

**BYLAWS OF THE NORTH CAROLINA VETERINARY MEDICAL
FOUNDATION, INC.**

(Originally adopted on May 18, 1978; amended on November 8, 1978; June 5, 1985; November 3, 1988; December 9, 1994; June 23, 2006; November 21, 2008; October 29, 2010, April 20, 2013, October 23, 2015, October 30, 2020).

**ARTICLE I
Offices**

Section 1. Registered Office. The corporation shall have and continuously maintain in this State a registered office and a registered agent whose office is identical with such registered office. Such registered office shall be located at Holladay Hall, North Carolina State University, Raleigh, Wake County, North Carolina or at such other place within the State of North Carolina as may from time to time be fixed and determined by the Board of Directors.

Section 2. Other Offices. The corporation may have offices at such places, either within or outside the state of North Carolina as the Board of Directors may from time to time determine.

**ARTICLE II
Membership**

Section 1. Members. The corporation shall have no members.

**ARTICLE III
Board of Directors**

Section 1. General Powers. The property, affairs and business of the corporation shall be managed by the Board of Directors.

Section 2. Number, Tenure and Qualifications. The corporation shall be governed by a Board of Directors. The number of persons on such Board of Directors shall consist of up to twenty-nine (29) persons, four (4) of whom (4) shall be *ex officio* Directors. These *ex officio* directors are: 1) the Commissioner of Agriculture of the State of North Carolina, 2) the President of the North Carolina State Grange, 3) the President of the North Carolina Farm Bureau, and 4) the Treasurer of North Carolina State University (“NC State”) and a

Senior Administrative Officer of NC State who is also *ex-officio* Treasurer of the corporation. With the exception of the Treasurer of North Carolina State University and a Senior Administrative Officer of NC State who is also *ex-officio* Treasurer of the corporation who shall have voting power, all other *ex officio* directors will not have voting power.

The remaining Directors shall be elected; provided, however, no more than twenty-five percent (25%) of the elected members of the Board of Directors shall be veterinarians. Those persons elected to succeed Directors whose terms have expired shall be elected at the annual Fall meeting of the Board of Directors by the then members of Board of Directors, including those members whose terms expire at the conclusion of such annual meeting each year. They must receive the affirmative vote of a majority of the members of the Board of Directors present but no less than one-third of the number of directors in office. Directors so elected, unless a director dies, resigns or is otherwise disqualified shall serve for a term of four (4) years, beginning at the adjournment of the annual meeting at which they are elected. They would serve for four (4) year terms; may be selected for second term but may not serve more than eight (8) years consecutively, then eligible to return after one (1) year of non-service. The elected Directors shall be divided into four classes of up to six (6) Directors each, and the terms of the classes of the elected Directors shall be staggered such that the term of one (1) class of elected Directors shall expire each year. In the event the number of elected Directors shall be increased, the additional elected Directors shall be added to each class of elected Directors on a “pro rata” basis such that following such increase an equal number of Directors will be elected each year. In the event the number of elected Directors shall be decreased, the elected Directors removed by reason of such decrease shall be removed from each class of elected Directors on a “pro rata” basis such that following such decrease an equal number of Directors will be elected each year.

Section 3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held at the office of the corporation during the fourth quarter of each year. There shall be at least one (1) additional regular meeting of the Board of Directors each year, to be held during the second quarter of each year. The Board of Directors may provide, by resolution, for the holding of such meetings at a place other than the office of the corporation, within or without the State of North Carolina, without other notice than such resolution.

Section 4. Substitute Annual Meeting. If any regular meeting provided for by Section 3 above shall not be held during the quarters designated in such section, a substitute meeting may be called in the manner provided for the call of a special meeting in accordance with the provisions of Section 5 of this Article III; and a substitute meeting so called shall be designated as, and be treated for all purposes, as a regular meeting.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or Vice President or by three or more of the Directors. The person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of North Carolina, as the place for holding such special meetings. Notwithstanding, the location of any special meeting must be within fifty (50) miles of the corporate offices of the Foundation unless otherwise agreed by the majority of the Executive Committee.

Section 6. Notice of Meetings. Notice of each regular meeting of the Board of Directors shall be given at least thirty (30) days in writing prior thereto. Notice of any special meeting of the board of Directors shall be given no less than two (2) business days in writing prior thereto. The notice of any special meeting must state the business to be transacted or the purpose of the meeting in the notice. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these bylaws.

Section 7. Quorum. The presence of one-third (1/3) of the members of the Board of Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business; provided, that, if less than a quorum of the Directors shall be present at the time and place of any meeting, the Directors present may adjourn the meeting from time to time until a quorum shall be present, and notice of any adjourned meeting need not be given. Virtual Attendance: Members may participate in any meeting through the use of a tele- or videoconference or similar communications equipment by means of which all persons participating in the meeting can communicate with one another or through any technology allowable under law, but only to the extent allowed by the Board of Directors. Such participation in the meeting shall constitute presence in person at the meeting.

Section 8. Voting. Except as otherwise expressly provided by statute, or by Charter of the corporation, or by these bylaws, the action of a majority of the Directors present at a meeting at which a quorum is present shall be the action of the Board of Directors.

Section 9. Resignation of Directors. Any Director may resign at any time by giving notice thereof in writing to the President of the corporation. Such resignation shall take effect at the time specified therein, or if no time is specified, at the time such resignation is received by the President, unless it shall be necessary to accept such resignation by its terms

before it becomes effective, in which event the resignation shall take effect upon its acceptance by the Executive Committee of the Board.

Section 10. Disqualification of Directors. Directors may be removed, either with or without cause, upon recommendation of the Executive Committee, by vote of a majority of the whole Board of Directors at a special meeting of the Board called for that purpose. A director appointed in accordance with the provisions of Section 2 of this Article III may be removed, either with or without cause, by the Board of Directors, by a majority vote of the Directors present at any meeting, or by any officer or agent on whom such power of removal may be conferred by the Board of Directors. The removal of any person from office shall be without prejudice to the contract rights, if any, of the person so removed.

Section 11. Vacancies. In the event of any vacancy occurring in the Board of Directors by death, resignation, disqualification, or otherwise, the remaining Directors shall continue to act; and such vacancy may be filled by the vote of a majority of the remaining Directors, even though such majority is less than a quorum, or by the sole remaining Director if there be only one (1) Director remaining. Any Director so chosen shall hold office for the unexpired portion of the term of the person whom the newly elected Director succeeds and until his successor shall have been duly elected and qualified, or until his death, or until he/she shall resign or shall become disqualified. An increase in the number of Directors shall be deemed to create vacancies in the Board of Directors to be filled in the manner provided in Section 2 of this Article III.

Section 12. Compensation of Directors. Directors shall not receive any compensation for their services as such; provided, however, that nothing herein contained shall be construed to preclude any person who is a Director from also serving the corporation in another capacity and receiving compensation therefore.

Section 13. Director Emeritus. From time to time the board of Directors may recognize exemplary service of retiring or former directors by electing deserving individuals to the position of Director Emeritus. Directors Emeritus will serve in an ex officio status and will serve for life unless he or she resigns or is otherwise disqualified but will have no voting power. Nomination and election will take place at the Foundation's 4th quarter meeting and election will require a two-thirds (2/3) affirmative vote of all Directors present.

Section 14. Duties. Each Director shall discharge his/her duties as a Director, including his duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director reasonably believes to be in the best interest of the corporation. Failure to act in

good faith may be grounds for disqualification and removal as a Director.

Section 15. Director's Conflict of Interest. Any corporate transaction in which a Director has a direct or indirect interest must be authorized, approved, or ratified in good faith at a regular or special meeting of the Board of Directors and by a two-thirds (2/3) majority of those Directors present, but not less than fifty per cent (50%) of the Directors who have no direct or indirect interest in the transaction even though less than a quorum; provided, however, no such transaction shall be authorized, approved, or ratified by a single Director. For purposes of this Section, a Director has an indirect interest in a transaction if:

- (a) Another entity in which he/she has a material financial interest or in which he/she is a general partner is a party to the transaction; or
- (b) Another entity of which he/she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the Board.

Section 16. Certain Director Liability. In addition to other liabilities imposed by law upon Directors, a Director shall be subject to the following liabilities:

- (a) All Directors who vote for or assent to any distribution of assets of the corporation contrary to any lawful restrictions in the North Carolina Nonprofit Corporation Act (the "Act"), the Articles of Incorporation, or these bylaws, shall be jointly and severally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating such restrictions.
- (b) All Directors who vote for or assent to the making of any loan or guaranty or other form of security by the corporation to or for the benefit of the Directors or officers of the corporation, or any of them, except loans, guaranties or other forms of security made to full-time employees of the corporation who are also Directors or officers of the corporation and which were made in accordance with Section 13 of this Article, section 2 of Article VI, and this Section, shall be jointly and severally liable to the corporation for the repayment or return of the money or value loaned, with interest thereon at the legal rate until paid, or for any liability of the corporation upon the guarantee.
- (c) A Director shall not be liable under the provisions of subparagraphs (a) or (b), above, if he/she performed his duties in compliance with section 13 of this Article III or (unless his actual knowledge concerning the matter in

question makes such reliance unreasonable) he/she relied on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (i) one or more officers or employees of the corporation whom the Director reasonably believes to be reliable and competent in the matters presented; (ii) legal counsel, public accountants, or other persons as to matters the Director reasonably believes are within their professional or expert competence; or (iii) a committee of the Board of which he/she is not a member if the Director reasonably believes the committee merits confidence.

Section 17. Adherence to Social Media Policy. All directors will be provided a copy of the NC State Veterinary Medicine Social Media Guidelines and are required to adhere to these guidelines with respect to social media postings that are in regard to or related to the College of Veterinary Medicine or NCSU at large, its staff, faculty, students, patients or clients.

ARTICLE IV

Officers

Section 1. Number of Officers. The officers of the corporation shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as may be appointed in accordance with the provisions of section 3 of this Article IV. Any two (2) offices may be held by one (1) person, except the offices of President and Secretary; but no officer shall sign or execute any document in more than one (1) capacity.

Section 2. Election, Term of Office and Qualifications. With the exception of the Secretary and the Treasurer, who also serve in an ex officio capacity as a Director, officers of the corporation shall be elected by the Board of Directors every two years to serve two-year terms at the Regular Annual Meeting of the Board, and shall hold office until the second Regular Annual Meeting of the Board held next after his/her election, or until his/her death, or until he/she shall resign or be disqualified or otherwise removed from office. All of the officers except the Secretary and Treasurer shall be elected from the membership of the Board of Directors.

Section 3. Subordinate Officers and Agents. The Board of Directors from time to time may appoint other officers or agents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors from time to time may determine. Traditionally the Vice Chancellor of Finance and Administration is appointed to serve as Assistant Treasurer. The Board of Directors may delegate to any officer or agent the power to appoint any subordinate officer or agent and to prescribe his respective

authority and duties.

Section 4. Disqualification and Removal of an Officer. With the exception of the Secretary and the Treasurer, who also serve in an ex officio capacity as a Director, the officers specifically designated in Section 1 of this Article IV may be removed, either with or without cause, by vote of a majority of the whole Board of Directors at a special meeting of the Board called for that purpose. The officers appointed in accordance with the provisions of Section 3 of this Article IV may be removed, either with or without cause, by the Board of Directors, by a majority vote of the Directors present at any meeting, or by any officer or agent on whom such power of removal may be conferred by the Board of Directors. The removal of any person from office shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors or to the President of the corporation or, if he/she was appointed by an officer or agent in accordance with Section 3 of this Article IV, by giving written notice to the officer or agent who appointed him/her. Any such resignation shall take effect upon its being accepted by the Executive Committee or President of the Board of Directors.

Section 6. Vacancies. A vacancy in any office because of death, resignation, removal, or disqualification, or any other cause, shall be filled for the unexpired portion of the term in the manner prescribed by these bylaws for regular appointments or elections to such offices.

Section 7. President. The President shall be the chief executive officer of the corporation, and, subject to the instructions of the Board of Directors, shall have general charge of the business, affairs, and property of the corporation and control over other officers, agents, and employees. He/she shall preside at all meetings of the Board of Directors and the Executive Committee at which he/she may be present. The President shall do and perform such other duties as from time to time may be assigned to him/her by the Board of Directors or the Executive Committee. While it is desirable that the President should be the same person who immediately preceded the outgoing President as Vice President of the corporation, all candidates for President shall, in any event, be subject to regular nomination and election in accordance with these Bylaws.

Section 8. Vice President. At the request of the President, or in his/her absence or disability, the Vice President shall perform all the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties and have such authority as from time to time may be assigned to him/her by the Board of Directors or the Executive Committee.

Section 9. Secretary. The Associate Dean (or Interim Associate Dean) of Advancement of North Carolina State College of Veterinary Medicine, shall serve ex-officio as Secretary of the corporation. The Secretary shall keep the minutes of the meetings of the Board of Directors and the Executive Committee and shall see that all notices are duly given in accordance with the provisions of these bylaws or as required by law. He/she shall be custodian of the records, books, reports, statements, certificates, and other documents of the corporation and the seal of the corporation and see that the seal is affixed to all documents requiring such seal. In general, he/she shall perform all duties and possess all authority incident to the office of Secretary, and he/she shall perform such other duties and have such other authority as from time to time may be assigned to him/her by the Board of Directors or the Executive Committee.

Section 10. Treasurer. The Treasurer of North Carolina State University, a Senior Administrative Officer of North Carolina State University, shall serve ex-officio as Treasurer of the corporation. The Treasurer shall have supervision over the funds, securities, receipts, and disbursements of the corporation. He/she shall in general perform all duties and have all authority incident to the office of Treasurer and shall perform such other duties and have such other authority as from time to time may be assigned or granted to him/her by the Board of Directors or the Executive Committee. He/she may be required to give a bond for the faithful performance of his duties in such form and amount as the Board of Directors may determine.

Section 11. Duties of Officers May Be Delegated. In case of the absence of any officer of the corporation or for any other reason that the Board may deem sufficient, the Board may delegate the powers or duties of such officer to any other officer or to any Director for the time being provided a majority of the entire Board of Directors concurs therein.

Section 12. Salaries of Officers. No officer of the corporation shall receive a salary for his service as such officer if he/she is also a Director of the corporation.

Section 13. Duties. (a) An officer with discretionary authority shall discharge his duties under that authority in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner he/she reasonably believes to be in the best interests of the corporation. (b) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of his/her office in compliance with subparagraph (a), above, or (unless his actual knowledge concerning the matter in question makes such reliance unreasonable) he/she relied on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the

matters presented; or (ii) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within their professional or expert competence.

ARTICLE V

Committees of the Board

Section 1. Generally. The Board of Directors may create such Committees as are necessary from time to time to assist the Board. These committees may be standing committees, *ad hoc* committees or subcommittees.

Section 2. Permanent Committees. The following committees are permanent standing committees: the Executive Committee, the Audit and Investment Committee and the Nominating Committee. Each committee will have a Chair and Vice-Chair or Co-Chairs who may be appointed by the President or Executive Committee.

2(a). Executive Committee. At each annual meeting the Board of Directors of the corporation shall elect an Executive Committee consisting of the officers, the immediate past president, the *ad hoc* committee chairs, and up to ten (10) other members of the Board of Directors. The Secretary of the corporation shall serve in an advisory capacity only and shall be a non-voting member of the Executive Committee. Each member of the Executive Committee shall serve until the annual meeting of the Board of Directors next after his election or until his earlier death, resignation, disqualification or removal. In any event, terms of all members of the Executive Committee shall coincide with the terms of their qualifying respective offices or designations; provided further, however, the immediate past president shall be a non-voting member of the Executive Committee unless he/she is also a member of the Board of Directors. The Executive Committee so appointed, in the interims between the meetings of the Board of Directors, shall exercise all the powers of the corporation, including all of the powers that have been conferred upon it or upon the Board of Directors, except that the Executive Committee shall have no power or authority to (a) authorize distributions; (b) approve dissolution, merger or the sale, pledge, or transfer all or substantially all of the corporation's assets; (c) elect, appoint or remove Directors, or fill vacancies on the Board or on any of its committees; or (d) adopt, amend, or repeal the Articles of Incorporation or bylaws. The presence of six (6) members of the Executive Committee at any regular or special meeting of said Committee shall constitute a quorum for the transaction of business.

2(b). Audit & Investment Committee. The Board of Directors shall appoint an Audit and Investment Committee, which shall be composed of five (5) members of the

Board of Directors none of whom shall be employees of either North Carolina State University or the corporation and each of whom shall remain in office at the will of the Board of Directors unless sooner disqualified by becoming an employee of either North Carolina State University or the corporation. This Audit & Investment Committee so appointed shall recommend the manner in which and the extent to which the funds of the corporation shall be invested from time to time and the making and altering of the investments of the corporation. No funds shall be invested without the approval of the Investment Committee. The Audit & Investment Committee so appointed shall receive the report of the independent CPA firm that conducts the corporation's annual audit and relevant tax forms to be submitted by the corporation.

Section 3. *Ad Hoc* Committees. Ad Hoc committees or subcommittees and their members may be appointed at the discretion of the Executive Committee for specific purposes. *Ad hoc* committees will be terminated upon completion of their specific assignments and submission of a report if required. All *ad hoc* committees will have a Chair and Vice-Chair, or Co-Chairs appointed by the President or Executive Committee.

ARTICLE VI

Contracts, Loans, Deposits, Checks, Drafts, Etc.

Section 1. Contracts. Except as otherwise provided in these bylaws, the Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or to execute or deliver any instruments on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name, unless and except as authorized by the Board of Directors. Any officer or agent of the corporation thereunto so authorized may effect loans or advances for the corporation and for such loans and advances may make, execute, and deliver promissory notes, bonds, or other evidences or indebtedness of the corporation. Any such officer or agent, when thereunto so authorized, may mortgage, pledge, hypothecate, or transfer as security for the payment of any and all loans, advances, indebtedness, and liabilities of the corporation any real property and all stocks, bonds, other securities, and other personal property at any time held by the corporation, and to that end, may endorse, assign, and deliver the same, and do every act and thing necessary or proper in connection therewith. Such authority may be general or confined to specific instances.

Section.3. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks or trust companies or with such bankers or other depositories as the Board of Directors may select, or as may be selected by any officer

or officers, agent or agents of the corporation to whom such power may from time to time be given by the Board of Directors.

Section 4. Checks, Drafts, Etc. All notes, drafts, acceptances, checks and endorsements or other evidences of indebtedness shall be signed by the President or a Vice President and by the Secretary or the Treasurer, or in such other manner as the Board of Directors from time to time may determine. Endorsements for deposit to the credit of the corporation in any of its duly authorized depositories will be made by the President or Treasurer or by any officer or agent who may be designated by resolution of the Board of Directors in such manner as such resolution may provide.

Section 5. Gifts. The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the corporation. Such gift or gifts, contributions, bequests or devises are subject to compliance with the applicable policies of the North Carolina State University.

ARTICLE VII

General Provisions

Section 1. Corporate Seal. The corporate seal shall be in such form as shall be approved from time to time by the Board of Directors.

Section 2. Fiscal Year. The fiscal year of the corporation shall be established from time to time by resolution of the Board of Directors.

Section 3. Waiver of Notice. Whenever any notice whatever is required to be given under the provisions of the Act of the State of North Carolina or under the provisions of the Articles of Incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 4. Amendment to Bylaws. These bylaws may be altered, amended, or repealed, and new bylaws may be adopted by two-thirds (2/3) of the Directors present at any meeting of the Board of Directors; provided, however, that at least seven (7) days' notice in writing shall be given of the intention to alter, amend, or repeal or to adopt bylaws at such meeting. In any event, these Bylaws shall be altered, amended, or repealed and new bylaws shall be adopted as may be required from time to time to conform to the requirements of any applicable North Carolina General Statutes pertaining to non-profit corporations or other applicable state and federal laws as may be amended from time to time, University of North Carolina Regulations, as may be amended from time to time, or to maintain the status

of the corporation as an Associated Entity of NC State pursuant to any applicable University of North Carolina Regulations, as may be amended, or any Operating Agreement with NC State. The Board of Directors shall provide NC State with a copy of these Bylaws, as may be amended from time to time, and shall provide NC State with any proposed amendments of these bylaws as soon as possible but in no event less than fifteen (15) days prior to the meeting of the Board of Directors at which they are to be considered for adoption.

Provided, however, that under no circumstances shall these bylaws be amended so that the corporation may operate other than exclusively for religious, charitable, scientific, literary or educational purposes, or so that any Director or any other private individual may participate in the distribution of the earnings, funds or properties of this corporation, nor shall these bylaws be amended to authorize the corporation to conduct its affairs in any manner or for any purpose contrary to the provisions set forth in Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future Internal Revenue Code.

ARTICLE VIII

Indemnification

Section 1. Officer, Director, Employee and Agent Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (hereinafter, a "proceeding" and including without limitation, a proceeding brought by or on behalf of the corporation itself), by reason that he/she is or was a Director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or as a trustee or administrator under an employee benefit plan, where the basis of such proceeding is alleged action in an official capacity as a Director, officer, employee or agent or in any other capacity while serving as a director, officer, partner, employee, agent, trustee or administrator, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Act as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than the Act permitted the corporation to provide prior to such amendment) against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to serve in the capacity that initially entitled such person to indemnification hereunder and shall inure to the benefit of his heirs, executors and administrators; provided, however, that the corporation shall indemnify

any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board.

1 (a) The right to indemnification conferred in this Section 1 shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Act so requires, the payment of expenses incurred by a Director, officer, employee or agent in his capacity as such (and not in any other capacity in which service was or is rendered by such person while a director, officer, employee or agent including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such person is not entitled to be indemnified under this Section or otherwise. The right to indemnification requires that the corporation periodically advance attorney fees and costs incurred by the Director or Directors in any qualified proceeding. Periodic advances shall occur no less than on a quarterly basis.

Section 2. Right of Claimant to Bring Suit. If a claim under Section 1 hereof is not paid in full by the corporation within ninety (90) days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the Act for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he/she has met the applicable standard of conduct set forth in the Act, nor an actual determination by the corporation (including its Board or independent legal counsel) that the claimant has not met the applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 3. Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any law (common or statutory), the Articles of Incorporation, these bylaws, any agreement, the vote of disinterested Directors, or otherwise.

Section 4. Insurance. The corporation will maintain Director and Officer Liability insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the corporation or is or was serving at the request of the corporation 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 against any liability asserted against and incurred by that person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify that person against such liability under the Act.

Section 5. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify and hold harmless each Director, officer, employee and agent of the corporation, as to costs, charges and expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the full extent permitted by applicable law.