.

Section 5. Quorum and Action by Board. At all meetings of the Board of Directors, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum shall be required for the transaction of business and shall consist of not less than a majority of the entire Board, and the vote of a majority of the directors present at the time of a vote, if a quorum is present at such time, shall decide any question that may come before the meeting. A majority

of the directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

Section 6. Procedure. The order of business and all other matters of procedure at every meeting of the directors may be determined by the person presiding at the meeting, subject to the following order of business:

1. Meeting call to order
2. Voice of membership
3. Approving of minutes from previous meeting(s)
4. Report of Treasurer
5. Report of President/ Vice President
6. Unfinished business
7. New business

Section 7. Action Without a Meeting. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The consent may be sent by electronic mail as long as the consent sets forth, or is submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 8. Presence at the Meeting by Telephone. One or more members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation in a meeting by such means shall constitute presence in person at the meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the board or committee.

ARTICLE V

COMMITTEES OF DIRECTORS

Section 1. Committees of the Board. The Board of Directors may create committees of the Board, each consisting of three or more directors with one director being designated as the committee chairman and may designate one or more directors as alternate members of any such committee who may replace any absent member or members at any meeting of such committee. The board shall appoint the members of such committee of the board, except that in the case of any executive committee or similar committee however denominated, the appointment shall be made by a majority of the entire board. In the interim between meetings of the Board of Directors, the executive committee shall have all the authority of the Board of Directors except as otherwise provided by law and shall serve at the pleasure of the Board of Directors. Each other committee designated shall have such a name as may be provided from time to time in the

resolution or resolutions of the Board of Directors, shall serve at the pleasure of the Board of Directors and shall have, to the extent provided in such resolution or resolutions, all the authority of the Board of Directors except as otherwise provided by law.

Section 2. Committees of the Corporation. The Board may designate committees of the Corporation for such purpose or purposes as shall be specified upon the creation of such committee and shall elect the members of such committees, who may consist of directors or officers of the Corporation or of other persons. Each such committee shall have only such powers as are specifically delegated to it and shall serve at the pleasure of the Board of Directors.

Section 3. Acts and Proceedings. All acts done and power and authority conferred by the executive committee from time to time within the scope of its authority shall be, and may be deemed to be, and may be specified as being, an act under the authority of the Board of Directors. The executive committee, each other board committee, and each committee of the corporation shall keep regular minutes of its proceedings and report its actions to the Board of Directors when required.

Section 4. Meetings of Committees. Committees of directors shall meet at such times and places as the chairmen of the committees shall determine and the notice of the meeting shall specify. Meetings of committees of directors shall be governed by the provisions of Sections 4, 5, 6, 7 and 8 of Article IV of these by-laws, which govern meetings of the entire Board of Directors.

ARTICLE VI

OFFICERS

Section 1. Officers. The Board of Directors shall annually, at the first meeting of the Board after the annual meeting of Voting Members, elect from among the directors a President, Vice-President, Secretary, and Treasurer. Additionally, the Board shall elect a Safety Officer, who need not, but may be, a director. The Board of Directors may from time to time elect or appoint such additional officers as it may determine, including but not limited to an Assistant Secretary and an Assistant Treasurer. Such additional officers shall have such authority and perform such duties as are prescribed by these bylaws or by the Board of Directors from time to time.

Section 2. Term of Office. Each of the President, Vice-President, Secretary, Treasurer, Assistant Secretary and Assistant Treasurer shall, unless otherwise determined by the Board of Directors, hold office until the first meeting of the Board following the next annual meeting of the Voting Members and until their successors have been elected or appointed and qualified. Each additional officer appointed or elected by the Board of Directors shall hold office for such term as shall be determined from time to time by the Board of Directors and until his or her successor has been elected or appointed and qualified. Any officer, however, may be removed or have his or her authority suspended by the Board of Directors at any time, with or without cause. If the office of any officer becomes vacant for any reason, the Board of Directors shall have the power to fill such vacancy.

Section 3. Resignation. Any officer may resign at any time by notifying the Board of Directors, the Chairperson, the President or the Secretary of the corporation in writing. Such

resignation shall take effect at the time specified therein unless otherwise specified in such resignation, the acceptance thereof shall not be necessary to make it effective.

Section 4. Duties of Officers May Be Delegated. In case of the absence or disability of an officer of the corporation, or for any other reason that the Board may deem sufficient, the Board, except where otherwise provided by law, may delegate, for the time being, the powers or duties of any officer to any other officer, or to any member of the Board.

Section 5. The President. The President shall be the chief executive and administrative officer of the corporation and shall have the general powers and duties of supervision and management of the corporation and shall perform all such other duties as usually pertain to the office or are properly required by the Board of Directors. Without limiting the foregoing, the President shall be the official representative of the Titans Swim Club at all functions, be an ex-officio member of all committees, work with the Town of Tonawanda in scheduling matters, appoint standing committee chairpersons, sign all contracts, certificates and agreements in the corporation name, ensure that Officers and Directors are completing their duties, and enforce the bylaws, rules, policies, and procedures of the Titans Swim Club. Prior to being elected, the President must serve (a) two (2) consecutive full years on the Board of Directors or (b) one (1) full year on the Board of Directors along with three years' experience with a competitive swim organization. The President can be re-elected a maximum of three (3) times.

Section 6. The Vice-President. The Vice-President shall, in the absence or at the request of the President, perform the duties and exercise the powers of the President. The Vice-President shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the Board of Directors.

Section 7. The Secretary. The Secretary shall issue notices of all meetings of directors and Members where notices of such meetings are required by law or these by-laws. The Secretary shall attend all meetings of the Board of Directors and keep minutes thereof. The Secretary shall affix the corporate seal to and sign such instruments as require the seal or the Secretary's signature and shall perform such other duties as usually pertain to the office or are properly required by the Board of Directors. Without limiting the foregoing, the Secretary shall record and preserve minutes of the Board of Directors and general meetings, post minutes of each meeting on the Titans Swim Club's webpage, provide members with copies of report and annual reports as requested, and handle correspondence of the Titans Swim Club.

Section 8. The Assistant Secretary. The Assistant Secretary shall, in the absence or at the request of the Secretary, perform the duties and exercise the powers of the Secretary. The Assistant Secretary shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the Board of Directors.

Section 9. The Treasurer. The Treasurer shall have the care and custody of all the moneys and securities of the corporation. The Treasurer shall cause to be entered in the books of the corporation to be kept for that purpose full and accurate accounts of all moneys received and paid on account of the corporation. The Treasurer shall make and sign such reports, statements and instruments as may be required of him or her by the Board of Directors or by the laws of the United States or of any state or country, and shall perform such other duties as usually pertain to the officer or as are properly required of the Treasurer by the Board of Directors. Without limiting the foregoing, the Treasurer shall:

- (a) receive and safely keep all Titans Swim Club monies and deposit same into such bank as directed by the Board of Directors,
- (b) keep accurate accounting records of all funds,
- (c) pay all duly authorized and ordinary bills promptly, without approval of the Board of Directors
- (d) pay all non-ordinary bills, for example and not limited to non-swimming expenses, non-prior approved meetings and expenses, non-swim meet related expenses, after approval from the Board of Directors and then promptly by check counter signed by the President,
- (e) disburse monies as directed by the Board of Directors,
- (f) provide a monthly statement of finances at board meetings to all the Board of Directors, and
- (g) provide for a complete annual account at the September meeting for the past year.

Section 10. The Assistant Treasurer. The Assistant Treasurer shall, in the absence or at the request of the Treasurer, perform the duties and exercise the powers of the Secretary. The Assistant Treasurer shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the Board of Directors.

Section 11. Safety Officer. The Safety Officer shall: disseminate USA and LSC safety education information to the Titans SwimClub members, coaches, and officials; ensure Titans Swim Club compliance with any and all USA and LSC safety requirements, actively encourage an overall feeling of "safety awareness" throughout the Titans Swim Club membership, assist in the development and enforcement of the Titans Swim Club safety procedures and ensure that all report of occurrences forms are returned to the LSC Safety Chairman.

Section 12. Officers Holding Two or More Offices. Any two or more offices, except those of President and Secretary, may be held by the same person, but no officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 13. Compensation. No officer of the corporation shall receive, directly or indirectly, salary compensation or emolument from the corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the corporation.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 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, shall 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 Not-for-Profit Corporation 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 shall 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 of Directors. Notwithstanding anything to the contrary in this Article, the corporation shall not provide any indemnification for any liability or expense of the director or officer if providing such indemnification would constitute “self dealing” or an “excess benefit” under applicable provisions of the United States Internal Revenue Code of 1986 and regulations promulgated thereunder, as such law or regulations may be amended from time to time.

Section 2. Advancement of Expenses: 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 VII may be paid by the corporation in advance of the final disposition of such action or proceeding upon (a) 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 VII and (b) approval by the Board of Directors acting by a quorum consisting of directors who are not parties to such action or proceeding or, if such a quorum is not obtainable, then approval by the Voting Members. To the extent permitted by law, the Board of Directors or, if applicable, the Voting Members, shall 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 expense hereunder.

Section 3. Availability and Interpretation: To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article VII (a) shall be available with respect to events occurring prior to the adoption of this Article VII, (b) shall continue to exist after any rescission or restrictive amendment of this Article VII with respect to events occurring prior to such rescission or amendment, (c) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the director or officer, (or, if applicable, at the sole discretion of the testator or intestate of such director or officer seeking such rights), on the basis of applicable law in effect at the time of such rights are claimed and (d) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the corporation and the director or officer from whom such rights are sought were parties to a separate written agreement.

Section 4. Other Rights. The rights of indemnification and to the advancement of expenses provided in this Article VII shall not be deemed exclusive of any other rights to which any director or officer of the corporation or other person may now or hereafter be otherwise entitled, whether contained in the certificate of incorporation, these by-laws, a resolution of the Voting Members, a resolution of the Board of Directors or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article VII shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any director or officer of the corporation or other person in any action or proceeding to have assessed or allowed in his or her favor, against the corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5. Severability. If this Article VII or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum

extent necessary to make it enforceable, and the remainder of this Article VII shall remain fully enforceable. Any payments made pursuant to this Article VII shall be made only out of funds legally available therefor.

ARTICLE VIII

CORPORATE FINANCE

Section 1. Corporate Funds. The funds of the corporation shall be deposited in its name with such banks, trust companies or other depositories as the Board of Directors may from time to time designate. All checks, notes, drafts and other negotiable instruments of the corporation shall be signed by such officer or officers, agent or agents, employee or employees as the Board of Directors from time to time may designate. No officers, agents or employees of the corporation, alone or with others, shall have the power to make any checks, notes, drafts or other negotiable instruments in the name of the corporation or to bind the corporation thereby, except as provided in this section.

Section 2. Fiscal Year. The fiscal year of the corporation shall be the calendar year unless otherwise provided by the Board of Directors.

Section 3. Loans to Directors and Officers. No loans shall be made by the corporation to its directors and officers.

Section 4. Gifts. The Board of Directors, the executive committee or any authorized officer, employee or agent of the corporation may accept on behalf of the corporation any contribution, gift, bequest or devise for any general or special purpose or purposes of the corporation.

Section 5. Voting of Securities Held by the Corporation. Stocks or other securities owned by the corporation may be voted in person or by proxy as the Board of Directors or the executive committee shall specify. In the absence of any direction by the Board of Directors or executive committee, such stocks or securities shall be voted by the President as he or she shall determine.

Section 6. Income from Corporation Activities. All income from activities of the corporation shall be applied to the maintenance, expansion or operation of the lawful activities of the corporation.

ARTICLE IX

CORPORATE SEAL

Section 1. Form of Seal. The seal of the corporation shall be in such form as may be determined from time to time by the Board of Directors.

ARTICLE X

AMENDMENTS

By-Laws of the corporation may be adopted, amended or repealed (i) at any meeting of Voting Members, notice of which shall have been given at least one month before the member meeting and shall have included specification of the proposed action, or (ii) at any meeting of the Board of Directors, notice of which shall have included specification of the proposed action;

provided, however, that if any by-law regulating an impending election of directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of Voting Members for the election of directors the by-law adopted, amended or repealed, together with a concise statement of the changes made.