WISCONSIN SCHOOL ATTORNEYS ASSOCIATION, INC.

Preamble to the By-Laws

This corporation is organized as a successor organization to the Wisconsin School Attorneys Association which was formed in 1971. The initial efforts to form this Association were undertaken by George Tipler, executive secretary at the Wisconsin Association of School Boards (WASB). George Tipler polled members of the WASB to obtain the names of attorneys representing school districts in legal matters. He then asked these lawyers about their interest in forming an organization of school law attorneys; the response of the attorneys was enthusiastic. About 50 attorneys representing Wisconsin school districts attended a meeting on October 1, 1970, in Madison, Wisconsin, for the purpose of organizing a school attorneys association. An interim committee was appointed of M.A. McKichan, Platteville, Chairman; James F. Clark, Madison; Albert Petajan, Milwaukee; John Kramer, Fennimore; Roy W. Thiel, Fond du Lac; Richard Volte, Wausau; George Redmond, Milwaukee; and Victor Miller, St. Nazianz, together with Rodney Kittelsen, Monroe; and Frank Woodworth, Beaver Dam, both directors of the WASB.

The interim committee met in Madison in early 1971 and proposed the organization of an independent group of attorneys for school districts in Wisconsin affiliated with the WASB, though not to be directly associated with the WASB or the State Bar of Wisconsin. The committee determined that the Association shall be closely allied with the WASB and should work closely with it. An organizational meeting was called for February 26, 1971, in Milwaukee, at which time the committee’s work and proposals were endorsed and approved. On the following day, February 27, the WASB Board of Directors approved a motion to allow the WASB to serve as Secretariat to the school attorneys group and to provide services to that group for a fee.

The organizational committee proceeded to prepare a constitution and by-laws which were promptly adopted by the members. Since its beginning, the Wisconsin Association of School Attorneys has been a success. Because of the growth and increased activity of the Association it was determined that a corporate structure would more efficiently and effectively accomplish its goals.

Prior to the passage of 2011 Wisconsin Acts 10 and 32, one of the major focuses of this corporation was to collect and disseminate information involving collective bargaining. While this need no longer exists, the representation of school districts in employment matters remains unique and challenging. As the practice of school law has continued to evolve, so has the need for attorneys who practice in this area to stay abreast of more national developments. Therefore, effective October 19, 2017, the corporation will formally request affiliation with National School Board Association (NSBA)’s Council of School Attorneys (COSA). These by-laws have been amended to allow for that affiliation to occur beginning July 1, 2018.
PURPOSE

The purpose of the corporation is to deal exclusively with the problems of schools and school districts. School law has become of age for the practicing lawyer. Significant developments in this field occur daily. School administrators and boards of education are not equipped to answer complex legal questions, and they seek the advice of school attorneys who need to be currently informed of changes in the law so that they may respond promptly in matters which may have far-reaching legal implications. In attempting to meet these needs, the corporation is formed to:

A. Identify the current legal problems of concern to those who advise school boards, to disseminate legal information and analysis to the members, and to promote the exchange of legal information and analysis among the members.

B. Plan and prepare programs for the annual meeting and such other meetings as may be scheduled by the Board of Directors for the purpose of providing in-service training for members.

C. Develop and strengthen the work of attorneys for school boards of the public schools of the State of Wisconsin and thus provide a valuable service for WASB member school districts in dealing with school problems, legal, and related matters.

D. Maintain a cooperative resource center and encourage members to provide the resource center with results of their work, study and experience, for the purpose of making this information in the field of school law available to other members.
BY-LAWS OF THE
WISCONSIN SCHOOL ATTORNEYS ASSOCIATION, INC.

ARTICLE I. OFFICE

1.01. Principal Office. The location of the principal office of the corporation shall be at the City of Madison, Wisconsin, at the office of the Wisconsin Association of School Boards, Inc. (WASB).

ARTICLE II MEMBERS

2.01. Qualifications for Membership.

A. Any school board attorney for any of the public school districts of Wisconsin who are members of the WASB, or any attorney for WASB, may become a member of this organization by the payment of dues as herein provided, thereby also becoming a member of the National School Board Association (NSBA)’s Council of School Attorneys (COSA).

B. The qualifications for a member are to be based on a certification by the attorney licensed in Wisconsin, endorsed on an application for membership, stating that the applicant currently, or within the immediate past two (2) years, represents or has represented, a specified public school district in the state of Wisconsin, belonging to the WASB or WASB.

C. Membership is specifically limited to attorneys representing a WASB Membership District or WASB as legal counsel on an attorney-client basis; the only exception is that all attorneys with the Department of Public Instruction be granted a complimentary membership without charge; provided, however, that the Department of Public Instruction shall not be entitled to any voting rights. The Corporation shall provide a special subscription service which would allow certain interested parties not otherwise qualified to be a member to receive membership mailings for such fees as the Board of Directors may determine from time to time.

D. Membership shall always be on the basis of an individual attorney rather than membership by a law firm, but any such member may by advance notice as to each meeting in writing to the Secretary/Treasurer of the Corporation designate another attorney from the firm with which the member practices to represent that member at any meeting of members; and any member may personally be accompanied to that meeting by another attorney or attorneys presented by the member as a member or associate of the law firm with which that member practices.
E. The Executive Committee of the corporation shall also constitute the admissions committee whose duty it shall be to decide any dispute or matters relating to the eligibility for membership or termination of membership. The admissions committee's function shall be generally to qualify candidates for membership, to have the sole determination as to the termination of membership and to keep the Board informed as to memberships. The determination of the admissions committee shall be final as to the eligibility of any attorney for membership or continued membership in the organization.

2.02. **Termination.**

A. Membership shall terminate when an attorney member ceases to represent a specified school district or WASB, within the immediate past two (2) years.

B. Membership will terminate after default in the payment of dues for a period of two months.

2.03. **Annual Meetings.** An annual meeting of the members shall be held each year on the day preceding the annual school law seminar sponsored by the corporation and the WASB or on such other day as may be designated by the Board or Executive Committee.

2.04. **Special Meetings.** Special meetings of the members may be called by the Board of Directors.

2.05. **Place of Meeting.** The Board of Directors may designate the place of meeting for any annual or special meeting but if no such designation is made, the place of meeting shall be the principal office of the corporation.

2.06. **Notice of Meeting.** Written notice stating the place, day and hour of the meeting and, in cases of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 days nor more than 60 days before the date of the meeting, by U.S. mail or electric communication, by or at the direction of the President, or the Secretary-Treasurer, or other officer or persons calling the meeting, to each member of the organization. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears in the membership record books with postage thereon prepaid. If noticed by electronic communication, such notice shall be deemed to be delivered when sent to the electronic mailing address as it appears in the membership record books.

2.07. **Quorum.** Those present, but not less than 20, shall constitute a quorum for the transaction of any business at any member's meeting and if less than a quorum is present at a meeting, a majority of the members present may adjourn the meeting from time to time until further notice. The act of a majority of the members present at a meeting at which a quorum is present, shall be the act of the members.
2.08. **Conduct of Meetings.** The President, and in his absence, the President-elect, and in their absence any person chosen by the members present, shall call the meeting of the members to order and shall act as chairman of the meeting, and the Secretary-Treasurer of the corporation shall act as secretary of all meetings of the members, but, in the absence of the Secretary-Treasurer, the presiding officer may appoint any other person to act as secretary of the meeting.

**ARTICLE III. BOARD OF DIRECTORS**

3.01. **General Powers and Number.**

A. The affairs of the corporation shall be managed by the Board of Directors.

B. The number of directors shall be seven.

3.02. **Election and Term of Office.**

A. Directors shall be elected at the annual meeting of members for four-year terms or until a successor is elected. The terms shall be staggered with no more than two full terms to be filled at each annual election. Directors shall be elected from a slate prepared by a nominating committee consisting of the President, President-elect and two non-members of the Board of Directors appointed by the President. The nominating committee shall consider all suggestions for the office of director received from the members. In preparing a slate of candidates the nominating committee shall attempt to maintain a broad representation on the Board of members who actively support and participate in activities of the corporation.

B. Directors shall hold office for no longer than a single four-year term; however, a director who is elected to fill an unexpired term of less than three years shall be eligible to stand for election an additional four-year term. A former director may become a nominee for the Board of Directors having been out of office for two years.

C. Directors shall take office immediately following the close of the annual meeting at which elected.

3.03. **Regular Meetings.** The Board of Directors shall hold at least one meeting per year. One meeting shall be held immediately after each annual meeting of the members as herein provided.

3.04. **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any two directors.
3.05. **Quorum.** A majority shall constitute a quorum for the transaction of business at any directors' meeting and if less than a majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time until further notice. Directors may attend in person or by means of telephone or video conferencing.

3.06. **Manner of Acting.** The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law or by the Article of Incorporation or these By-Laws.

3.07. **Notice of Meeting; Waiver.** Notice of each meeting of the Board of Directors shall be given by written notice delivered by mail or electronic communication to each director of his business address or at such other address as such director shall have designated in writing filed with the Secretary-Treasurer, in each case not less than five days if by mail, and not less than 48 hours if by electronic communication. Whenever any notice is required to be given to a director of the corporation, a written waiver of notice, signed at any time, whether before or after the time of meeting, by the director entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting and objects thereat 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 or special meeting of the Board of Directors need to be specified in the notice or waiver of notice of such meeting.

3.08. **Conduct of Meetings.** The President, and in his absence the, President-elect, and in their absence any director chosen by the directors present, shall call meetings of the Board of Directors to order and shall act as chairman of the meeting. The Secretary-Treasurer of the corporation shall act as secretary of all meetings of the Board of Directors, but in the absence of the Secretary-Treasurer, the presiding officer may appoint any person present to act as secretary of the meeting.

3.09. **Vacancies.** Any vacancy occurring on the Board of Directors may be filled by a vote of the majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

3.10. **Compensation.** No fee shall be paid to any director of the corporation nor shall any director be compensated for services to the corporation as director or otherwise, but the Board of Directors may authorize reimbursement for reasonable expenses incurred on behalf of the corporation.

3.11. **Presumption of Assent.** A director of the corporation who is present at a meeting of the Board of Directors or a committee thereof, of which he is a member at which action on any corporate matter is taken, shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before
of the adjournment thereof or shall forward such dissent by registered mail to the Secretary-Treasurer of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

3.12. **Unanimous Consent Without Meeting.** Notwithstanding any other provision of these by-laws, the directors may, by written consent, executed by all members of the Board of Directors, take any action on any matter of business within the authority of the Board.

**ARTICLE IV. OFFICERS**

4.01. **Number.** The principal officers of the corporation shall be a President, President-elect and a Secretary-Treasurer. The President and President-elect must at all times be members of the corporation and the Board of Directors; the Secretary-Treasurer need not be a member of the corporation or the Board of Directors.

4.02. **Election and Term of Office.**

A. Each of the named officers shall be elected annually by the Board of Directors at the annual meeting of the Board to be held immediately after each annual meeting of the members and shall take office immediately upon election. The person serving as President-elect at the time of the annual meeting shall be elected President if such person's term as director has at least one year remaining, unless, in the judgment of the Board of Directors, it would not be in the best interests of the corporation to do so.

B. Such other officers and assistants as may be deemed necessary may be elected or appointed by the Board of Directors.

C. If the election of the officers shall not be held at the meeting following the annual meeting such election shall be held as soon thereafter as convenient.

D. Neither the President nor the President-elect shall hold the same office for more than a single one-year term. However, if either is elected to fill an unexpired term he shall be eligible to stand for election for a full one-year term.

Each officer shall hold office until replaced by his successor in office. A Past-President or President-elect may become a nominee for the same office having been out of office for four years.

E. On these By-Laws the use of the word "his" shall imply and be interpreted to include in any case either "his" or "her" as may be applicable.

4.03. **Removal.** 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.
4.04. **Vacancies.** Any vacancy in office may be filled by a vote of the majority of the Board of Directors, even though less than a quorum of the Board, and the vacancy filled shall be for the unexpired portion of the term.

4.05. **President and Duties.** The President shall be the principal executive officer of the corporation. He shall, when present, preside at all meetings of the members of the Board of Directors. He shall execute documents which the Board of Directors has authorized to be executed, and in general, perform all duties incidental to the office of the President and such other duties as may be prescribed from time to time by the Board of Directors.

4.06. **President-elect and Duties.** The President-elect shall perform the duties of the President in the absence of the President, and when so acting, he shall have the same powers as those of the President, and in general, the President-elect shall perform all duties as may be prescribed from time to time by the Board of Directors.

4.07. **Past-President and Duties.** The Past-President shall serve in a consultation role and assist the President as necessary to provide continuity for a term of one-year after his term as President has ended. In such case as the Past-President’s term has expired after serving as President, the Past-President shall serve on the Board of Directors for an additional full one-year term, but shall have no voting rights and shall not be counted in determining a quorum.

4.08. **Compensation.** No fee shall be paid to any officer of the corporation, nor shall any officer be compensated for services to the corporation as officer or otherwise, but the Board of Directors may authorize reimbursement for reasonable expenses incurred on behalf of the corporation.

**ARTICLE V. EXECUTIVE COMMITTEE**

There shall be an Executive Committee of the corporation in order that the continuity of the corporation's business may be preserved in those situations where it is impractical or impossible for the full Board of Directors to act. The President, President-elect and one member of the Board of Directors elected by the Board shall constitute the Executive Committee. The President or the other two members of the committee acting together may call a meeting of the Executive Committee. Section 3.07 regarding notice of meeting and waiver shall apply to the call of Executive Committee meetings. A majority of the members of the Executive Committee present and voting shall be binding as to any action taken. A subsequent meeting of the Board of Directors may cancel or modify any action of the Executive Committee, if in the judgment of the Board of Directors, it would be in the best interests of the corporation to do so.
ARTICLE VI. FISCAL OPERATIONS

6.01. General Authority. The financial operation of the corporation shall be vested in the Board of Directors. No funds of the organization shall be disbursed except upon the authority of the Board of Directors or the Executive Committee of the corporation.

6.02. Fiscal Year. The fiscal year of the organization shall begin on the first day of July of each year and end on the last day of June in each year.

6.03. Dues.

A. The dues for the first year of membership for Members shall be $100 per fiscal year of the corporation beginning July 1, 2018, and these dues are to be paid to the Secretary-Treasurer of the corporation. In addition, national dues for membership in the NSBA Council of School Attorneys shall be $240 for private attorney and $170 for in-house counsel for the fiscal year beginning July 1, 2018, and shall be required for all Members to be paid to the Secretary-Treasurer of the corporation.

B. Dues shall be payable for each fiscal year of the organization on or before the first day of July in each calendar year.

C. The dues of any new member shall be pro-rated from the first day of the month in which the new member is qualified and accepted.

D. The amount of the dues for each ensuing year of the corporation shall be determined by the Board of Directors and the NSBA Council of School Attorneys Board of Directors (and subsequent approval by the NSBA Board of Directors), respectively.

ARTICLE VII. AMENDMENTS

The By-Laws may be altered, amended or repealed by the Board of Directors. The Board of Directors is specifically authorized to dissolve, reorganize and restructure the corporation under the same or another name. The Board of Directors is specifically authorized to assign and transfer any and all of the corporation's assets to the Wisconsin Association of School Boards, Inc., for the use and purpose of that corporation.

ARTICLE VIII. DISSOLUTION

In the event of liquidation or dissolution of the corporation, no liquidating or other dividends and distribution of property owned by the corporation shall be declared or paid to any private individual but the net assets of the corporation shall be distributed to the WASB or any legal successor thereto; provided that if the WASB is not then a tax exempt organization or an organization excluded from liability for income taxes, then the net assets shall be distributed to
one or more charitable or educational organizations as then described in Section 501(c)(3) of the Internal Revenue Code of 1954, selected in the discretion of the Board of Directors of this corporation.

ARTICLE IX. INDEMNIFICATION

9.01 Certain Definitions.

All capitalized terms used in this Article IX and not otherwise hereinafter defined in this Section I shall have the meanings set forth in Section 181.041 of the Statute. The following capitalized terms (including any plural forms thereof) used in this Article IX shall be defined as follows:

A. "Affiliate" shall include, without limitation, any corporation, partnership, joint venture, employee benefit plan, trust or other enterprise that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Corporation.

B. "Authority" shall mean the entity selected pursuant to Section 4 of this Article IX by the director or officer to determine his or her right to indemnification.

C. "Board-Appointed Committee" shall mean a committee duly appointed by the Board of Directors and consisting solely of two (2) or more directors not at the time parties to the subject Proceeding or any related Proceeding.

D. "Board of Directors" shall mean the entire then elected and serving Board of Directors of the Corporation, including all members thereof who are Parties to the subject Proceeding or any related Proceeding, unless specifically stated otherwise herein.

E. "Breach of Duty" shall mean a director's or officer's breach or failure to perform his or her duties to the Corporation and his or her breach or failure to perform those duties constitute any of the following: (1) a willful failure to deal fairly with the Corporation in connection with a matter in which the director or officer has a material conflict of interest; (2) a violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful; (3) a transaction from which the director or officer derived an improper personal profit; and (4) willful misconduct.

F. "Controlled Subsidiary" shall mean any subsidiary of the Corporation, at least 80 percent of the outstanding voting stock of which is owned directly or indirectly by the Corporation.
G. "Corporation" as used herein and as defined in the Statute and incorporated by reference into the definitions of certain other capitalized terms used herein, shall mean this Corporation, including, without limitation, any successor corporation or entity to this Corporation by way of merger, consolidation or acquisition of all or substantially all of the assets of this Corporation.

H. "Director" or "Officer" shall mean any of the following: (1) a natural person who is or was at the time of the events giving rise to the Proceeding a director or officer of the Corporation; (2) a natural person who, while a director or officer of the Corporation, is or at the time of the events giving rise to the Proceeding was serving at the Corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; however, it shall be conclusively presumed that any Director or Officer serving as a director or officer, partner, trustee, or member of an Affiliate shall be serving at the request of the Corporation; or (3) a natural person who, while a director or officer of the Corporation, is or was serving an employee benefit plan because his or her duties to the Corporation also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan. "Director" or "Officer" shall include the estate, heirs, personal representatives, administrators, guardians and conservators of any deceased or former "Director" or "Officer."

I. "Disinterested Quorum" shall mean a quorum of the Board of Directors consisting of Directors who are not Parties to the subject Proceeding or any related Proceeding.

J. "Expenses" shall include fees, costs, charges, disbursements, attorneys' fees, and other expenses incurred in connection with a Proceeding.

K. "Liability" shall include the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employee benefit plan, and reasonable Expenses.

L. "Party" shall mean a natural person who was or is, or is threatened to be made, a named defendant or respondent in a Proceeding, or any Director or Officer who is or was a witness in a Proceeding at a time when he or she has not otherwise been formally named a Party thereto.

M. "Proceeding" shall mean (1) any threatened, pending or completed action, suit, claim, litigation, investigation, arbitration or proceeding, whether civil, criminal, administrative or investigative, formal or informal, predicated on foreign, federal, state or local law, rule or regulation brought by or in the right of the Corporation or by any other person or by any governmental or administrative authority; (2) all proceedings brought before an Authority or otherwise to enforce rights hereunder; (3) any appeal from a Proceeding; and (4) any proceeding in which the Director or Officer is a plaintiff or petitioner because he or she is a Director or Officer;
provided, however, that any such Proceeding under this subsection (iv) must be authorized by a majority vote of a Disinterested Quorum.

N. "Statute" shall mean Sections 181.041 through 181.053, inclusive, of the Wisconsin Nonstock Corporation Law, Chapter 181 of the Wisconsin Statutes, as the same shall then be in effect, including any amendments thereto, but, in the case of any such amendment, only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than the Statute permitted or required the Corporation to provide prior to such amendment.

9.02 Mandatory Indemnification.

A. The Corporation shall indemnify a Director or Officer, to the extent he or she has been successful on the merits or otherwise in the defense of a Proceeding, for all reasonable Expenses incurred in connection with the defense of the Proceeding if the Director or Officer was a party thereto because he or she is or was at the time of the events upon which the Proceeding was based a Director or Officer of the Corporation.

B. In all cases not included in Section 2(A) of this Article IX, the Corporation shall indemnify a Director or Officer against Liabilities incurred by the Director or Officer in a Proceeding to which the Director or Officer was a party because he or she is or was at the time of the event upon which the Proceeding was based a Director or Officer of the Corporation, unless liability was incurred because the Director or Officer engaged in conduct constituting a Breach of Duty.
9.03 Procedural Requirements.

A. A Director or Officer who seeks indemnification under Section 2 of this Article IX shall make a written request therefor to the Secretary/Treasurer of the Corporation or, if the party seeking indemnification is the Secretary/Treasurer, to the President of the Corporation.

B. Within sixty (60) days of the Corporation's receipt of such request, as provided in Section 3(A) of this Article IX, a Disinterested Quorum or, if a Disinterested Quorum cannot be obtained, a Board-Appointed Committee shall meet to determine, by a majority vote thereof, whether the Director or Officer requesting indemnification is entitled to such indemnification pursuant to the requirements of Section 2 of this Article IX. Upon approval of such request, indemnification by the Corporation of the requested amount of Liabilities shall be paid to the Director or Officer immediately (net of any Expenses previously advanced pursuant to Section 5 of this Article IX).

C. In the event that, pursuant to Section 3(B) of this Article IX, the Disinterested Quorum or the Board-Appointed Committee, as the case may be, denies the Director's or Officer's request for indemnification, or in the event that neither a Disinterested Quorum nor a Board-Appointed Committee can be obtained, the Board of Directors shall immediately authorize by resolution that an Authority, appointed as provided in Section 4 of this Article IX, determine whether the Director's or Officer's conduct constituted a Breach of Duty and, therefore, whether indemnification should be denied hereunder.

D. (1) If the Board of Directors does not authorize an Authority to determine the Director's or Officer's right to indemnification hereunder within such 60-day period and/or, (2) if indemnification of the requested amount of Liabilities is paid by the Corporation, then it shall be conclusively presumed for all purposes that a Disinterested Quorum has affirmatively determined that the Director or Officer did not engage in conduct constituting a Breach of Duty and, in the case of subsection 1, above (but not subsection 2), indemnification by the Corporation of the requested amount of Liabilities shall be paid to the Director or Officer immediately.

9.04 Determination of Indemnification.

A. If the Board of Directors authorizes an Authority to determine a Director's or Officer's right to indemnification pursuant to Section 3 of this Article IX, then the Director or Officer requesting indemnification shall have the absolute discretionary authority to select one of the following as such Authority:

1. An independent legal counsel selected by majority vote of a Disinterested Quorum, or, if a Disinterested Quorum cannot be obtained, by majority vote of a Board-Appointed Committee, or, if a Disinterested Quorum or a Board-Appointed
Committee cannot be obtained, by a majority vote of the full Board of Directors, including Directors who are parties to the same or related Proceedings; or

2. A panel of three (3) arbitrators selected from panels of arbitrators of the local American Arbitration Association, provided that: (a) one arbitrator shall be selected by such Director or Officer, the second arbitrator shall be selected by a majority vote of those Directors entitled under subsection 1 of this Section 4 to select independent legal counsel, and the third arbitrator shall be selected by the two previously-selected arbitrators; and (b) in all other respects, such panel shall be governed by the American Arbitration Association's then existing Commercial Arbitration Rules; or

3. The affirmative vote or unanimous written consent of the members of the Corporation if there are members having voting rights at the time. However, membership rights owned by or voted under the control of persons who at the time of the vote or consent are parties to the same or related Proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination; or

4. A court of competent jurisdiction upon application by the Director or Officer for an initial determination of entitlement to indemnification or for review by the court of an adverse determination under Sections 3 and 4 of this Article IX. Indemnification shall be ordered if the court determines that the Director or Officer is entitled to indemnification under Section 2 or that the Director or Officer is fairly and reasonably entitled to indemnification in view of all of the relevant circumstances.

B. In any such determination by the selected Authority, there shall exist a rebuttable presumption that the Director's or Officer's conduct did not constitute a Breach of Duty and that indemnification against the requested amount of Liabilities is required. The burden of rebutting such a presumption by clear and convincing evidence shall be on the Corporation or such other party asserting that such indemnification should not be allowed. Furthermore, the termination of a Proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the Director or Officer is not required under Section 2 of this Article IX.

C. The Authority shall make its determination within sixty (60) days of being selected and shall submit a written opinion of its conclusion simultaneously to both the Corporation and the Director or Officer.

D. If the Authority determines that indemnification is required hereunder, the Corporation shall pay the entire requested amount of Liabilities (net of any Expenses previously advanced pursuant to Section 5), including interest owed at a reasonable rate, as determined by the Authority, within ten (10) days of receipt of the Authority's
opinion; provided that, if it is determined by the Authority that a Director or Officer is entitled to indemnification against Liabilities incurred in connection with some claims, issues or matters, but not as to other claims, issues or matters, involved in the subject Proceeding, the Corporation shall be required to pay (as set forth above) only the amount of such requested Liabilities as the Authority shall deem appropriate in light of the circumstances of such Proceeding.

E. The determination by the Authority that indemnification is required hereunder shall be binding upon the Corporation regardless of any prior determination that the Director or Officer engaged in a Breach of Duty.

F. Except where it is determined that a Director or Officer engaged in conduct constituting a Breach of Duty, all Expenses incurred in the determination process under this Section 4 by either the Corporation or the Director or Officer, including, without limitation, all Expenses of the selected Authority, shall be paid by the Corporation.

9.05 Allowance of Expenses as Incurred.

A. The Corporation shall pay or reimburse, from time to time, or at any time within ten (10) days after the receipt of the Director's or Officer's written request therefor, the reasonable Expenses incurred by a Director or Officer who is a party to a Proceeding, as those Expenses are incurred, provided that the Director or Officer satisfies the following conditions:

1. The Director or Officer furnishes to the Corporation an executed written affirmation of his or her good-faith belief that he or she has not engaged in conduct which constitutes a Breach of Duty; and

2. The Director or Officer furnishes to the Corporation an unsecured written agreement executed by the Director or Officer personally or on his or her behalf, to repay any advances made under this Section 5 to the extent it is ultimately determined that the Director or Officer is not entitled to be indemnified by the Corporation for such Expenses pursuant to Sections 2, 3 and 4 of this article IX.

B. If the Director or Officer must repay any previously advanced Expenses pursuant to this Section 5, such Director or Officer shall not be required to pay interest on such amounts.

9.06 Indemnification and Allowance of Expenses of Certain Others.

A. The Corporation shall indemnify an individual who is or was a director or officer of any Controlled Subsidiary (who is not or was not otherwise serving as a Director or Officer) against all Liabilities, and shall advance the reasonable expenses incurred by such director or officer in a Proceeding, but only to the extent such Proceeding is
based on acts or omissions alleged to have occurred after the Controlled Subsidiary
has become a subsidiary of the Corporation and, otherwise, to the same extent
hereunder as if such director or officer incurred such Liabilities because he or she was
a Director or Officer, or if such director or officer is a party thereto because he or she
is or was a director or officer of the Controlled Subsidiary.

B. The Board of Directors may, in its sole and absolute discretion, as it deems
appropriate, and pursuant to a majority vote thereof, indemnify an individual who
is or was a director or officer of an Affiliate (who is not otherwise serving as a
Director or Officer or a director or officer of a Controlled Subsidiary) against all
Liabilities, and shall advance the reasonable Expenses, incurred by such director or
officer in a Proceeding to the same extent hereunder as if such director or officer
incurred such Liabilities because he or she was a Director or Officer, or if such
director or officer is a Party thereto because he or she is or was a director or officer of
the Affiliate.

C. The Board of Directors may, in its sole and absolute discretion, as it deems
appropriate, and pursuant to a majority vote thereof, indemnify against the Liabilities
incurred by, and/or provide for the advance or allowance of reasonable Expenses of,
an employee or authorized agent of the Corporation acting within the scope of his or
her duties as such.

9.07 Insurance.

The Corporation may purchase and maintain insurance on behalf of a Director or Officer
or any individual who is or was an employee or authorized agent of the Corporation, or to
reimburse itself, against any Liability asserted or incurred, and expenses incurred, by such
Director or Officer or individual in connection with a Proceeding brought against such
Director or Officer or individual in his or her capacity as such or arising from his or her
status as such, regardless of whether the Corporation is required or permitted to
indemnify against any such Liability or to reimburse for any such Expenses incurred
under this Article.