

**BYLAWS
OF THE
ANACORTES FARMERS MARKET
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ARTICLE I: Offices

1.1 Registered Office and Registered Agent. The registered office of the Anacortes Farmers Market, (the "Corporation") shall be located in the State of Washington at such place as may be fixed from time to time by the Board of Directors upon filing of such notices as may be required by law. The registered agent shall have a business office identical with such registered office.

1.2 Other Offices. The Corporation may have other offices within or outside the State of Washington at such place or places as the Board of Directors may determine from time to time.

ARTICLE II: Members

The Corporation shall have no members.

ARTICLE III: Board of Directors

3.1 Number and Powers. The business and affairs of the Corporation shall be conducted under the direction of, and the control and disposal of the Corporation's properties and funds shall be vested in, its Board of Directors, except as otherwise provided by statute or the Corporation's Articles of Incorporation or these Bylaws. The Board of Directors shall consist of a minimum of five (5) and not more than nine (9) directors who shall be appointed in January of each calendar year as follows:

- (a) Two (2) or more directors shall be independent individuals appointed by the Board of Directors (see paragraph 3.2), one of these directors shall be appointed in even numbered years and one directors shall be appointed in odd numbered years,
- (b) One (1) director shall be appointed by the City of Anacortes Parks and Recreations department (or other appropriate City department) annually, and
- (c) Two (2) or more directors shall be elected by their peers at the annual meeting of vendors of the Anacortes Farmers Market. One of these directors shall be elected in even numbered years and one director shall be elected in odd numbered years (the "staggered election process"). The number of vendor directors shall not exceed the number of directors appointed by the Board of Directors (see paragraph 3.1(a)).
- (d) In order to implement the staggered election process, all directors shall be elected during the initial annual meetings of 2011; however, half shall be elected to serve a term of two years in accordance with Section 3.3 and half shall be elected to serve a term of one year. The positions held by the directors serving a term of one year shall be up for election at the annual meeting in January 2012.

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

3.2 Qualifications. Directors shall be individuals who have reached the age of majority and shall have such other qualifications as the Board of Directors may prescribe by resolution or amendment to these Bylaws. Efforts will be made by the Board to have representation from the following areas: accounting; community development; business/non-profit management; finance; government (agricultural science; regulatory); healthcare; law; philanthropy; real estate development; retailing (consumer products); vendors; and neighborhoods served by the markets. Efforts will be made to select Board members representative of the diversity of the neighborhoods served by the Corporation.

3.3 Terms. Except as provided in Section 3.1(b), each director shall serve for a term of two (2) years, provided that each director shall hold office until his or her successor is appointed and qualified, or until his or her death, resignation or removal or until he or she ceases to be a director of the Corporation. Any director may serve three (3) successive two-year terms. The Board President may serve two (2) successive two-year terms.

3.4 Duties of Directors. Each director shall perform the duties of a director, including the duties as a member of any committee of the Board of Directors upon which the director may serve, in good faith, in a manner that such director believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Each director is required to regularly attend all meetings. In the event that a director misses three or more consecutive meetings, the director may be removed in accordance with Section 3.18.

3.5 Change of Number. The number of directors may at any time be increased or decreased by amendment of these Bylaws, but no decrease shall have the effect of shortening the term of any incumbent director.

3.6 Vacancies. All vacancies in the Board of Directors, whether caused by resignation, death or otherwise, may be filled by the affirmative vote of a majority of the remaining directors even though less than a quorum of the Board of Directors. A director elected to fill any vacancy shall hold office for the unexpired term of his or her predecessor and until successor is elected and qualified.

3.7 Resignation. Any director may resign at any time by delivering notice in the form of a record to the President or the Secretary at the principal office of the Corporation, or by giving such notice at any meeting of the Board of Directors. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective; provided however, that if the resignation would result in the Corporation having no director or no director capable of serving as such, the resigning director shall continue

to serve as a director until a successor director is appointed and qualified as provided in these Bylaws.

3.8 Regular Meeting. Regular meetings of the Board of Directors may be held at the registered office of the Corporation or at such other place or places, either within or without the State of Washington, as the Board of Directors may designate from time to time. There shall be regular meetings of the Board of Directors held, with proper notice, not less frequently than twice each calendar year.

3.9 Special Meetings. Special meetings of the Board of Directors may be called at any time by the President or upon written request by any two directors. Such meetings shall be held at the registered office of the Corporation or at such other place or places as the directors may from time to time designate.

3.10 Rules for Meetings. The Board of Directors may make such rules and regulations covering its meetings as it may in its discretion determine necessary, following the order of business outlined below:

- 1) Roll Call.
- 2) Reading of the Minutes of the preceding meeting.
- 3) Reports of Committees.
- 4) Reports of Officers.
- 5) Old and Unfinished Business.
- 6) New Business.
- 7) Adjournments.

3.11 Notice. Notice of all meetings of the Board of Directors shall be given to each director by three (3) days' prior service of the same by telegram, telefax by letter, personally, or by an electronic transmission (e.g., email). The method of notice need not be the same to each director. Such notice need not specify the business to be transacted at, or the purpose of, the meeting.

3.12 Quorum. A majority of the whole Board of Directors shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business.

3.13 Waiver of Notice. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. A waiver of notice signed by the director or directors, whether before or after the time stated for the meeting, shall be equivalent to the giving of the notice.

3.14 Registering Dissent. A director who is present at a meeting of the Board of Directors at which action on a corporate matter is taken shall be presumed to have assented to such action unless the director shall file a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

3.15 Committees. The Board of Directors may appoint, from time to time, from its own number, standing or temporary committees consisting each of no fewer than two (2) directors. Such committees may be vested with such powers as the Board may determine by resolution passed by a majority of the full Board of Directors. No such committee shall have the authority of the Board of Directors in reference to amending, altering, or repealing these Bylaws; electing, appointing, or removing any member of any such committee or any director or officer of the Corporation; amending the Articles of Incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease or exchange of all or substantially all of the property and assets of the Corporation other than in the ordinary course of business; authorizing voluntary dissolution of the Corporation or adopting a plan for the distribution of the assets of the Corporation; or amending, altering, or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. All committees so appointed shall keep regular minutes of the transactions of their meetings and shall cause them to be recorded in books kept for that purpose in the office of the Corporation. The designation of any such committee and the delegation of authority thereto, shall not relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

3.15.1 Executive Committee. The Executive Committee shall be a standing committee. The scope of this committee's responsibilities shall include issue analysis and development of proposed policy related to the following areas: the budget, finance, governance, human resources and strategic planning.

3.15.2 Fund Development and Marketing Committee. The Fund Development and Marketing Committee shall be a standing committee. The scope of this committee's responsibilities shall include issue analysis and development of proposed policy related to the following areas: fundraising, advertising, brand and communications.

3.15.3 Vendor Committee. The Vendor Committee shall be a standing committee. The scope of this committee's responsibilities shall include issue analysis and development of proposed policy related to the following areas: policies and practices for financially successful and prosperous markets.

3.16 Remuneration. No stated salary shall be paid directors, as such, for their service, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of such Board; provided, that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefore. Members of special or standing committees may be allowed like compensation for attending committee meetings. Loans. No loans shall be made by the Corporation to any director. Removal. Any director may be removed at any time, with or without cause, by the affirmative vote of two-thirds (2/3) of the votes cast by directors represented in person or by proxy at a meeting of directors at which a quorum is present.

3.19 Action by Directors without a Meeting. Any action required or permitted to be taken at a meeting of the directors, or of a committee thereof, may be taken without a meeting by a written consent setting forth the action so to be taken, signed by all of the directors, or all of the

members of the committee, as the case may be, before such action is taken. Such consent shall have the same effect as a unanimous vote. Any such action may also be ratified after it has been taken, either at a meeting of the directors or by unanimous written consent.

ARTICLE IV: Officers

4.1 President. The Board of Directors shall elect a President to serve as the chief executive officer of the Corporation. The President shall supervise and control the assets, business and affairs of the Corporation. The President shall preside at all meetings of the Board. The President shall be a director. The President may sign certificates for deeds, mortgages, bonds, contracts, or other instruments. The President shall perform all duties incident to the office of president and any other duties which the Board may prescribe.

4.2 Vice President. The Board of Directors shall elect a Vice President who shall assist the President in carrying out the programs of the Corporation. In the event of the death of the President or his or her inability to act, the Vice President shall perform the duties of the President, except as may be limited by resolution of the Board of Directors, with all the powers of and subject to all the restrictions upon the President. The Vice President shall have, to the extent authorized by the President or the Board of Directors, the same powers as the President to sign deeds, mortgages, bonds, contracts or other instruments. The Vice President shall perform such other duties as from time to time may be assigned to them by the President or the Board of Directors.

- (a) Secretary. The Board of Directors shall elect a Secretary who shall: Prepare the minutes of meetings of the directors, keep the minutes in one or more books provided for that purpose, and be responsible for authenticating the records of the Corporation;
- (b) Ensure that all notices are given in accordance with the provisions of these Bylaws and as required by law;
- (c) Serve as custodian of the corporate records and the corporate seal, and ensure that the seal is affixed to all documents requiring the Corporation's seal, provided that the document has been duly authorized for execution;
- (d) Keep a register of the address of each director and officer;
- (e) When required by law or resolution of the Board, sign the Corporation's deeds, mortgages, bonds, contracts, or other instruments; and
- (f) Perform all other duties incident to the office of Secretary or assigned by the President or the Board.

4.3 Treasurer. The Board of Directors shall elect a Treasurer who shall: Receive and give receipts for sums due to the Corporation, and deposit those sums in the name of the Corporation in banks, trust companies, or other depositories which the Board may select in accordance with the provisions of these Bylaws; and

- (b) Perform all other duties incident to the office of treasurer or assigned to the Treasurer by the President or the Board.

4.4 Joinder of Offices. One person may perform the duties of Secretary and Treasurer. Delegation. If any officer of the Corporation is absent or unable to act and no other person is authorized to act in such officer's place by the provisions of these Bylaws, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer or any director or any other person if may select. Vacancies. Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting of the Board.

4.7 Other Officers. The Board of Directors may appoint such other officers or agents as it shall deem necessary or expedient, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

4.8 Loans. No loan shall be made by the Corporation to any officer.

4.9 Compensation; Contract Rights. Officers may receive reimbursement for reasonable expenditures incurred on behalf of the Corporation. Election or appointment of an officer shall not of itself create contract rights.

4.10 Term - Removal. The officers of the Corporation shall hold office until their successors are chosen and qualified. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the whole Board of Directors, but such removal shall be without prejudice to the contracts rights, if any, of the person so removed.

4.11 Resignation. Any officer may resign at any time by delivering notice to the Board of Directors in the form of a record. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.12 Bonds. The Board of Directors may, by resolution, require any and all of the officers to provide bonds to the Corporation, with surety or sureties acceptable to the Board, conditioned for the faithful performance of the duties of their respective offices, and to comply with such other conditions as may from time to time be required by the Board of Directors.

ARTICLE V: Depositories

The monies of the Corporation shall be deposited in the name of the Corporation in such bank or banks or trust company or trust companies as the Board of Directors shall designate and shall be drawn from such accounts only by check or other order for payment of money signed by such persons, and in such manner, as may be determined by resolution of the Board of Directors.

ARTICLE VI: Notices

Except as may otherwise be required by law, any notice to any director may be delivered personally, by electronic transmission or by mail. If mailed, the notice shall be deemed to have

been delivered when deposited in the United States mail, addressed to the addressee at his or her last known address in the records of the Corporation, and postage prepaid.

If notice is provided in an electronic transmission, it must satisfy the following requirements:

- (a) Notice to directors in an electronic transmission that otherwise complies with these Bylaws is effective only with respect to directors who have consented, in the form of a record, to receive notices by electronic transmission.
 - (i) Notice to directors includes material that these Bylaws require or permit to accompany the notice.
 - (ii) A director who provides consent, in the form of a record, to receipt of notices by electronic transmission shall designate in the consent the message format accessible to the recipient, and the address, location, or system to which these notices may be sent by electronic transmission.
 - (iii) A director who has consented to receipt of notices by electronic transmission may revoke the consent by delivering a revocation to the Corporation in the form of a record.
 - (iv) The consent of any director is revoked if the Corporation is unable to deliver two consecutive notices by electronic transmission in accordance with the consent, and this inability becomes known to the secretary of the Corporation or other person responsible for giving the notice. The inadvertent failure by the Corporation to treat this inability as a revocation does not invalidate any meeting or other action.
- (b) Notice to directors who have consented to receipt of notices by electronic transmission may be provided by posting the notice on an electronic network and delivering to the director a separate record of the posting, together with instructions regarding how to obtain access to this posting on the electronic network.
- (c) Notice provided in an electronic transmission is effective when it:
 - (i) Is given by electronic transmission to an address, location, or system designated by the recipient for that purpose, and is made pursuant to the consent provided by the recipient; or
 - (ii) Has been posted on an electronic network and a separate record of the posting has been delivered to the recipient together with instructions regarding how to obtain access to the posting on the electronic network.

ARTICLE VII: Indemnification of Officers, Directors, Employees, and Agents

7.1 Definitions. As used in this Article:

7.1.1 “Agent” means an individual who is, or was, an agent of the Corporation or an individual who, while an agent of the Corporation, is, or was, serving at the Corporation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Agent” includes, unless the context requires otherwise, the estate or personal representative of an Agent.

7.1.2 “Corporation” means this Corporation and any domestic or foreign successor entity.

7.1.3 “Director” means an individual who is, or was, a director of the Corporation or an individual who, while a director of the Corporation, is, or was, serving at the Corporation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Director” includes, unless the context requires otherwise, the estate or personal representative of a Director.

7.1.4 “Employee” means an individual who is, or was, an employee of the Corporation or an individual who, while an employee of the Corporation, is, or was, serving at the Corporation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Employee” includes, unless the context requires otherwise, the estate or personal representative of an Employee.

7.1.5 “Expenses” means all fees and expenses incurred in any Proceeding, including without limitation, the fees and expenses of counsel.

7.1.6 “Indemnitee” means an individual made a Party to a Proceeding because the individual is, or was, a Director, Officer, Employee, or Agent, and who possesses indemnification rights pursuant to the Articles of Incorporation, the Corporation’s Bylaws, or other corporate action. “Indemnitee” shall also include the heirs, executors, and other successors in interest of such individuals.

7.1.7 “Liability” means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable Expenses incurred with respect to a Proceeding.

7.1.8 “Officer” means an individual who is, or was, an officer of the Corporation or an individual who, while an officer of the Corporation, is, or was, serving at the Corporation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Officer” includes, unless the context requires otherwise, the estate or personal representative of an Officer.

7.1.9 “Party” includes an individual who was, is, or is threatened to be, named a defendant or a respondent in a Proceeding.

7.1.10 “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

7.2 Indemnification Rights of Directors, Officers, Employees and Agents.

7.2.1 The indemnification rights and the right to advancement of expenses of the Corporation’s Directors shall be as set forth in the Articles of Incorporation. The procedures of paragraph 7.3 shall apply to such indemnification rights and advancement of expenses unless the Board of Directors adopts or approves further indemnification and expense advancement arrangements as may be permitted by law.

7.2.2 The indemnification rights of the Corporation’s Officers, Employees and Agents shall be as set forth in these Bylaws. The Corporation shall indemnify its Officers, Employees and Agents to the full extent permitted by law, subject to RCW 23B.08.510 through RCW 23B.08.550, against Liability arising out of a Proceeding to which such individual was made a Party because the individual is or was an Officer, Employee or Agent of the Corporation. The Corporation shall advance Expenses incurred by such Officer, Employee or Agent who is a Party to a Proceeding in advance of final disposition of the Proceeding, as provided herein. Notwithstanding the foregoing, no indemnification shall be provided under this Article if payment of any such amount would result in an excess benefit transaction such that the Officer, Employee or Agent would be subject to the imposition of tax and any applicable correction procedures, including repayment of such amounts, under Section 4958 of the Code or the corresponding provision of any future federal tax law.

7.3 Procedure for Seeking Indemnification and/or Advancement of Expenses.

7.3.1 Notification and Defense of Claim. Indemnatee shall promptly notify the Corporation, in the form of a record, of any Proceeding for which indemnification could be sought under this Article or the Articles of Incorporation. In addition, Indemnatee shall give the Corporation such information and cooperation as it may reasonably require and as shall be within Indemnatee’s power. With respect to any such Proceeding as to which Indemnatee has notified the Corporation:

- (a) The Corporation shall be entitled to participate therein at its own expense; or
- (b) Except as otherwise provided below, to the extent that it may wish, the Corporation, jointly with any other indemnifying Party similarly notified, will be entitled to assume the defense thereof, with counsel satisfactory to Indemnatee. Indemnatee’s consent to such counsel may not be unreasonably withheld.

After notice from the Corporation to Indemnitee of its election to assume the defense, the Corporation will not be liable to Indemnitee under this Article for any Expenses subsequently incurred by Indemnitee in connection with such defense. Indemnitee shall, however, continue to have the right to employ its counsel in such Proceeding, at Indemnitee's expense; and if:

- (a) The employment of counsel by Indemnitee has been authorized by the Corporation;
- (b) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnitee in the conduct of such defense; or
- (c) The Corporation shall not, in fact, have employed counsel to assume the defense of such Proceeding;

then the fees and Expenses of Indemnitee's counsel shall be at the expense of the Corporation.

The Corporation shall not be entitled to assume the defense of any Proceeding brought by, or on behalf of, the Corporation or as to which Indemnitee shall reasonably have made the conclusion that a conflict of interest may exist between the Corporation and the Indemnitee in the conduct of the defense.

7.3.2 Information to be Submitted and Method of Determination and Authorization of Indemnification. For the purpose of pursuing rights to indemnification under the Articles of Incorporation and/or this Article, Indemnitee shall submit to the Board or Directors a sworn statement requesting indemnification and reasonable evidence of all amounts for which such indemnification is requested (together, the sworn statement and the evidence constitute an "Indemnification Statement").

Submission of an Indemnification Statement to the Board of Directors shall create a presumption that the Indemnitee is entitled to indemnification hereunder, and the Corporation shall, within sixty (60) calendar days thereafter, make the payments requested in the Indemnification Statement to, or for the benefit of, the Indemnitee, unless: (a) within such sixty (60) calendar day period it shall be determined by the Corporation that the Indemnitee is not entitled to indemnification under the Articles of Incorporation; (b) such vote shall be based upon clear and convincing evidence (sufficient to rebut the foregoing presumption); and (c) the Indemnitee shall receive notice of such determination in the form of a record, which shall disclose with particularity the evidence upon which the determination is based.

The foregoing determination shall be made (a) by the Board of Directors by majority vote of a quorum consisting of Directors not at the time parties to the Proceeding; (b) if a quorum cannot be obtained under (a) in this paragraph, by majority vote of a committee duly designated by the Board of Directors, in which designation Directors who are Parties may participate, consisting solely of two or more Directors not at the time Parties to the Proceeding; or (c) by special legal counsel as provided by RCW 23B.08.550.

Any determination that the Indemnitee is not entitled to indemnification, and any failure to make the payments requested in the Indemnification Statement, shall be subject to judicial review by any court of competent jurisdiction.

7.3.3 Special Procedure Regarding Advance for Expenses. An Indemnitee seeking payment of Expenses in advance of a final disposition of the Proceeding must furnish the Corporation, as part of the Indemnification Statement:

- (a) a written affirmation, given in the form of a record, of the Indemnitee's good faith belief that the Indemnitee has met the standard of conduct required to be eligible for indemnification; and
- (b) a written undertaking, in the form of a record constituting an unlimited general obligation of the Indemnitee, to repay the advance if it is ultimately determined by the final disposition of a court of competent jurisdiction that the Indemnitee did not meet the required standard of conduct.

If the Corporation determines that indemnification is authorized, the Indemnitee's request for advance of Expenses shall be granted.

7.3.4 Settlement. The Corporation is not liable to indemnify Indemnitee for any amounts paid in settlement of any Proceeding without the Corporation's consent, given in the form of a record. The Corporation shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's consent, given in the form of a record. Neither the Corporation nor Indemnitee may unreasonably withhold its consent to a proposed settlement.

7.4 Contract and Related Rights.

7.4.1 Contract Rights. The right of an Indemnitee to indemnification and advancement of Expenses is a contract right upon which the Indemnitee shall be presumed to have relied in determining to serve, or to continue to serve, in his or her capacity with the Corporation. Such right shall continue as long as the Indemnitee shall be subject to any possible Proceeding. Any amendment to, or repeal of, this Article shall not adversely affect any right or protection of an Indemnitee with respect to any acts or omissions of such Indemnitee occurring prior to such amendment or repeal.

7.4.2 Optional Insurance, Contracts, and Funding. The Corporation may:

- (a) Maintain insurance, at its expense, to protect itself and any Indemnitee against any Liability;
- (b) Enter into contracts with any Indemnitee in furtherance of this Article and consistent with the Act; and

- (c) Create a trust fund, grant a security interest, or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

7.4.3 Severability. If any provision or application of this Article shall be invalid or unenforceable, the remainder of this Article and its remaining applications shall not be affected thereby, and shall continue in full force and effect.

7.4.4 Right of Indemnitee to Bring Suit. If (a) a claim under the Articles of Incorporation and/or this Article for indemnification is not paid in full by the Corporation within sixty (60) days after notice of a claim has been received by the Corporation; or (b) a claim under this Article for advancement of Expenses is not paid in full by the Corporation within twenty (20) days after notice of a claim, then the Indemnitee may, but need not, at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the extent successful in whole or in part, the Indemnitee shall be entitled to also be paid the expense (to be proportionately prorated if the Indemnitee is only partially successful) of prosecuting such claim.

Neither (a) the failure of the Corporation (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such Proceeding that indemnification or reimbursement or advancement of Expenses to the Indemnitee is proper in the circumstances, nor (b) an actual determination by the Corporation (including its Board of Directors or its independent legal counsel) that the Indemnitee is not entitled to indemnification or to the reimbursement or advancement of Expenses, shall be a defense to the Proceeding or create a presumption that the Indemnitee is not so entitled.

7.5 Exceptions. Notwithstanding any other provision herein or in the Corporation's Articles of Incorporation to the contrary, the Corporation shall not be obligated pursuant to the terms of this Article to indemnify or advance Expenses to Indemnitee with respect to any Proceeding:

- (a) Initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to Proceedings brought to establish or enforce a right to indemnification under the Bylaws, or any other statute or law or as otherwise required under the statute; but such indemnification or advancement of Expenses may be provided by the Corporation in specific cases if the Board of Directors finds it to be appropriate.
- (b) Instituted by Indemnitee to enforce or interpret rights under the Bylaws, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding was not made in good faith or was frivolous.
- (c) For which any of the Expenses or Liabilities for indemnification being sought have been paid directly to Indemnitee by an insurance carrier under an insurance policy maintained by the Corporation.

- (d) If the Corporation is prohibited by its Articles of Incorporation, the Act or other applicable law as then in effect from paying such indemnification and/or advancement of Expenses.

ARTICLE VIII: Books and Records

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board of Directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its directors, giving the names and addresses of all directors.

ARTICLE IX: Amendments

The Board of Directors shall have power to make, alter, amend, and repeal the Bylaws of this Corporation; provided, that the Board will not approve any such alteration, amendment, or repeal that would adversely impact the rights of any class of members unless such alteration, amendment, or repeal shall first have received the approval of two-thirds (2/3) of the members of such class.