

**THE FIBRE BOX ASSOCIATION**  
**AMENDED AND RESTATED BYLAWS**  
**NOVEMBER 2004**

**ARTICLE 1. OFFICES**

1.1 Principal Office - Delaware: The principal office of the Association in the State of Delaware shall be in the City of Wilmington, County of New Castle, and the name of the resident agent in charge thereof is The Corporation Trust Company.

1.2 Additional Offices: The Association may also have offices at such other place or places, either within or without the State of Delaware, as the Board of Directors may from time to time designate or as the business of the Association may require.

**ARTICLE 2. ASSOCIATION OBJECTIVES**

The principal objects and purposes for which the Association is organized are:

- (1) To promote the general welfare of the corrugated and solid fibre container (hereinafter referred to as "corrugated container") industry in North America.
- (2) To represent the members of that industry in matters before appropriate governmental, transportation, industrial or other boards or agencies.
- (3) To gather, compile and disseminate statistical information with respect to the operations of the corrugated container industry.
- (4) To promote and develop the market, both domestic and foreign, for corrugated container products.
- (5) To maintain a high standard of competitiveness for the products of the corrugated container industry.
- (6) To promote the safety of the employees of the corrugated container industry.
- (7) To promote technical developments for the corrugated container industry.
- (8) To promote the environmental compatibility of the manufacture, distribution, use and recycling of the products of the corrugated container industry.

**ARTICLE 3. ASSOCIATION MEMBERSHIP**

3.1 Qualification and Acceptance: Any individual, partnership or corporation engaged in the production of corrugated products in North America is eligible for membership in the Association and may become a member by making application to the Secretary of the Association on such form as may be approved by the Board of Directors and, if qualified, shall be accepted for membership in the Association.

3.2 Membership Classes: The Board of Directors may create such additional classes of members with qualifications, rights, privileges and obligations as may be determined by it.

3.3 Membership Reporting: Every member shall file with the Association, at the times specified therefor, such reports and statistics of its operations as the Association may require. A member or any group of members which owns 25% of the ownership interests, or other practical control of another corporation, partnership, or other business enterprise engaged in the production of corrugated products shall also cause the statistics thereof to be reported. The data contained in such member reports may be included by the Association in appropriate statistical compilations, but shall not be divulged by the Association to other members except as required by legal process and only then if approved by the Association's Counsel.

3.4 Area Designations: For convenience in compiling statistical information, the Board of Directors may designate Areas and Regions of the Association and modify them as statistical reporting requirements may warrant.

3.5 Dues and Assessments:

(A) Dues: Dues for members shall be fixed by the Board of Directors and made payable at such times as the Board may prescribe. Such dues shall be fixed at a rate which shall, in the opinion of the Board, be necessary for operation of the business of the Association.

(B) Assessments: If special services are provided to some or all of the members and the Board of Directors approves furnishing such services, the costs thereof may be assessed in a manner determined by the Board of Directors.

3.6 Annual Meeting: The Annual Meeting of members of the Association shall be held on the date and at the place designated by the Board of Directors.

3.7 Special Meetings: Special Meetings of members for any purpose or purposes may be called at any time by the Chairman or by any five (5) members of the Board of Directors, and shall be called by the Chairman at the written request of ten or more members of the Association. A Special Meeting shall be held at such time and place as shall be stated in the notice of the meeting.

3.8 Notice of Meeting: Written notice of the time and place of the Annual Meeting or a Special Meeting shall be sent by the Secretary to each member of the Association, by regular or electronic mail, facsimile or telegraph, not less than ten (10) days prior to the date of the meeting.

3.9 Quorum: Twenty-five percent (25%) of the members of the Association, present in person or by written proxy, shall constitute a quorum at any duly-called meeting of members.

3.10 Representation at Meetings: Each member shall appoint one employee, partner, or officer to represent such member at all meetings, with power to act upon all subjects considered at such meetings. Any number of alternates may also be appointed. The Board of Directors of the Association shall have authority to require any such appointment to be in writing and to be in such form as may from time to time be designated by it.

3.11 Voting at Meetings:

(A) Voting Eligibility: Each member of the Association in good standing shall be entitled to one vote at every meeting of the members; a member shall be "in good standing", if the member is not, at the time of the meeting, delinquent in the payment of any amount or in the providing of any report due the Association.

(B) Required Vote: A majority of the votes entitled to be cast by members present in person or represented by written proxy at a meeting at which a quorum is present shall be necessary for adoption of any matter voted on by the members, unless a greater proportion is required by law, the Association's Certificate of Incorporation or these Bylaws.

3.12 Consent of Members in Lieu of Meeting: Any action required to be taken at any Annual or Special Meeting of the members, or any action which may be taken at any Annual or Special Meeting of such members, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the number of members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Prompt notice of the taking of any action without unanimous consent shall be given to all members who have not so consented in writing.

3.13 Resignation: A member may resign at any time by giving written notice to the Association's Secretary. Such resigning member shall be obligated to pay all dues to the end of the budget year in which resignation is received and any other sums owed to the Association. Any such resigning member relinquishes all of its interests in the Association and its assets.

3.14 Expulsion; Suspension of Statistics:

(A) Expulsion: Upon failure of a member to fulfill the reasonable obligations of membership, including, but not limited to, the payment of periodic dues and the furnishing of reports and statistics, as required from time to time by the Association, the member may be expelled by two-thirds vote of the Directors present at any regular or Special Meeting of the Board of Directors at which a quorum is present. Any such expelled member relinquishes all of its interest in the Association and its assets, but shall remain liable for the sums owed the Association through the end of the budget year during which expulsion occurs.

(B) Suspension of Statistics: After thirty (30) days written notice, the President, with the approval of a majority of the members of the Executive Committee, acting either at or without a meeting, may suspend all statistical services to a member which fails to furnish reports to the Association. The President shall report any such suspension of statistical services at the next Executive Committee or Board of Directors' meeting for further action.

## **ARTICLE 4. BOARD OF DIRECTORS**

4.1 General Powers: The property, business and affairs of the Association shall be managed by its Board of Directors.

4.2 Qualifications, Number and Election:

(A) Qualifications: Each Director shall be the designated representative of a member of the Association or an officer of the Association. No more than one (1) Director shall be elected from each member.

(B) Number, Election and Term: (B) Number, Election and Term: The Board of Directors shall consist of: (1) Eighteen (18) Directors, six (6) of whom shall be elected each year at the Annual Meeting for a three (3) year term and (2) the current Chairman, Vice Chairmen and President of the Association and the immediate Past Chairman of the Association. No Director shall serve a third consecutive three-year term. A Director who serves as such because of his

position as a current or past officer of the Association shall serve as a Director only during his term as such current or past officer, unless otherwise elected to a three (3) year term. Each Director shall serve until his successor shall have been elected, or until his death, resignation, or removal.

4.3 Regular Meeting: A regular meeting of the Board of Directors shall be held in conjunction with the Annual Meeting of members.

4.4 Special Meetings: Special meetings of the Board of Directors may be called by the Chairman on three (3) days' notice to each Director, either personally or by regular or electronic mail, facsimile or by telegram. Special meetings shall be called by the Chairman or Secretary in like manner and on like notice on written request of any three (3) Directors. Neither the business to be transacted at, nor the purpose of, a special meeting of the Board of Directors need be specified in the notice of such meeting.

4.5 Quorum; Required Vote: One half of the number of Directors fixed by Section 4.2(B) shall constitute a quorum for the transaction of business at a duly-called meeting of the Board of Directors. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the action of the Board of Directors, except as may be otherwise specifically provided by law, the Association's Certificate of Incorporation, or these Bylaws.

4.6 Consent of Board in Lieu of Meeting: Any action required or permitted to be taken at a meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board, or of the committee, as the case may be, consent thereto in writing.

4.7 Vacancies: A vacancy existing in the Board of Directors may be filled by appointment of the Chairman, subject to confirmation by the Board at its next meeting.

4.8 Removal and Resignation: Any Director may be removed from office by the affirmative vote of a majority of the members taken at a meeting of members. A Director may resign at any time by filing his written resignation with the Secretary of the Association.

4.9 Compensation: Directors shall serve without compensation. However, nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

4.10 Executive Committee: The Chairman of the Board of Directors shall appoint annually from its membership an Executive Committee which shall consist of the Chairman, the Vice Chairmen, the President, and the immediate Past Chairman, plus such additional members as the Chairman may determine. The appointment of the Executive Committee shall be subject to the approval of the Board of Directors at its first meeting after appointment thereof. In addition to its other functions, this Executive Committee shall (1) assist the Treasurer in preparing the annual budget for submission to the Board of Directors; (2) review on a periodic basis the Association's financial condition and its performance against budget; and (3) act as a consultant to the Treasurer and his staff on financial matters. The Executive Committee shall have and may exercise all of the powers of the Board of Directors between meetings of the Board.

## **ARTICLE 5. OFFICERS**

5.1 Number: The principal officers of the Association shall be a Chairman, one or more Vice Chairmen, a President, one or more Vice Presidents, a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. An individual may hold more than one of the

offices of President, Secretary and Treasurer. Such other officers and assistant officers as may be deemed necessary may be elected by the Board of Directors. The Vice Presidents, Secretary and Treasurer need not be members of the Board of Directors. The duties of the officers shall be those enumerated herein and any further duties designated by the Board of Directors.

5.2 Election and Term of Office: The officers of the Association shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held in conjunction with the Annual Meeting of the members. Each officer shall hold office until his successor shall have been duly elected or until his death, resignation or removal.

5.3 Removal: Any officer or agent elected or appointed by the Board of Directors may be removed at any time, with or without cause, by action by the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person. Election or appointment shall not of itself create contract rights.

5.4 Vacancies: If the office of any officer becomes vacant for any reason, the vacancy may be filled by appointment of the Chairman, subject to confirmation by the Board of Directors at its next meeting.

5.5 The Chairman and Vice Chairmen: The Chairman shall be the Chairman of the Board of Directors and of the Executive Committee and chief executive officer of the Association, reporting to the Board of Directors. The First Vice Chairman shall be Vice Chairman of the Board and the Executive Committee. The Chairman, and in his absence, the First Vice Chairman shall preside at all meetings of the Board of Directors, the Executive Committee or the membership of the Association and shall perform such other functions as may be assigned by the Board of Directors.

5.6 The President: The President shall be the chief operating officer of the Association reporting to the Chairman and the Board of Directors. He shall implement the Association's programs, work with the officers and members to develop and execute new plans, appoint the membership and the chairman of standing or temporary committees (subject to review by the Board of Directors), assist committees in carrying out their programs, administer the executive headquarters of the Association, and perform all such other duties as are incident to his office or are required of him by the Board of Directors or the Chairman. He shall have the authority subject to such rules, directions or orders as may be prescribed by the Chairman of the Board of Directors, to appoint and terminate the appointment of such agents and employees of the Association as he shall deem necessary, to prescribe their powers, duties and compensation and to delegate authority to them. He shall be a voting member of the Board of Directors.

5.7 The Vice Presidents: In the absence of the President or in the event of his death, inability or refusal to act, or in the event for any reason it shall be impracticable for the President to act personally, the Vice Presidents in the order of their designation, shall perform 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. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President, the Chairman or the Board of Directors.

5.8 The Secretary: The Secretary shall attend all meetings of the Board of Directors and the meetings of the Association and shall be responsible for the giving of due notice of meetings of the members and of the Board of Directors, for the proper keeping of minutes of meetings of the members and of the Board of Directors, and for the keeping of the files, records and papers of the Association.

5.9 The Treasurer: The Treasurer shall: (a) have charge and custody and be responsible for all funds and securities of the Association; (b) receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected from time to time by the Association; and (c) in general perform all of the duties incident to the office of Treasurer and have such other duties and exercise such other authority as from time to time shall be delegated or assigned to him by the Chairman, the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

5.10 Salaries: The Chairman and Vice Chairmen shall serve without compensation. The salaries of the other officers, if any, shall be fixed from time to time by the Board of Directors.

## **ARTICLE 6. COUNSEL**

The Board of Directors of the Association shall employ Counsel for the Association who shall advise the officers, the Board of Directors and the Association with respect to all legal matters. Counsel and the President shall select a Legal Advisory Committee comprising general or outside counsel of members, which Committee shall function as liaison between Counsel and the members.

## **ARTICLE 7. TRANSACTIONS WITH THE ASSOCIATION**

The Board of Directors may from time to time authorize transactions by officers, Directors and employees with the Association. No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association, or entity in which one or more of its Directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if (1) the material facts of such relationship or interest are disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction in good faith by a vote or consent of a majority of the disinterested Directors, even though the disinterested Directors comprise less than a quorum; or (2) the material facts of such relationship or interest are disclosed or known to the members entitled to vote and they authorize, approve or ratify such contract or transaction in good faith by vote or written consent; or (3) the contract or transaction is fair and reasonable to the Association as of the time it is authorized. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction. This Article shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto.

## **ARTICLE 8. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS**

### **8.1 Mandatory Indemnification:**

(A) Subject to the conditions and limitations of this Article 8 and the Association's Amended and Restated Certificate of Incorporation, the Association shall, to the fullest extent permitted by the Delaware General Corporation Law as it may then be in effect, indemnify and hold harmless any person who is or was a party, or is threatened to be made a party, to any

threatened, pending or completed action, claim, litigation, suit or proceeding, whether civil, criminal, administrative or investigative, whether predicated on foreign, federal, state or local law, and whether formal or informal (collectively, "action(s)") by reason of his status as, or the fact that he is or was or has agreed to become, a Director, officer, employee or agent (collectively, "executive(s)") of the Association, and as to acts performed in the course of the executive's duty to the Association, against:

(i) expenses, fees, costs and charges, including, without limitation, attorneys' fees and disbursements (collectively, "expenses") reasonably incurred by or on behalf of the executive in connection with any action (including, without limitation, in connection with the investigation, defense, settlement or appeal of such action), no matter by whom brought;

(ii) subject to the restrictions of Section 8.1(C), amounts incurred by the executive in settlement of any action, no matter by whom brought; and

(iii) subject to the restrictions of Section 8.1(C), judgments, fines, penalties or other amounts incurred by the executive pursuant to an adjudication of liability in connection with any action.

Notwithstanding the foregoing, the executive shall not be indemnified and held harmless hereunder if it is determined pursuant to Section 8.2, or by the court before which such action was brought, that:

(a) the executive did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association;

(b) with respect to criminal actions, the executive had reasonable cause to believe his conduct was unlawful; and

(c) with respect to the settlement of any action, such settlement was not in the best interests of the Association and its members, or the amount incurred by the executive in such settlement was unreasonable (to a material extent) in light of all of the circumstances of such action.

(B) To the extent the executive has been successful on the merits or otherwise in connection with any action referred to in Section 8.1(A), no matter by whom brought (including, without limitation, the settlement, dismissal, abandonment or withdrawal of any such action where the executive does not issue or matter therein, he shall be indemnified by the Association against expenses reasonably incurred by or on behalf of him in connection therewith. The Association shall pay such amounts (net of all amounts, if any, previously advanced to the executive pursuant to Section 8.4) to the executive (or to such other person or entity as the executive may designate in writing to the Association) upon the executive's written request therefor without regard to the provisions of Section 8.2.

(C) Notwithstanding the provisions of Section 8.1(A) (ii) and 8.1(A) (iii), no indemnification shall be made to the executive by the Association for monetary damages incurred by the executive pursuant to an action brought by or in the right of the Association to procure a judgment in its favor (sometimes hereinafter referred to as "derivative action(s)") or an action brought by a member of the Association if it is determined pursuant to Section 8.2, or by the court before which such action was brought, that:

(i) the executive breached his duty of loyalty to the Association or its members;

(ii) the executive committed acts or omissions in bad faith or which involve intentional misconduct or a knowing violation of the law; or

(iii) the executive derived an improper personal benefit from any related transaction, unless such improper personal benefit is determined to be immaterial in light of all of the circumstances of such action.

(D) If the executive is or was serving as an executive, trustee, fiduciary, employee or agent of an employee benefit plan sponsored by or otherwise associated with the Association and incurs expenses or amounts in settlement, judgments, fines, penalties or other amounts, including, without limitation, any excise tax or penalty assessed with respect to the employee benefit plan by reason of an action having been brought, or having been threatened, against such executive because of his status as such an executive, trustee, fiduciary, employee or agent of such plan, or by reason of his having performed duties in any such capacity the Association shall indemnify and hold harmless the executive against any and all of such reasonable amounts; provided, it is not determined pursuant to Section 8.2 that the executive's conduct with respect to such employee benefit plan was for a purpose he did not reasonably believe to be in the interests of the participants in and beneficiaries of such plan.

#### 8.2 Right to Indemnification; How Determined:

(A) Any indemnification to be provided to the executive by the Association under Section 8.1 upon the final disposition or conclusion of an action (or a claim, issue or matter associated with such an action), unless otherwise ordered by the court before which such action was brought, shall be paid by the Association (net of all amounts, if any, previously advanced to the executive pursuant to Section 8.4) to the executive (or to such other person or entity as the executive may designate in writing to the Association) within ten days after approval, pursuant to the procedures in this Section 8.2, of the executive's written request therefor, which request shall include a comprehensive accounting of amounts for which indemnification is being sought and shall reference the provision(s) of this Article 8 pursuant to which such claim is being made.

Within ten days after the receipt of the executive's written request, the Board of Directors shall meet to consider and act upon said request. The payment of the requested amounts shall be approved by the Association unless (i) the Board of Directors of the Association by a majority vote of a quorum consisting of Directors who are no parties to such action determines either that such payment, in whole or in part, would not be in the best interests of the Association and its members and would contravene the terms and conditions of this Article 8 or that an independent judgment should be made with respect to the matter; or (ii) a majority of the Directors of the Association are a party in interest to such action. In either of such events, the Board shall immediately authorize and direct, by resolution, that an independent determination be made as to whether the executive has met the applicable standard(s) of conduct set forth in Section 8.1 and, therefore, whether indemnification is proper pursuant to this Article 8.

Such independent determination shall be made by an independent legal counsel mutually selected by the Board and the executive (such independent legal counsel being hereinafter referred to as the "authority").

In any such determination there shall exist a rebuttable presumption that the executive has met such standard(s) of conduct and is therefore entitled to indemnification pursuant to this Article 8. The burden of rebutting such presumption by clear and convincing evidence shall be on

the Association. The authority shall make a determination within sixty days of being selected and shall simultaneously submit a written opinion of its conclusions to both the Association and the executive and, if the authority determines that the executive is entitled to be indemnified for any amounts pursuant to this Article 8, the Association shall pay such amounts (net of all amounts, if any, previously advanced to the executive pursuant to Section 8.4), including interest thereon as provided in Section 8.5(C), to the executive (or to such other person or entity as the executive may designate in writing to the Association) within ten days of receipt of such opinion.

(B) The executive may, either before or within two years after determination, if any, has been made by the authority, petition any court of competent jurisdiction to determine whether the executive is entitled to indemnification under this Article 8. Such court shall thereupon have the exclusive power to make such determination unless and until such court dismisses or otherwise terminates such proceeding without having made such determination.

The court shall make an independent determination of whether the executive is entitled to indemnification as provided under this Article 8, irrespective of any prior determination made by the authority; provided, however, that there shall exist a rebuttable presumption that the executive has met the applicable standard(s) of conduct and is therefore entitled to indemnification pursuant to this Article 8. The burden of rebutting such presumption by clear and convincing evidence shall be on the Association.

If the court determines that the executive is entitled to be indemnified for any amounts pursuant to this Article 8, unless otherwise ordered by such court, the Association shall pay such amounts (net of all amounts, if any, previously advanced to the executive pursuant to Section 8.4), including interest thereon as provided in Section 8.5(C) to the executive (or to such other person or entity as the executive may designate in writing to the Association) within ten days of the rendering of such determination.

The executive shall pay all expenses incurred by the executive in connection with the judicial determination provided in this Section 8.2(B), unless it shall ultimately be determined by the court that he is entitled to be indemnified, in whole or in part, by the Association as authorized by these Bylaws. All expenses incurred by the executive in connection with any subsequent appeal of the judicial determination provided for in this Section 8.2(B) shall be paid by the executive regardless of the disposition of such appeal.

(C) Except as otherwise set forth in this Section 8.2, the expenses associated with the indemnification process set forth in this Section 8.2, including, without limitation, the expenses of the authority selected hereunder, shall be paid by the Association.

8.3 Termination of an Action is Nonconclusive: The termination of any action, no matter by whom brought, by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent, shall not, of itself, create a presumption that the executive has not met the applicable standard(s) of conduct set forth in Section 8.1.

#### 8.4 Advance Payment:

(A) Expenses reasonably incurred by or on behalf of the executive in connection with any action (or claim, issue or matter associated with such action), no matter by whom brought, shall be paid by the Association to the executive (or to such other person or entity as the executive may designate in writing to the Association) in advance of the final disposition or conclusion of such action (or claim, issue or matter associated with such action) upon the receipt of executive's written request therefor, provided, the following conditions are satisfied.

(i) the executive has first requested an advance of such expenses in writing (and delivered a copy of such request to the Association) from the insurance carrier(s), to whom a claim has been reported under an insurance policy purchased by the Association, if any, as provided under Section 8.8 and each such insurance carrier has declined to make such an advance.

(ii) the executive furnishes to the Association an executed written certificate affirming his good faith belief that he has met the applicable standard(s) of conduct set forth in Section 8.1; and

(iii) if the executive is a director or officer of the Association, the executive furnishes to the Association an executed written agreement to repay any advances made under this Section 8.4 if it is ultimately determined that he is not entitled to be indemnified by the Association for such amounts pursuant to this Article 8; if the executive is an employee or agent of the Association other than a director or officer, the executive satisfies such other requirements as the Board of Directors determines appropriate.

(B) If the Association makes an advance of expenses to the executive pursuant to this Section 8.4, the Association shall be subrogated to every right of recovery the executive may have against any insurance carrier from whom the Association has purchased insurance for such purpose.

#### 8.5 Partial Indemnification; Interest:

(A) If it is determined by the authority pursuant to Section 8.2, or by the court before which such action was brought, that the executive is entitled to indemnification as to some claims, issues or matters, but not as to other claims, issues or matters, involved in any action, no matter by whom brought, the authority (or the court) shall authorize the reasonable proration of such expenses, judgments, penalties, fines and/or amounts incurred in settlement with respect to which indemnification is sought by the executive, among such claims, issues or matters as the authority (or the court) shall deem appropriate in light of all of the circumstances of such action.

(B) If it is determined by the authority pursuant to Section 8.2, or by the court before which such action was brought, that certain amounts incurred by the executive, are for whatever reason unreasonable in amount, the authority (or the court) shall authorize indemnification to be paid by the Association to the executive for only such amounts as the authority (or the court) shall deem reasonable in light of all the circumstances of such action.

(C) To the extent deemed appropriate by the authority, or by the court before which such action was brought, interest shall be paid by the Association to the executive, at a reasonable interest rate, for amounts for which the Association indemnifies the executive.

8.6 Limitation of Derivative Actions and Release of Derivative Claims: No derivative action shall be brought and no cause of derivative action shall be asserted against the executive, his spouse, heirs, executors or administrators after the expiration of two years from the date the executive ceases, for any reason whatsoever, to serve as an executive of the Association and any claim or cause of derivative action of the Association shall be extinguished and deemed released unless asserted by the filing of an appropriate derivative action within such two-year period.

The provisions of any federal, state or local law or statute providing in substance that releases shall not extend to claims, demands, injuries or damages which are unknown or unsuspected to exist at the time to the person or entity executing such release are hereby expressly waived by the Association and its members.

8.7 Nonexclusivity of Agreement: The right to indemnification and advancement of expenses provided to the executive by this Article 8 shall not be deemed exclusive of any other rights to which the executive may be entitled under any charter provision, bylaw, agreement, resolution, vote of members or disinterested Directors of the Association or otherwise, including, without limitation, under Delaware General Corporation Law Section 145 as it may then be in effect, both as to acts in his official capacity as such executive of the Association or as to acts in any other capacity while holding such office or position, and the terms and provisions of this Article 8 shall continue as to the executive if he ceases to be an executive of the Association, and such terms and provisions shall inure to the benefit of the heirs, executors and administrators of the executive.

8.8 Insurance:

(A) The Association may purchase and maintain insurance on behalf of the executive against any liability asserted against him or incurred by or on behalf of him in such capacity as an executive of the Association, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article 8 or under Delaware General Corporation Law Section 145 as it may then be in effect.

The purchase and maintenance of such insurance shall not in any way limit or affect the rights and obligations of the Association or the executive under this Article 8 and the adoption of this Article 8 by the Association shall not in any way limit or affect the rights and obligations of the Association or of the other party or parties thereto under any such policy or agreement of insurance.

(B) If the executive shall receive payment from any insurance carrier or from the plaintiff in any action against the executive in respect of indemnified amounts after payments on account of all or part of such indemnified amounts have been made by the Association pursuant to this Article 8, the executive shall promptly reimburse the Association for the amount, if any, by which the sum of such payment by such insurance carrier or such plaintiff and payments by the Association to the executive exceeds such indemnified amounts; provided, however, that such portions, if any, of such insurance proceeds that are required to be reimbursed to the insurance carrier under the terms of its insurance policy, such as deductible or co-insurance payments, shall not be deemed to be payments to the executive hereunder.

In addition, upon payment of indemnified amounts under this Article 8, the Association shall be subrogated to the executive's rights against any insurance carrier in respect of such indemnified amounts and the executive shall execute and deliver any and all instruments and/or documents and perform any and all other acts or deeds which the Association deems necessary or advisable to secure such rights. The executive shall do nothing to prejudice such rights of recovery or subrogation.

8.9 Witness Expenses: Upon the executive's written request, the Association shall pay (in advance or otherwise) or reimburse any and all expenses reasonably incurred by the executive in connection with his appearance as a witness in any action related to the Association, at a time when he has not been formally named a defendant or respondent to such an action.

#### 8.10 Contribution:

(A) If the indemnity provided for in Section 8.1 is unavailable to the executive for any reason whatsoever, the Association, in lieu of indemnifying the executive, shall contribute to the amount reasonably incurred by or on behalf of the executive, whether for judgments, fines, penalties, amounts incurred in settlement and/or for expenses in connection with any action, no matter by whom brought, in such proportion as deemed fair and reasonable by the authority pursuant to Section 8.2, or by the court before which such action was brought, taking into account all of the circumstances of such action, in order to reflect (i) the relative benefits received by the Association and the executive as a result of the event(s) and/or transaction(s) giving cause to such action; and/or (ii) the relative fault of the Association (and its other executives) and the executive in connection with such event(s) and/or transaction(s).

(B) The executive shall not be entitled to contribution from the Association under this Section 8.10 if it is determined pursuant to Section 8.2, or by the court before which such action was brought, that the executive engaged in criminal, fraudulent or intentional misconduct in the performance of his duty to the Association or otherwise violated the provisions of Section 8.1(C).

(C) The Association's payment of, and the executive's right to, contribution under this Section 8.10 shall be made and determined in accordance with Section 8.2 relating to the Association's payment of, and the executive's right to, indemnification.

8.11 Severability: If any provision of this Article 8 shall be deemed invalid or inoperative, or if a court of competent jurisdiction determines that any of the provisions of this Article 8 contravenes public policy, this Article 8 shall be construed so that the remaining provisions shall not be affected, but shall remain in full force and effect, and any such provisions which are invalid or inoperative or which contravene public policy shall be deemed, without further action or deed on the part of any person, to be modified, amended and/or limited, but only to the extent necessary to render the same valid and enforceable, and the Association shall indemnify the executive as to reasonable expenses, judgments, fines and amounts incurred in settlement with respect to any action, no matter by whom brought, to the full extent permitted by any applicable provision of this Article 8 that shall not have been invalidated and to the full extent otherwise permitted by the Delaware General Corporation Law as it may then be in effect.

8.12 Amendment and Modification: This Article 8 has been adopted by the affirmative vote of not less than a majority of the members of the Association entitled to vote therefor and may only be altered, amended or repealed by the affirmative vote of not less than a majority of the members of the Association so entitled to vote; provided, however, that such member authorization shall not be required in the event such alteration or amendment: (i) is made in order to conform to any amendment or revision of the Delaware General Corporation Law which expands an executive's rights to indemnification thereunder or is otherwise beneficial to the executive, or (ii) in the sole judgment and discretion of the Board of Directors of the Association, does not materially adversely affect the rights and protections of the members of the Association.

### **ARTICLE 9. DISSOLUTION**

The Association has perpetual existence, but it may be dissolved, if a majority of the Board of Directors adopts a resolution of dissolution at a meeting of the Board called for that purpose and a majority of the total number of members subsequently approves the resolution at a meeting for which notice shall have been mailed to each member indicating that member action upon a resolution is desired. In the event of the dissolution of the Association, the balance of the assets of the Association, after the payment of all debts and obligations, including without limitation by

enumeration, any unfunded pension costs and employment contract liabilities of the Association, shall be distributed to those members active in the Association on the date of the members' adoption of the resolution to dissolve, in proportion to the amount of dues or assessments paid by them respectively for the full period of continuous membership during the three fiscal years preceding the fiscal year in which such dissolution takes place, subject to the applicable provisions of the Internal Revenue Code then prevailing.

## **ARTICLE 10. GENERAL PROVISIONS**

10.1 Notices: Whenever notice is given to any Director or member by telephone, facsimile, telegraph, or regular or electronic mail as is provided in these Bylaws, such notice shall be deemed to be given at the time when the same shall be made, filed or mailed.

10.2 Corporate Seal: The corporate seal shall have inscribed thereon the name of the Association, the year of its organization and the words "CORPORATE SEAL, DELAWARE." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

10.3 Antitrust: The activities of the Association shall not be such as will result in any agreement, understanding, combination or any other form of concerted action to limit production, fix or stabilize prices, suppress competition or in any other manner unreasonably restrain trade or commerce. Counsel to the Association shall provide periodic informational programs to the members concerning antitrust compliance and developments or changes to the relevant antitrust laws.

10.4 Amendments: Except as otherwise provided, these Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a majority vote of those members present at any meeting of the members at which a quorum is present, provided notice of the substance of the proposed alteration, amendment or repeal shall have accompanied the notice of the meeting. The Bylaws may also be altered, amended or repealed and new Bylaws may be adopted by a majority vote of the total number of members after having received a ballot soliciting their vote provided notice of the substance of the proposal to alter, amend or repeal is provided with the ballot.