

DCS

Michael J. Mocniak  
Vice President, General Counsel  
and Secretary



number one baltimore place north chicago, illinois 60064 phone (708) 689-4900 fax (708) 689-0307

February 4, 1994

Mr. James Lieberman, Director  
Office of Enforcement  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Reference: Demand for Information  
Docket No. 40-07580  
License No. SMB-911

Dear Mr. Lieberman:

Enclosed are the following documents which demonstrate that Fansteel has taken the specific actions requested in Section III.B.(1)-(6) of the above-referenced Demand for Information.

1) An originally signed revised Standby Trust Agreement incorporating the changes requested in Section III.B.(1)-(4) and (6).

2) A certified copy of Fansteel Inc.'s by-laws. You will note that the Trust Agreement is signed on behalf of Fansteel Inc. by its Chairman of the Board and Chief Executive Officer. Article VIII, Section 8 of the by-laws provides that he has the power to sign all agreements on behalf of the Corporation. This satisfies Section III.B.(5).

These documents satisfy the Demand for Information and no further response is required at this time from Fansteel. If you disagree, please call me.

Concurrent with forwarding these documents to you, Fansteel Inc. has notified the existing trustee of its replacement as well as the Commission. The bank which

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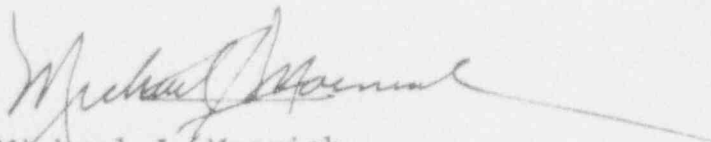
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**Fansteel**

issued the Standby Letter of Credit is also being advised of the change and instructed to amend the Letter of Credit to reflect the change.

Very truly yours,

FANSTEEL INC.



Michael J. Mocniak

jjt

Enclosures

cc: Assistant General Counsel for Hearings and Enforcement  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Director, Division of Low-Level Waste Management  
and Decommissioning  
Office of Nuclear Material Safety and Safeguards  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

## STANDBY TRUST AGREEMENT

The Trust Agreement is entered into as of the 3<sup>rd</sup> day of February, 1994, by and between Fansteel Inc., a Delaware corporation, herein referred to as the "Grantor", and Bank of Waukegan as trustee under Trust No. 2740 and not individually, of Waukegan, Illinois, the "Trustee";

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 40. These regulations, applicable to the Grantor, require that a holder of, or an applicant for a Part 30, 40, 70 or 72 license provide assurance that funds will be available when needed for required decommissioning activities.

WHEREAS, the Grantor has elected to use a letter of credit to provide all of such financial assurance for the facilities identified herein; and

WHEREAS, when payment is made under a letter of credit, this standby trust shall be used for the deposit of such payment; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

### Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the NRC licensee who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the trustee who enters into this Agreement and any successor Trustee.

### Section 2. Costs of Decommissioning.

This Agreement pertains to the costs of decommissioning the materials and activities identified in License Number SMB-911 issued pursuant to 10 CFR Part 40 as shown in Schedule A.

Section 3. Establishment of Fund.

The Grantor hereby establishes a standby trust fund for the benefit of the NRC. Trustee hereby agrees to hold said Fund IN TRUST and to administer said Fund in accordance with the terms hereof. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein.

Section 4. Payments Constituting the Fund.

Payments made to the Trustee for the Fund shall consist of proceeds of the letter of credit in the initial face value of \$750,000.00. Such property and any other property subsequently transferred to the Trustee are referred to as the "Fund", together with all earnings and profits hereon, less any payment or distributions made by the Trustee pursuant to this Agreement. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the Fund, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NRC.

Section 5. Payment for Required Activities Specified in the Plan.

The Trustee shall make payments from the Fund to the Grantor upon presentation to the Trustee of the following:

- (a) A certificate duly executed by the Secretary of the Depositor in the form set forth in the attached Exhibit A: Specimen Certificate, and
- (b) A certificate that states:
  - (1) that decommissioning is proceeding pursuant to an NRC-approved Plan,
  - (2) that the funds withdrawn will be expended for activities undertaken pursuant to that Plan, and
  - (3) that the NRC has been given 30 days' prior notice of Fansteel Inc.'s intent to withdraw funds from the escrow fund.

No withdrawal from the fund can exceed ten percent (10%) of the outstanding balance of the Fund or Seventy-Five Thousand and no/100 Dollars (\$75,000.00), whichever is greater, unless NRC's written approval is attached.

In the event of the Grantor's default or inability to direct decommissioning activities, which default or inability shall be conclusively evidenced to the Trustee by a sworn affidavit made by a person purporting to be an authorized representative of the NRC stating that the Grantor has been notified by NRC of such default or inability and has failed to remedy such default or inability, the Trustee shall make such payments from the Fund as the NRC shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement. The Trustee shall have no liability for any action based on any such affidavit reasonably believed by Trustee to be made with authority. The Trustee shall reimburse the Grantor or other persons as specified by the NRC, from the Fund for expenditures in such amounts as the NRC shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NRC specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### Section 6. Trust Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the Fund solely in the interest of the Grantor and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a-2{a}), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal government; and

- (c) For a reasonable time, not to exceed 60 days, the Trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary for prudent management of the Fund;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, to reinvest interest payments and funds from matured and redeemed instruments, to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such



securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Annual Valuation.

After payment has been made into this standby trust fund, the Trustee shall annually, at least 30 days before the anniversary date of receipt of payment into the standby trust fund, furnish to the Grantor and to the NRC a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NRC shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to the matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as set forth in Exhibit B.

Section 13. Successor Trustee.

Upon 90 days notice to the NRC, the Trustee may resign; upon 90 days notice to the NRC and the Trustee, the Grantor may replace the Trustee; but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NRC, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are signatories to this Agreement or such other designees as the Grantor may designate in writing. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, or instructions. If the NRC issues orders, requests, or instructions to the Trustee, these shall be in writing, signed by the NRC, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests,



and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor, the NRC, hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the NRC, except as provided for herein.

Section 15. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NRC, or by the Trustee and the NRC if the Grantor ceases to exist.

Section 16. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 15, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NRC or by the Trustee and the NRC if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or its successor.

Section 17. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the NRC, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. This Agreement shall be administered, and enforced according to the laws of the State of Illinois.

Section 19. Interpretation and Severability.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall

not affect the interpretation or the legal efficacy of this Agreement. If any part of this Agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the respective officers duly authorized and the corporate seals to be hereunto affixed and attested as of the date first above written.

ATTEST: *M. J. Mocniak*  
M. J. Mocniak

Its: Secretary

FANSTEEL INC.

By: *K. R. Garrity*  
K. R. Garrity

Its: Chairman and Chief  
Executive Officer

ATTEST: *Catherine A. Polley*

Its: TRUST OFFICER

BANK OF WAUKEGAN, as trustee  
aforesaid and not individually

By: *[Signature]*

Its: PRESIDENT

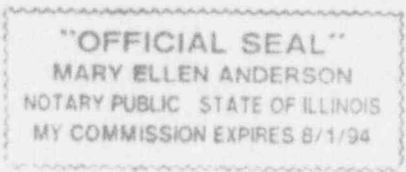
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STATE OF ILLINOIS    )  
                                  )  
COUNTY OF LAKE        )

**AFFIDAVIT OF ACKNOWLEDGEMENT**

ON THIS 2nd day of February, 1994, before me, a **NOTARY PUBLIC** in and for the State and County aforesaid, personally appeared **KENNETH W. BALZA**, and he did depose and say that he is the **PRESIDENT** of the **BANK OF WAUKEGAN**, a banking association, as **TRUSTEE** under its **TRUST NUMBER 2740**, and not individually, which executed the foregoing instrument, that he knows the **SEAL** of said banking association; that the **SEAL** affixed to the foregoing instrument is such corporate seal; that it was so affixed by Order of the association; and that he signed his name thereto by like Order.

*Mary E. Anderson*  
\_\_\_\_\_  
**NOTARY PUBLIC**



TRUST AGREEMENT SCHEDULE A

This Agreement demonstrates financial assurance for the following cost estimates for the following licensed activities:

U.S. NUCLEAR  
REGULATORY  
COMMISSION  
LICENSE NUMBER

SMB-911

NAME AND ADDRESS OF LICENSEE

FANSTEEL INC.  
NUMBER ONE TANTALUM PLACE  
NORTH CHICAGO, IL 60064

ADDRESS OF LICENSED ACTIVITY

NUMBER TEN TANTALUM PLACE  
MUSKOGEE, OK 74401

COST ESTIMATES FOR REGULATORY  
ASSURANCES DEMONSTRATED BY  
THIS AGREEMENT

\$750,000 SUBMITTED AS INITIAL  
REQUIREMENT OF 10 CFR PART 40.36(C)(2)

EXHIBIT A: Specimen Certificate

Gentlemen:

In accordance with the terms of the Agreement with you, I, Michael J. Mocniak, Secretary of Fansteel Inc. hereby certify that the following events have occurred:

1. Fansteel Inc. is required to commence the decommissioning of its facility located at \_\_\_\_\_ (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the United States Nuclear Regulatory Commission, or its successor, on \_\_\_\_\_ (copy of approval attached).
3. The Board of Directors of Fansteel Inc. has adopted the attached resolution authorizing the commencement of the decommissioning.

\_\_\_\_\_  
Secretary of Fansteel Inc.

Date: \_\_\_\_\_, 1994



EXHIBIT A, Page 2

Certificate of Resolution

I, Michael J. Mocniak, do hereby certify that I am Secretary of Fansteel Inc., a Delaware corporation, and that the resolution listed below was duly adopted at a meeting of this Corporation's Board of Directors on \_\_\_\_\_, 199\_\_.

IN WITNESS WHEREOF, I have hereunto signed by name and affixed the seal of this Corporation this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Secretary of Fansteel Inc.

RESOLVED, that this Board of Directors hereby authorizes the President, or such other employee of the Company as he may designate, to commence decommissioning activities at \_\_\_\_\_ in accordance with the terms and conditions described to this Board of Directors at this meeting and with such other terms and conditions as the President shall approve with and upon the advice of counsel.

## EXHIBIT B: Trustee's Fees

In addition to the fees and expenses of Trustee provided for in the Trust Agreement, the Trustee's annual maintenance fee for the first year ending on the first anniversary of the date the Trust Agreement is entered into shall be payable in advance upon acceptance hereof. Thereafter, said fee shall be charged in accordance with the then current schedule of Trustee's fees on the anniversary date of each succeeding year until the Trust is terminated. All such fees are payable in advance of the year for which the fee is incurred. The full year's fee shall be deemed earned when paid. Current trust fees may be obtained from the trust department of the Bank of Waukegan.


C E R T I F I C A T E

I, MICHAEL J. MOCNIAK, do hereby certify:

1. That I am the duly elected, qualified and acting Secretary, and the custodian of the corporation records and seal of Fansteel Inc., a Delaware corporation.

2. That attached hereto is a true and correct copy of the By-Laws of Fansteel Inc. in effect as of the February 3, 1994.

GIVEN under my hand and seal of Fansteel Inc. this 3rd day of February, 1994.

  
Michael J. Mocniak, Secretary



FANSTEEL INC.

BY-LAWS

ARTICLE I

Offices

Section 1. Offices. The Corporation may have such offices in any jurisdiction within or without the United States as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

Meetings of Stockholders

Section 1. Place of Stockholders' Meetings. Meetings of stockholders shall be held at such place, within or without the State of Delaware, as the Board of Directors may from time to time determine or, in the absence of such determination, at the offices of the Corporation at Number One Tantalum Place, North Chicago, Illinois 60064.

Section 2. Annual Meeting. A meeting of the stockholders shall be held annually for the election of directors and the transaction of other business on the third Wednesday in April; or if such date be a legal holiday, then on the next secular day following; or at such other date as may be fixed by action of the Board of Directors.

Section 3. Special Meetings. Special meetings of the stockholders may be called by the Board of Directors and the Chairman and shall be called by the Chairman or the Secretary at the request, in writing, of a majority of the directors then in office. Such request shall state the purpose or purposes of the proposed special meeting. The business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of such meeting.

Section 4. Notices.

(a) Written notice of each meeting of stockholders shall be given, personally or by mail, not less than thirty nor more than fifty days before the date of the meeting, to each stockholder entitled to vote at such meeting. Such notice shall state the place, date and hour of the meeting and, unless it is the annual meeting, indicate that it is being issued by or at the direction of the person or persons

calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called.

(b) When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if the adjournment is for more than thirty days or if after the adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 5. Record Date. The Board of Directors may fix in advance a date as the record date for determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining stockholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action. Such date shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.

#### Section 6. Quorum.

(a) The holders of a majority of the stock entitled to vote thereat shall constitute a quorum at the meeting of stockholders for the transaction of any business, provided that when a specified item of business is required to be voted on by a class or series, voting as a class, the holders of a majority of the shares of stock of such class or series shall constitute a quorum for the transaction of such specified item of business.

(b) When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any stockholders.

(c) The stockholders present may adjourn the meeting despite the absence of a quorum.

#### Section 7. Proxies.

(a) Every stockholder entitled to vote at a meeting of stockholders or to express consent or dissent without a meeting may authorize another person to act for him by proxy.



(b) Every proxy must be signed by the stockholder or his attorney in fact. No proxy shall be valid after the expiration of eleven months from the date thereof. Every proxy shall be revocable at the pleasure of the stockholder executing it, except as otherwise provided by law.

#### Section 8. Inspectors of Election.

(a) The Board of Directors, in advance of any stockholders' meeting may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at the stockholders' meeting may, and on the request of any stockholder entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting, with strict impartiality and according to the best of his ability.

(b) The requirement of inspectors at any stockholders' meeting may be waived unless compliance therewith is requested by a stockholder present in person or by proxy and entitled to vote at such meeting.

(c) The inspectors shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them, and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

#### Section 9. Vote of Stockholders.

(a) Every stockholder of record shall be entitled at every meeting of stockholders to one vote for every share of stock standing in his name on the record of stockholders unless otherwise provided in the Certificate of Incorporation

fixing the designations, relative rights, preferences or limitations of shares of any series of Preferred Stock.

(b) Directors shall be elected by a plurality of the votes cast at a meeting of stockholders by the holders of shares of stock entitled to vote in the election.

(c) Whenever any corporate action, other than the election of directors, is to be taken under the Delaware General Corporation Law by vote of the stockholders, it shall, except as otherwise required by said Delaware General Corporation Law or by the Certificate of Incorporation as permitted by law, be authorized by a majority of the votes cast at a meeting of stockholders by the holders of shares of stock entitled to vote thereon.

### ARTICLE III

#### Directors

Section 1. Management of Business of the Corporation. The business of the Corporation shall be managed by its Board of Directors. Each of the directors shall be at least twenty-one years of age.

Section 2. Number of Directors. The number of directors constituting the entire Board of Directors shall not be less than three nor more than fifteen. Subject to such limitation, the Board of Directors shall set the number of directors by resolution adopted by the vote of a majority of the entire Board of Directors then in office.

Section 3. Election and Term of Office; Removal.

(a) At each annual meeting of stockholders, directors shall be elected to hold office until the next annual meeting.

(b) Subject to his earlier resignation or removal, each director shall hold office until the expiration of the term for which he is elected, and until his successor has been elected and qualified.

(c) Except as otherwise provided by applicable law, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares of stock then entitled to vote at an election of directors.

Section 4. Newly Created Directorships and Vacancies.

(a) Newly created directorships resulting from an

increase in the number of directors and vacancies occurring in the Board of Directors for any reason may be filled by vote of a majority of the directors then in office, although less than a quorum exists.

(b) A director elected to fill a vacancy shall be elected to hold office for the unexpired term of his predecessor.

Section 5. Quorum. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business. Except as otherwise provided by statute, the Certificate of Incorporation or these by-laws, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board of Directors.

#### ARTICLE IV

##### Meetings of the Board of Directors

Section 1. Place and Time of Meetings. Meetings of the Board of Directors, regular or special, may be held at any place within or without the State of Delaware. The time and place for holding meetings of the Board of Directors may be fixed by the Board of Directors.

##### Section 2. Notice.

(a) Regular meetings of the Board of Directors may be held without notice, if the time and place of such meetings are fixed by the Board of Directors. Special meetings of the Board of Directors shall be held upon two days' notice to each director, either personally or by telegram. Such special meetings may be called by the Chairman and shall be called by the Chairman or Secretary upon written request of not less than three directors. Such request shall state the purpose or purposes of the proposed special meeting. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board of Directors.

(b) A notice of a meeting need not be given to any director who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

(c) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board of Directors to another time or place

shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

Section 3. Telephonic Participation in Meetings. One or more directors may participate in a meeting of the Board of Directors, or of any committee thereof, by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## ARTICLE V

### Executive Committee

Section 1. Designation of Executive Committee. The Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may designate from among its members an Executive Committee consisting of three or more directors. The Board of Directors, by resolution adopted by a majority of the entire Board, shall designate one of the members of the Executive Committee as Chairman of such Committee. The Executive Committee shall consult with and advise the officers of the Corporation in the management of its business. Except as otherwise provided in these by-laws or by resolution adopted by a majority of the entire Board of Directors, the Executive Committee shall have and may exercise all of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, may authorize the seal of the Corporation to be affixed to all papers which may require it, and may declare dividends, authorize the issuance of stock and adopt certificates of ownership and merger. The Executive Committee shall not have the powers or authority as to the following matters:

- (1) Adopting an agreement of merger or consolidation under Sections 251 or 252 of the Delaware General Corporation Law.
- (2) Recommending to the stockholders a sale, lease or exchange of substantially all of the Corporation's property and assets.
- (3) Recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution.
- (4) Amending the by-laws of the Corporation.
- (5) Amending the Certificates of Incorporation of the Corporation (except that to the extent authorized by a resolution of the Board of Directors providing for

the issuance of shares of stock, the Executive Committee may fix any of the preferences or rights of such shares relating to dividends, redemptions, dissolution, any distribution of assets of the Corporation, or the conversion into or the exchange of such shares for shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation).

Vacancies on the Executive Committee may be filled by the Board of Directors at any regular or special meeting. The Executive Committee shall keep regular minutes of its proceedings and report the same to the Board of Directors. The Executive Committee shall serve at the pleasure of the Board of Directors.

Section 2. Meetings of Executive Committee. The Executive Committee may hold its meetings at such place either within or without the State of Delaware as they may from time to time determine. Regular meetings of the Committee may be held without notice, at such time and place as shall from time to time be determined by resolution of the Executive Committee or the Board of Directors. Special meetings of the Committee shall be held upon two days' notice to each member of the Committee, either personally or by telegram. Such special meetings may be called by the Chairman and shall be called by the Chairman or the Secretary upon written request of not less than two members of the Committee. At all meetings of the Executive Committee, the presence of a majority of the entire number of members of the Committee shall be necessary to constitute a quorum for the transaction of business and any act of a majority present at a meeting, at which there is a quorum, shall be the act of the Executive Committee, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation or by these by-laws. If a quorum shall not be present at any meeting of the Executive Committee, the members present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

## ARTICLE VI

### Other Committees

Section 1. Designation of Other Committees. The Board of Directors may designate from among its members other committees in the same manner as the Executive Committee. Such other committees shall, to the extent provided in the



resolution adopted by the Board of Directors designating the committee, or in the Certificate of Incorporation or these by-laws, have all the authority of the Board of Directors, except that no such committee shall have any authority which is denied to the Executive Committee under the provisions of ARTICLE V. In all other respects, the provisions of ARTICLE V shall apply to all other committees designated by the Board of Directors as well as to the Executive Committee.

## ARTICLE VII

### Compensation of Directors

Directors shall receive such reasonable compensation for their services as directors and as members of a committee of the Board as may be fixed by resolution of the Board of Directors and, in addition thereto, expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board or the Executive Committee. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of the Board of Directors who are full-time employees or salaried officers of the Corporation or one of its subsidiaries may receive separate compensation for services rendered by them as directors or as members of the Executive Committee.

## ARTICLE VIII

### Officers

Section 1. Election or Appointment. The Board of Directors may elect or appoint a Chairman of the Board, a President, one or more Vice Presidents (one or more of whom may be designated as Executive Vice President), a Controller, a Secretary, a Treasurer, one or more Assistant Secretaries and one or more Assistant Treasurers, and such other officers as it may determine.

Section 2. Term of Office. All officers shall be elected or appointed to hold office until the meeting of the Board of Directors following the next annual meeting of stockholders. Subject to his earlier resignation or removal, each officer shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified.

Section 3. Offices Held by Same Person. Any two or more offices may be held by the same person except the offices of President and Secretary.

Section 4. Security. The Board of Directors may require any officer to give security for the faithful performance of his duties.

Section 5. Duties. All officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the Corporation as may be provided in these by-laws or to the extent not so provided, by the Board of Directors.

Section 6. Salaries. The salaries of all officers of the Corporation, except as to officers who serve as Assistant Secretaries or Assistant Treasurers as an incident to other duties, shall be determined by the Board of Directors.

Section 7. Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors with or without cause. The removal of an officer without cause shall be without prejudice to his contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

Section 8. Chairman of the Board. The Chairman of the Board shall be the chief executive officer of the Corporation, and in addition he shall be ex officio a member of all outstanding committees of the Board, and Chairman of all such committees except the Executive Committee. He shall preside at all meetings of the Board and of those committees of which he is Chairman and at all meetings of the stockholders. Subject to the powers vested in the Board of Directors, he shall have general and active management of the business and affairs of the Corporation. He, along with the President, shall have power to sign and execute all authorized bonds, stock certificates, mortgages, contracts, agreements or other obligations in the name of the Corporation, and shall perform such other duties and exercise such other powers as may be assigned to him by the Board of Directors.

Section 9. The President. The President shall have supervision of all such matters as may be designated to him by the Board of Directors or the Chairman. He, along with the Chairman, shall have power to sign and execute all authorized bonds, stock certificates, mortgages, contracts, agreements or other obligations in the name of the Corporation, and shall perform such other duties and exercise such other powers as may be assigned to him by the Board of Directors. In the absence of the Chairman of the Board or

when the office of Chairman of the Board is vacant, the President shall preside at all meetings of stockholders and directors at which he may be present.

Section 10. Vice Presidents.

(a) The Executive Vice Presidents and Vice Presidents shall have such powers and perform such duties as may be assigned to them by the Board of Directors. In the absence or disability to act of the President, the Vice President or Executive Vice President who is designated by the Chairman of the Board shall perform the duties and exercise the powers of the President.

(b) The Board of Directors may assign to one of the Vice Presidents responsibility for exercising a general supervision of the financial affairs of the Corporation, including the performance by the Controller and the Treasurer of the duties delegated to them.

(c) When one of the Vice Presidents has been assigned responsibility for exercising a general supervision of the financial affairs of the Corporation as provided in Section 10(b) of this ARTICLE VIII, the internal auditor of the Corporation shall report directly to such Vice President.

Section 11. The Controller. The Controller shall be the chief accounting officer of the Corporation and under such general supervision as may be determined by the Board of Directors, he shall have general charge of, and be responsible for, the accounting and internal auditing system and procedures of the Corporation. He shall submit such reports and statements to the Board of Directors and the Executive Committee as may be required by them and shall perform such other duties as may be assigned to him by the Board of Directors.

Section 12. The Secretary. The Secretary shall attend all sessions of the Board and all meetings of the stockholders and act as clerk thereof, and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for any committee of the Board when required. He shall cause to be given notice of all meetings of stockholders and directors and shall perform such other duties as pertain to his office. He shall keep in safe custody the seal of the Corporation and, when authorized by the Board of Directors or Executive Committee, affix it when required to any instrument.

Section 13. The Treasurer.

(a) The Treasurer shall have the custody of all the Corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors; provided, however, that the Board of Directors may, in its discretion, and subject to such restrictions and conditions as it may impose, delegate authority to designate depositories to such officers of the Corporation as the Board of Directors may deem appropriate. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chairman and Directors at the regular meeting of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial conditions of the Corporation.

(b) He shall, if required by the Board, give the Corporation a bond in a sum and with one or more sureties satisfactory to the Board, conditioned upon the faithful performance of his duties and for the restoration to the Corporation in case of his death, resignation, retirement or removal from office of all books, papers, vouchers, money and other property of whatever kind in his possession, or under his control, belonging to the Corporation.

(c) In the absence or disability to act of the Treasurer, the Assistant Treasurers, in the order of their seniority, may exercise the powers and perform the duties of the office of Treasurer; each Assistant Treasurer shall have such other powers and shall perform such other duties as shall from time to time be determined by the Board of Directors.

Section 14. Resignation. Any officer may resign his office at any time, such resignation to be made in writing and to take effect from the time of its acceptance by the Corporation. The acceptance of a resignation shall be required to make it effective.

ARTICLE IX

Certificates Representing Stock

The stock of the Corporation shall be represented by certificates signed by the Chairman of the Board or the

President or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Corporation and may be sealed with the seal of the Corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the Corporation itself or its employee. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of issue.

## ARTICLE X

### Lost Certificates

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative to give the Corporation a bond in such sum and with such surety or sureties as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed. In lieu of requiring an individual indemnity bond, the Board of Directors may authorize the transfer agent to accept Assumption Certificates under a Blanket Lost Original Instruments Bond arranged by the transfer agent.

## ARTICLE XII

### Indemnification

Section 1. Directors and Officers. The Corporation shall indemnify each director or officer (including each former director or officer) and may, by action of the Board of Directors, indemnify any other authorized representative (including any former authorized representative) of the Corporation to the fullest extent now or hereafter permitted by law against all expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed action,



suit, or proceeding, whether civil, criminal, administrative, or investigative, to which such person was, is, or is threatened to be made a party or a witness by reason of the fact that such person is or was an authorized representative of the Corporation. For the purposes of this Article, "authorized representative" shall mean a director, officer, employee, or agent of the Corporation or of any subsidiary of the Corporation, or a trustee, custodian, administrator, committeeman, or fiduciary of any employee benefit plan established and maintained by the Corporation or by any subsidiary of the Corporation, or a person who is or was serving another corporation, partnership, joint venture, trust or other enterprise in any such capacity at the request of the Corporation.

Section 2. Basis of Rights; Other Rights. Each person who shall act as an authorized representative of the Corporation shall be deemed to be doing so in reliance upon such rights of indemnification as are provided in this Article. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any agreement, vote of stockholders or disinterested directors, statute, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office or position, and shall continue as to a person who has ceased to be an authorized representative of the Corporation and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 3. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was an authorized representative of the Corporation, against any liability asserted against or incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article.

### ARTICLE XIII

#### Corporate Seal

The Corporation shall have a corporate seal in such form as the Board of Directors may determine and such seal may be attached at the pleasure of the Board of Directors. The Corporation may use such seal by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

ARTICLE XIV

Checks

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons ("authorized signatories") as the Board of Directors may, from time to time, designate; provided, however, that the Board of Directors may, in its discretion, and subject to such restrictions and conditions as it may impose, delegate authority to designate authorized signatories to such officers of the Corporation as the Board of Directors may deem appropriate.

ARTICLE XV

Fiscal Year

The fiscal year of the Corporation shall be as determined by the Board of Directors.

ARTICLE XVI

Amendments

Section 1. By Stockholders. The by-laws may be amended by a majority vote of all the stockholders issued and outstanding and at the time entitled to vote at any annual or special meeting of the stockholders, provided notice of intention to amend shall have been contained in the notice of the meeting.

Section 2. By Directors. The Board of Directors may adopt, amend or repeal the by-laws by affirmative vote of a majority of the entire Board at any regular meeting of the Board, or at any special meeting of the Board if notice of the proposed alteration, amendment or repeal is contained in the notice of such special meeting.

ARTICLE XVII

Business Combinations With Interested Stockholders

The Corporation shall not be governed by Section 203 of the General Corporation Law of Delaware, Chapter 1, Title 8, Delaware Code of 1953.