

**BY-LAWS OF  
LOWER BUCKS LONG TERM CARE CONSORTIUM**

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**ARTICLE I – OFFICES**

1. The registered office of the corporation shall be at c/o St. Mary Medical Ctr. Langhorne-Newtown Rd, Langhorne, PA 19047.
2. The corporation may also have offices at such other places as the Board of Directors may from time to time appoint or the activities of the corporation may require.

**ARTICLE II –SEAL**

1. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Pennsylvania".

**ARTICLE III – MEMBERS**

1. Members and affiliate members shall be elected by a two-thirds vote of the Board of Directors. A member shall be a licensed organization or facility providing care or health related services in Bucks County and shall be entitled to one vote in any election or business at the general meetings. Affiliate members shall be any individual or organization having a professional Interest in the mission of the Lower Bucks Long Term Care Consortium and shall not have voting rights.
2. The Board of Directors may determine from time to time the amount of initiation fee, if any; and may determine the amount and schedule of membership dues, not to exceed yearly in frequency.
3. The Board of Directors, by affirmative vote of two-thirds of all of the members of the Board, may suspend or expel a member for cause after an appropriate hearing, and may, by a majority vote of those present at any regularly constituted meeting, terminate the membership of any member who becomes ineligible for membership, or suspend or expel any member who shall be in default in the payment of any dues or assessments.
4. Upon written request signed by a former member and filed with the Secretary, the Board of Directors may, by the affirmative vote of two-thirds of the members of the Board, reinstate such former member to membership upon such terms as the Board of Directors may deem appropriate.
5. Membership in this corporation is not transferable or assignable.

**ARTICLE IV - MEETINGS OF MEMBERS**

1. Meetings of the members shall be held at c/o St. Mary Medical Ctr. Langhorne-Newtown Rd., Langhorne, PA 19047 or at such other place or places, either within or without the Commonwealth of Pennsylvania, as may from time to time be fixed by the Board of Directors.
2. The annual meeting of the members shall be held on the fourth Thursday of January at 8 o'clock A.M. to transact such business as may be properly brought before the meeting. Biannually they shall elect a Board of Directors.
  - (a) The President or the Board of Directors shall appoint a Nominating Committee prior to the October meeting.
  - (b) The Nominating Committee shall be chaired by the immediate past President or designee.

3. Special meetings of the members may be called at any time by the President, or the Board of Directors, or members entitled to cast at least ten percent (10%) of the votes which all members are entitled to cast at the particular meeting. At any time, upon written request of any person who has called a special meeting, it shall be the duty of the Secretary to fix the time of the meeting which shall be held not more than sixty days after the receipt of the request. If the Secretary shall neglect or refuse to fix the time of the meeting, the person or persons calling the meeting may do so. Business transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto.

4. Written notice of every meeting of the members, stating the time, place and object thereof, shall be given by, or at the direction of, the Secretary to each member of record entitled to vote at the meeting, fourteen (14) days prior to the day named for the meeting, unless a greater period of notice is required by statute in a particular case. If the Secretary shall neglect or refuse to give notice of the meeting, the person or persons calling the meeting may do so. In the case of a special meeting, the notice shall specify the general nature of the business to be transacted.

5. Persons authorized or required to give notice of a meeting of members may, in lieu of any written notice of a meeting of members required to be given, give notice of such meeting by causing notice of such meeting to be officially published. If eighty percent (80%) of the members of record entitled to vote at the meeting do not have addresses of record within the territory of general circulation of the newspapers required for official publication, the notice shall also be published in newspapers which have an aggregate territory or general circulation which includes the addresses of record of at least eighty percent (80%) of such members of record.

6. A meeting of members duly called shall not be organized for the transaction of business unless a quorum is present. The presence in person of one more than half of the members entitled to vote shall constitute a quorum at all meetings of the members for the transaction of business except as may be otherwise provided by law or by the Articles of Incorporation. The members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise provided by statute, adjourn the meeting to such time and place as they may determine but in the case of any meeting called for the election of directors, those who attend the second of such adjourned meetings, although less than a quorum, shall nevertheless constitute a quorum for the purpose of electing directors. In the case of any meeting called for any other purpose, those who attend the second of such adjourned meetings, although less than a quorum, shall nevertheless constitute a quorum for the purpose of acting upon any resolution or other matter set forth in the notice of the meeting, if written notice of such second adjourned meeting, stating that those members who attend shall constitute a quorum for the purpose of acting upon such resolution or other matter, is given to each member of record entitled to vote at such second adjourned meeting at least ten days prior to the day named for the second adjourned meeting.

7. Any action which may be taken at a meeting of the members or of a class of members may be taken without a meeting, if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the members who would be entitled to vote at a meeting for such purpose and shall be filed with the Secretary of the corporation.

8. Every member of the corporation shall be entitled to one vote. No member shall sell his vote for money or anything of value. Upon request of a member, the books or records of membership shall be produced at any regular or special meeting of the corporation. If at any meeting the right of a person to vote is challenged, the presiding officer shall require such books or records to be produced as evidence of the right of the person challenged to vote, and all persons who appear by such books or records to be members entitled to vote may vote. The right of a member to vote, and his right, title and interest in or to the corporation or its property, shall cease on the termination of his membership.

9. Voting may be by ballot, mail or any reasonable means determined by the Board of Directors. Elections for directors need not be by ballot except upon demand made by a member at the election and before the voting begins.

10. In advance of any meeting of members, the Board of Directors may appoint judges of election, who need not be members, to act at such meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of any such meeting may, and on the request of any member shall, make such appointment at the meeting. The number of judges shall be one or three. No person who is a candidate for office shall act as a judge.

## **ARTICLE V – DIRECTORS**

1. The business and affairs of this corporation shall be managed by its Board of Directors, four (4) in number, who shall be natural persons of full age and who need not be residents of this Commonwealth but who shall be members of this corporation. They shall be elected biannually by the members at the annual meeting of the members of the corporation, and each director shall be elected for the term of two (2) years and until a successor shall be elected and shall qualify. There shall be a limit of two (2) consecutive terms for any one (1) office.

2. In addition to the powers and authorities by these By-Laws expressly conferred upon them, 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 or by these By-Laws directed or required to be exercised or done by the members.

3. The meetings of the Board of Directors may be held at such times and at such place or places within this Commonwealth or elsewhere, as a majority of the directors may from time to time appoint, or as may be designated in the notice calling the meeting.

4. Written or personal notice of every meeting of the Board of Directors shall be given to each director at least fourteen (14) days prior to the day named for the meeting.

5. A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. Any action which may be taken at a meeting of the directors may be taken without a meeting, if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and shall be filed with the Secretary of the corporation.

6. The Board of Directors may, by resolution adopted by a majority of the directors in office, establish one or more committees to consist of one or more directors of the corporation. Any such committee, to the extent provided in the resolution of the Board of Directors or in the By-Laws, shall have and may exercise all of the powers and authority of the Board of Directors, except that no such committee shall have any power or authority as to the following.

- (a) The submission to members of any action required by statute to be submitted to the members for their approval.
- (b) The filling of vacancies in the Board of Directors.
- (c) The adoption, amendment or repeal of the By-Laws.
- (d) The amendment or repeal of any resolution of the Board.
- (e) Action on matters committed by the By-Laws or resolution of the Board of Directors to another committee of the Board.

7. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously

appoint another director to act at the meeting in the place of any such absent or disqualified member  
Each committee of the Board shall serve at the pleasure of the Board.

8 The Board of Directors shall have the authority to fix the compensation of directors for their services as such, and a director may also be a salaried officer of the corporation.

9. The entire Board of Directors, or a class of the Board, where the Board is classified with respect to the power to select directors any individual director, ay be removed from office without assigning any cause by the vote of members entitled to cast at least a majority of the votes which all members present would be entitled to cast at any annual or other regular election of the directors or of such class of directors. In case the Board or such a class of the Board or any one or more directors are so removed, new directors may be elected at the same meeting If members are entitled to vote cumulatively for the Board or a class of the Board, no individual director shall be removed unless the entire Board or class of the Board is removed in case sufficient votes are cast against the resolution for his removal, which, if cumulatively voted at an annual or other regular election of directors, would be sufficient to elect one or more directors to the Board or to the class.

10. The Board of Directors may declare vacant the office of a director if he is declared of unsound mind by an order of court or is convicted of felony, or if within sixty days after notice of his selection, he does not accept such office either in writing or by attending a meeting of the Board of Directors, and fulfill such other requirements of qualification as the By-Laws may specify.

11. A director of the corporation shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances In performing his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared by any of the following:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.
- (2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.
- (3) A committee of the board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which the director reasonably believes to merit confidence.

A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors may, in considering the best interests of the corporation, consider the effects of any action upon employees, upon suppliers and customers of the corporation and upon communities in which offices or other establishments of the corporation are located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of this section.

Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a director or any failure to take any action shall be presumed to be in the best interests of the corporation. A director of the corporation shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless:

- (1) The director has breached or failed to perform the duties of his office under this section.
- (2) The breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The provisions of this section shall not apply to:

- (1) The responsibility or liability of a director pursuant to any criminal statute; or
- (2) The liability of a director for the payment of taxes pursuant to local, state or federal law.

12. Directors as such, shall not receive any stated salary for their services, but by resolution of the Board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the 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.

## **ARTICLE VI –OFFICERS**

1. The executive officers of the corporation shall be chosen by the members, and shall be a President, Vice President, Secretary, Treasurer and such other officers and assistant officers as the needs of the corporation may require. A President Elect may be elected one year prior to the expiration of the President's term. The President, Vice President, and Secretary shall be natural persons of full age; the Treasurer, however, may be a corporation, but if a natural person, shall be of full age. They shall hold their offices for a term of two (2) years excepting the President Elect whose term shall be one (1) year. They shall have such authority and shall perform such duties as are provided by the By-Laws and as shall from time to time be prescribed by the Board and/or members. It shall not be necessary for the officers to be directors and any number of offices may be held by the same person. The Board of Directors may secure the fidelity of any or all such officers by bond or otherwise.

2. Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

3. The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the members and directors; he shall have general and active management of the affairs of the corporation; shall see that all orders and resolutions of the Board are carried into effect, subject, however, to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the corporation. He shall execute bonds, mortgages and other documents requiring a seal, under the seal of the corporation. He shall be EX-OFFICIO a member of all committees and shall have the general powers and duties of supervision and management usually vested in the office of President.

4. The Vice President shall act in all cases for and as the President in the latter's absence or incapacity, and shall perform such other duties as he may be required to do from time to time.

5. The Secretary shall attend all sessions of the Board and all meetings of the members and act as clerk thereof, and record all the votes of the corporation and the minutes of all its transactions in a book to be kept for that purpose; and shall perform like duties for all committees of the Board of Directors when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. He shall keep in safe custody the corporate seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it.

6. The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall keep the moneys of the corporation in a separate account to the credit of the corporation. He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transaction as Treasurer and of the financial condition of the corporation.

7. The President Elect shall be a non-voting member of the Board of Directors and shall attend all general meetings and executive committee meetings. The term of the President Elect shall be limited to one (1) term of one (1) year.

#### **ARTICLE VII –VACANCIES**

1. If the office of any officer or agent, one or more, becomes vacant for any reason, the Board of Directors may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

2 Vacancies in the Board of Directors, including vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the Board, though less than a quorum, and each person so elected shall be a director until his successor is elected by the members, who may make such election at the next annual meeting of the members, or at any special meeting duly called for that purpose and held prior thereto.

#### **ARTICLE VIII - BOOKS AND RECORDS**

1. The corporation shall keep an original or duplicate record of the proceedings of the members and the directors, the original or a copy of its By-Laws, including all amendments thereto to date, certified by the Secretary of the corporation, and an original or a duplicate membership register, giving the names of the members, and showing their respective addresses and the class and other details of the membership of each. The corporation shall also keep appropriate, complete and accurate books or records of account. The records provided for herein shall be kept at either the registered office of the corporation in this Commonwealth, or at its principal place of business wherever situated.

2. Every member shall, upon written demand under oath stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the membership register, books and records of account, and records of the proceedings of the members and directors, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of such person as a member. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the member. The demand under oath shall be directed to the corporation at its registered office in this Commonwealth or at its principal place of business wherever situated.

#### **ARTICLE IX - MEMBERSHIP CERTIFICATES**

1. Membership in the corporation may be evidenced by Certificates of Membership, in which case they shall be in such form and style as the Board of Directors may determine. The fact that the corporation is a nonprofit corporation shall be noted conspicuously on the face of each certificate. They shall be signed by the President or a Vice President and by the Secretary or an Assistant Secretary, and shall bear the corporate seal.

#### **ARTICLE X -TRANSACTION OF BUSINESS**

1. The corporation shall make no purchase of real property nor sell, mortgage, lease away or otherwise dispose of its real property, unless authorized by a vote of two-thirds of the members in office of the Board of Directors, except that whenever there are twenty-one or more directors, the vote of a majority of the members in office shall be sufficient. Unless otherwise restricted in these By-Laws, no vote or consent of the members shall be required to make effective such action by the Board. If the real property is subject to a trust the conveyance away shall be free of trust and the trust shall be impinged upon the proceeds of such conveyance.

2. Whenever the lawful activities of the corporation involve among other things the charging of fees or prices for its services or products, it shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance and operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors or officers of the corporation.

3. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

## **ARTICLE XI -ANNUAL REPORT**

1. The Board of Directors shall present annually to the members a report, verified by the President and Treasurer or by a majority of the directors, showing in appropriate detail the following:

(a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year immediately preceding the date of the report.

(b) The principal changes in assets and liabilities including trust funds, during the year immediately preceding the date of the report.

(c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(d) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(e) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and addresses of the current members may be found.

This report shall be filed with the minutes of the meeting of members.

## **ARTICLE XII – NOTICES**

1. Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof by first class mail, postage prepaid, or by telegram, charges prepaid, to his address appearing on the books of the corporation, or, in the case of directors, supplied by him to the corporation for the purpose of notice. If the notice is sent by mail or by telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by statute of these By-Laws. When a special meeting is adjourned it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

2. Whenever any written notice is required to be given under the provisions of the statute or the Articles or By-Laws of this 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. Except as Otherwise required by statute, neither the business to be transacted at nor the purpose of a meeting need be specified in the waiver of notice of such meeting. In the case of a special meeting of members such waiver of notice shall specify the general nature of the business to be transacted. Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of

objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

### **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

1. The fiscal year of the corporation shall begin on the first day of January.
- 2 One or more persons may participate in a meeting of the Board or of the members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.
3. So long as the corporation shall continue to be organized on a nonstock basis, the Board of Directors shall have authority to provide for the members to make capital contributions in such amounts and upon such terms as are fixed by the directors in accordance with the provisions of section 5541 of the Nonprofit Corporation Law of 1988.
4. The Board of Directors, by resolution, may authorize the corporation to accept subventions from members or nonmembers on terms and conditions not inconsistent with the provisions of section 5542 of the Nonprofit Corporation Law of 1988, and to issue certificates therefore.

### **ARTICLE XIV – INDEMNIFICATION**

1. The corporation shall indemnify each of its directors, officers, and employees whether or not then in service as such (and his or her executor, administrator and heirs), against all reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any litigation to which the individual may have been a party because he or she is or was a director, officer or employee of the corporation. The individual shall have no right to reimbursement, however, in relation to matters as to which he or she has been adjudged liable to the corporation for negligence or misconduct in the performance of his or her duties, or was derelict in the performance of his or her duty as director, officer or employee by reason of willful misconduct, bad faith, gross negligence or reckless disregard of the duties of his or her office or employment. The right to indemnity for expenses shall also apply to the expenses of suits which are compromised or settled if the court having jurisdiction of the matter shall approve such settlement.

The foregoing right of indemnification shall be in addition to, and not exclusive of, all other rights to that which such director, officer or employee may be entitled.

### **ARTICLE XV –AMENDMENTS**

1. By-Laws may be adopted, amended or repealed by the vote of members entitled to cast at least a majority of the votes which all members present are entitled to cast thereon at any regular or special meeting duly convened after notice to the members of that purpose.

### **ARTICLE XVI - INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER AUTHORIZED REPRESENTATIVES**

1. Scope of Indemnification.
  - (a) General rule. The corporation shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as a party or otherwise by reason of the fact that such person is or was sewing in an indemnified capacity, including, without limitation, liabilities resulting from any

actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:

- (1) where such indemnification is expressly prohibited by applicable law;
- (2) where the conduct of the indemnified representative has been finally determined pursuant to Article XVI (6) or otherwise:

- (i) to constitute willful misconduct or recklessness within the meaning of 15 Pa.C.S. 9 513(b) and 1746(b) and 42 Pa.C.S. § 8365(b) or any superseding provision of law sufficient in the circumstances to bar indemnification against liabilities arising from the conduct; or

- (ii) to be based upon or attributable to the receipt by the indemnified representative from the corporation of a personal benefit to which the indemnified representative is not legally entitled; or

- (3) to the extent such indemnification has been finally determined in a final adjudication pursuant to Article XVI (6) to be otherwise unlawful.

(b) Partial payment. If an indemnified representative is entitled to Indemnification in respect of a portion, but not all, of any liabilities to which such person may be subject, the corporation shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.

(c) Presumption. The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not itself create a presumption that the indemnified representative is not entitled to indemnification.

(d) Definitions. For purposes of this Article:

- (1) "indemnified capacity" means any and all past, present and future service by an indemnified representative in one or more capacities as a director, officer, employee or agent of the corporation, or, at the request of the corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise;

- (2) "indemnified representative" means any and all directors and officers of the corporation and any other person designated as an indemnified representative by the Board of Directors of the corporation (which may, but need not, include any person serving at the request of the corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise);

- (3) "liability" means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense, of any nature (including, without limitation, attorneys' fees and disbursements); and

- (4) "proceeding" means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether Civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the corporation, a class of its security holders or otherwise.

2. Proceedings initiated by Indemnified Representatives. Notwithstanding any other provision of this Article, the corporation shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counter-claims or affirmative defenses) or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before

or after its commencement, by the affirmative vote of a majority of the directors in office. This section does not apply to a reimbursement of expenses incurred in successfully prosecuting or defending an arbitration under Article XVI (6) or otherwise successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this Article.

3. Advancing Expenses. The corporation shall pay the expenses (including attorneys' fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Article XVI (1) or the initiation of or participation in which is authorized pursuant to Articles XVI (2) upon receipt of an undertaking by or on behalf of the indemnified representative to repay the amount if it is ultimately determined pursuant to Article XVI (6) that such person is not entitled to be indemnified by the corporation pursuant to this Article. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.

4. Securing of Indemnification Obligations. To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the corporation may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate. Absent fraud, the determination of the Board of Directors with respect to such amounts, costs, terms and conditions shall be conclusive against all security holders, officers and directors and shall not be subject to voidability.

5. Payment of Indemnification. An indemnified representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the secretary of the corporation.

6. Arbitration.

(a) General role. Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article, except with respect to indemnification for liabilities arising under the Securities Act of 1933 that the corporation has undertaken to submit to a court for adjudication, shall be decided only by arbitration in the metropolitan area in which the principal executive offices of the corporation are located at the time, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the corporation, the second of whom shall be selected by the indemnified representative and third of whom shall be selected by the other two arbitrators. In the absence of the American Arbitration Association, or if for any reason arbitration under the arbitration rules of the American Arbitration Association cannot be initiated, or if one of the parties fails or refuses to select an arbitrator or if the arbitrators selected by the corporation and the indemnified representative cannot agree on the selection of the third arbitrator within 30 days after such time as the corporation and the indemnified representative have each been notified of the selection of the other's arbitrator, the necessary arbitrator or arbitrators shall be selected by the presiding judge of the court of general jurisdiction in such metropolitan area.

(b) Burden of proof. The party or parties challenging the right of an indemnified representative to the benefits of this Article shall have the burden of proof.

(c) Expenses. The corporation shall reimburse an indemnified representative for the expenses (including attorneys' fees and disbursements) incurred in successfully prosecuting or defending such arbitration.

(d) Effect. Any award entered by the arbitrators shall be final, binding and nonappealable and judgment may be entered thereon by any party in accordance with applicable law in any court of competent jurisdiction, except that the corporation shall be entitled to interpose as a defense in any such judicial enforcement proceeding any prior final judicial determination adverse to the indemnified representative under Articles XVI (1) (a) (2) in a proceeding not

directly involving indemnification under this Article. This arbitration provision shall be specifically enforceable.

7. Contribution. If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the corporation shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

8. Mandatory Indemnification of Directors, Officers, Etc. To the extent that an authorized representative of the corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in 15 Pa.C.S. 1741 or 1742 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection therewith.

9. Contract Rights: Amendment or Repeal. All rights under this Article shall be deemed a contract between the corporation and the indemnified representative pursuant to which the corporation and each indemnified representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.

10. Scope of Article. The rights granted by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement, vote of shareholders or disinterested directors or otherwise both as to action in an indemnified capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this Article shall continue as to a person who has ceased to be an indemnified representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person.

11. Reliance of Provisions. Each person who shall act as an indemnified representative of the corporation shall be deemed to be doing so in reliance upon the rights provided in this Article.

12. Interpretation. The provisions of this Article are intended to constitute bylaws authorized by 25 Pa.C.S. 5 513 and 1746 and 42 Pa.C.S. 5 8365.