

THE SEA GATE ASSOCIATION
Sea Gate, Brooklyn, NY 11224

2023 BY-LAWS



1899-2023

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BY-LAWS OF
THE SEA GATE ASSOCIATION

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BY-LAWS
OF
THE SEA GATE ASSOCIATION

ARTICLE I
NAME AND SEAL

SECTION 1. This Association shall be called “The Sea Gate Association”.

SECTION 2. The seal of the Association shall be circular in form, containing the name of the Association and the year of the incorporation.

ARTICLE II
OBJECTIVES

The Association is organized for the mutual comfort and convenience of its members; to provide and maintain suitable means of access between properties of its members, and suitable sanitary arrangements for their comfort and health; to provide and maintain buildings for mutual convenience; to provide and maintain open places on its beaches and/or elsewhere within the Sea Gate community for the common use of its members; to provide generally for the care, protection and maintenance of the property within Sea Gate and of its members, and to promote social discourse and interaction amongst its members to the ends of aforesaid, take, hold and dispose of such property, real and personal, as the purpose of the Association may require, subject to such limitations as may be presented by law. To provide parks and playgrounds, grounds for musical or other meetings; to preserve and maintain the private community known as Sea Gate in the Borough of Brooklyn, City and State of New York, including all the facilities therein and to take all means for the improvements, betterment and welfare of said community and the properties and facilities located therein.

ARTICLE III
MEMBERSHIP

SECTION 1. a) Any owner or co-owner of one or more lots within Sea Gate, or the husband or wife, as the case may be of such owner, who has received mutual residential access from the spouse who's name appears on the property deed and who has filed privilege of membership in the Sea Gate Association indicating his/her spouse, in whole or in part, may apply for membership to the Sea Gate Association by signing an application for that purpose. Application signatures must be submitted using one of the following options; In person by signing in front of Office staff or sitting board member, or submission of a application via USPS mail, or electronic scan and e-mailing a copy, or uploading a copy to a Sea Gate Association Portal (once established), or generally accepted forms of signature either current or future.

b) In the event of a division of privileges of membership as provided for herein, each co-owner shall be jointly and severally liable for the payment of the full amount of dues in accordance with the provisions of Article VIII of these by-laws.

SECTION 2. a) Any member in good standing may be present at or represented at any meeting of the Association or may vote at any election by a legally constituted attorney-in-fact, whose proxy shall be filled and vetted by the Community Manager to be a ‘member in good standing’ in advance of the opening of the meeting or immediately following the meeting in accordance with filing procedures adopted by resolution of the Board of Directors. In the event more than one (1) proxy is submitted for any Association member, the last proxy shall be

validated only. After the vetting of a proxy, the Association member submitting said proxy shall be notified if the proxy is valid and if not valid the reason for such invalidation.

b) A member in 'Good Standing' shall mean a member who is up to date on payment of dues, by one of the following options; payment in full by January 31st or twelve (12) monthly installments due on the 1st day of each month, with final installment paid by December 1st or payment plan option for the current year ONLY, that is negotiated by the Finance Committee and agreed upon by the majority of the sitting Board of Directors. Outstanding balances for prior years shall not constitute a member in good standing. Once payment plan is agreed upon it must be maintained by the member to remain in 'Good Standing'. Fines, or outstanding Beach Pass payments, shall NOT be used to prevent a member from voting at the annual meeting or any special meeting of the Association.

SECTION 3. The sale of all Sea Gate property owned by a member of this Association shall terminate membership and all other rights there under. In the event that a 'Trust' is created for any property, only the 'Trustee' has voting rights in any election.

ARTICLE IV

GOVERNMENT

SECTION 1. a) The property and affairs of this Association shall be managed by fifteen directors, who shall be elected in classes of five each year by the 'Nominating Committee, and introduced at the at the annual meeting of the Association. Each class to serve for a term of three years from the date of the annual meeting of the Association, or until successors be selected due to but not limited by; removal by board vote, end of term due to term limits, or resignation.

b) Only the election of a new 'Nominating Committee' shall be conducted during the annual meeting of the Association. The 'Nominating Committee' shall conduct interviews of prospective Board members beginning in January following the annual meeting of the Association. The exception would be for sitting board member class up for re-nomination. That group will sit before the 'Nominating Committee' in August prior to the annual meeting of the Association. If a vacancy on the Board occurs during the year, the Board of Directors shall advise the nomination committee to seek a 'Temporary' replacement. The temporary member must first submit to a background check and sit before the 'Nominating Committee' in August prior to the annual meeting of the Association, but does not have to submit to a second background check until he/she is up for renomination.

c) Background Check: ALL Board members, be it 'New Applicant' or 'Renomination,' or temporary replacement must agree to a background check by the SGA third party investigator. The results of which provided to the Board President. Any discrepancies that would disqualify the member from sitting shall be brought to the Board, and if necessary, a majority vote will disqualify the member. If the background check is on the current President the results of which shall be provided to the Vice President.

d) Any and ALL changes, additions, modifications, removals, suspensions to the 'Rules and Regulations' be it temporary or permanent MUST be approved by a majority vote of the Board of Directors.

e) Term Limits: No sitting board member shall be re-elected beyond two (2) three (3) year terms, and after a member's term is exhausted, he/she cannot re-apply for election until a minimum of three (3) years after the member's terms have come to end. At no point can a board member be active greater than six (6) years in any nine (9) year period. No member may be elected to sit on the 'Nominating Committee' more than two (2) consecutive years. If a 'Nominating Committee' member has sat for two (2) consecutive years, he/she cannot be renominated until two (2) years have passed. A 'Nominating Committee' member may sit for multiple one (1) year on and one (1) off successions.

f) The Board of Directors shall be the governing body of the Community; the power of the Board of Directors shall include but not be limited to the adoption of the rules and regulations for the maintenance, protection, preservation and improvement of the Community known as Sea Gate, and the safety, security, comfort, arid general welfare of the Community residents. Said Rules and Regulations, which may, at the

Board's discretion include the imposition of fees or charges, shall be binding upon the owners of property within Sea Gate Community and the residents thereof and upon the non-residents of said Community at such times as they may be within the Sea Gate Community.

g) Any director may be removed by the Board of Directors for good cause and as used herein, the phrase "good cause" shall mean any cause or reason deemed sufficient by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors. The member who is subject to removal shall NOT have a vote on his/her own removal. That member MUST abstain from the vote. The member subject to removal does not have to be present at the meeting in which the motion was made for his/her removal. Any member removed from the Board by a 2/3 affirmative vote cannot reapply for any position on the Board of Directors or the 'Nominating Committee' for a period of not less than three (3) years from the date of his/her removal.

h) When a sitting Board member falls into arrears on his/her dues, the member shall work out a payment plan approved by the finance Committee and agreed upon by the majority of the Board. If the Board member fails to work out a payment plan for the dues, and/or fails to maintain the payment plan stipulation for greater than one month, that Board member shall be suspended for a period of time to reaffirm the payment schedule or until August prior to the annual meeting of the Association. At that time, the member's seat will be filled by a new Board member selected by the 'Nominating Committee.'

i) No sitting Director of the Board shall receive any compensation when acting in his/her capacity as such, a careful review of the 'Conflicts of Interest Policy' shall be conducted prior to any consideration for compensation of ANY sitting Director, if acting in some other capacity, if not prohibited by law. Every sitting Board member shall sign Schedule 'A' Sea Gate Association Conflict of Interest Disclosure Statement each year and a copy kept on record with the Compliance Officer. Failure to do so by any sitting Board member will cause that sitting member to be placed on suspension until such time as he/she signs the Schedule 'A' of the current Conflict of Interest Disclosure Statement. If a signature is not provided or sitting member refuses to sign within 45 days following the annual meeting, the Nominating Committee shall be notified to begin the selection process for replacement of that board member's seat.

j) The Board of Directors shall have the full power and authority to retain attorneys, accountants and other professionals or consultants to assist or advise the Board and to provide for the compensation of such person.

k) The Directors shall meet at least once per month and as often as they think necessary. Committee Chairs shall conduct committee meetings as necessary but not less than once (1) every two (2) months.

l) A majority of the Board of Directors shall constitute a quorum unless a greater number is required by law or by these by-laws. The current number of sitting Board members is fifteen (15), eight (8) of which shall constitute a quorum.

SECTION 2. The Directors shall, subsequent to the Annual meeting of the Association and prior to November 1st, in each year, elect, from their members a President, one (1) Vice President, a Secretary and Treasurer, who shall hold office until the second Monday in September next ensuing, or until their respective successor(s) are elected.

a) This group of four (4) Executive Officers have only the authority granted to them by the entire Board of Directors. Only provisions of each title specified within these By Laws shall dictate the duties and responsibilities of each Officer.

b) The Board of Directors shall interview and hire a Community Manager as necessary and replace same in the event of a vacancy or termination. The Community Manager MUST be present within the administrative Office no less than the full-time hours agreed upon at hiring. The Community Manager must submit to a background check, and the results of which to be discussed by the Board of Directors prior to the start date agreed upon.

c) If necessary, the Board of Directors may interview and hire an Assistant to the manager. The Assistant hire must submit to a background check before beginning his/her duties, and the results of which to be discussed by the Board of Directors prior to hire.

d) Any and all additional office personnel must submit to a background check prior to hiring, the same shall hold true for maintenance staff and Sea Gate Police.

SECTION 3. a) The President shall preside over or assign a meeting ‘Sergeant at Arms’ for all meetings of the Association and the directors. He/she shall, with the Secretary, sign all written contracts and obligations of the Sea Gate Association and exercise the usual functions pertaining to his office, subject to the direction and control of the directors.

No President shall hold office for more than two (2) successive years.

b) The Vice President shall have the powers and perform the duties of the President in the Presidents’ absence or disability, or inability to carry out the duties of the President, and is subject to the direction and control of the Board of Directors.

c) The Secretary shall keep the minutes and records, and provide access to the meeting minutes no later than one (1) week following the meeting via ‘Drop Box’ or e-mail or via Board Member Portal should one be implemented, and conduct the correspondence of the Association and of the directors. The Secretary shall, with the President or the acting President if the President is absent, sign all written contracts of the Association, have the custody of the seal of the Association and perform the usual duties pertaining to the office of Secretary, subject to the direction and control of the directors. The Secretary may delegate any duties to any other officer.

d) The treasurer shall, subject to the direction and control of the directors, oversee the office ‘Accounts Receivable’ with the collection and receiving all monies due and belonging to the Association, and shall have custody in trust for the Association of all funds, securities and title deeds thereof. Any two officers shall sign all checks and notes, and shall pay bills on the certificate of their correctness, either by the Chairman of the applicable Committee, or upon the order of the President or the directors. At its discretion the Board of Directors may designate any two (2) persons to sign payroll checks only.

SECTION 4. a) To carry out the purposes and objects of the Association, the following Committees may be appointed by the President:

Public Works	Legal/Collections
Police	Finance and Budget
Public Relations	Public
Beach/Beach Club Improvements	Health/Emergency
Civic Improvements	Sanitation/Maintenance

and any other Committees as deemed necessary and proper, subject to the approval of the Board of Directors. The Chairman of each Committee shall likewise be appointed by the President, subject to the approval of the Board of Directors. Chairpersons of any committee can be replaced if he/she fails to perform his/her duties as committee chair. Replacement of Chairpersons must be agreed upon by the majority of the Board of Directors.

b) The Finance Committee shall, Subject to the direction and control of the directors, aid the Treasurer in managing the finances of the Association. Upon request, but no less than quarterly, the Treasurer and Finance Committee shall provide a full finance report including but not limited to, bank statements, QuickBooks, ledgers, check registers, and payroll statements in an effort to provide complete and transparent oversight by all sitting Board members. The Finance Committee shall make or cause to be made, by a Certified Public Accountant, as often as they think best, and at least once in each year, an audit of the accounts of the Sea Gate Association. The Treasurer shall e-mail (Sea Gate Association E-mail server ONLY, no financials to be e-mailed to a private server) to each member of the Association a copy of the Association’s current financial statement as prepared by the Association’s Certified Public Accountant.

c) The ‘Public Works/Civic Committee shall direct, regulate and control all matters pertaining to public works, and civic matters subject to the: approval of the Board of Directors.

d) There shall be a Police Committee who shall, subject to the authority and control of the Board of Directors, have entire charge of the police, the preservation of order and the enforcement of Laws found in the NYC Penal Code and Vehicle and Traffic Law, and assist the Board of Directors with the rules of the Association that might violate NYC laws. All matters related to civil disputes and/or landlord-tenant legalities shall be referred to the appropriate court(s) that deal with such matters.

e) The Finance and Budget Committee shall, subject to the direction and control of the Board of Directors, prepare the proposed budget required by these by-laws. Thereafter, a meeting of the members of the Association shall be called for the first Monday in December of each year for the purpose of discussing the proposed budget. The Board of Directors, however, shall have the right to change the date of the Budget Meeting of the Association to any other day in the month of December in each year. Notice of such change of the date of such meeting shall be forwarded in writing to the members of the Association not less than 10 days prior to the date fixed for such meeting.

ARTICLE V

MEETINGS

SECTION 1. a) The Annual Meeting of the Association shall be held on the 2nd Monday of September in each year, at 8:30 o'clock in the evening, at Sea Gate, Borough of Brooklyn, at such place as the directors shall appoint.

b) The Board of Directors, however, shall have the right to change the date and/or start time of the Annual Meeting of the Association to any other Monday in the month of September or October but no later than October 15th and no earlier than 7:00PM in each year and notice of such change of the date of the Annual Meeting shall be forwarded to the members of the Association in writing or via Association Portal (once such portal is implemented) not less than 10 days prior to the date fixed for such meeting.

SECTION 2. a) At all meetings of the members each member in good standing' shall be entitled to cast a maximum of one (1) vote. As used herein, the phrase, "member in good standing," shall mean a member who is current and not in arrears of dues and charges, or any other unpaid fee including without limitation unpaid beach license fees, interest, legal fees, judgments, etc. For the purpose hereof, any multiple dwelling including without limitation, a hotel, rooming house single room occupancy, cooperative dwelling or apartment house, condominium units, apartment or garden apartment development shall be deemed a single member and shall, as a whole, have but one (1) vote at all meetings of the Association. Any Association member may attend any and all meetings of the Association regardless of current standing, only members in good standing may cast a vote. Refer to Article III Membership Sec. 2 b) for definition of a 'Member in Good Standing.' Any Association member that wishes to cast a vote during the Annual or any other special meeting, must be up to date on his/her dues at the time of the vote. Up to date on dues is taken to mean as paid according to the 12-month payment schedule, or payment plan approved by the Board of Directors.

b) Co-owners shall have the right to declare in writing, the extent of their interest in the property and file such declaration in the office of the Sea Gate Association. In the absence of such declaration, the interest of co-owners shall be deemed to be equal. When an Association member places his/her property or residence into a 'Trust,' the member relinquishes membership in the Association and forfeits the ability to vote at meetings or sign petitions to make amendments to the By Laws, unless the member is listed as a 'Trustee or Co-Trustee.'

SECTION 3. a) The President of the Association shall appoint Teller(s) and alternate Teller(s) if necessary, prior to the Annual meeting of the Association to verify and count all submitted proxies and to count the votes cast from the Slate(s) of directors, and to count the votes cast for members of the 'Nominating Committee,' and to count the votes cast on all other matters and they shall have charge of the polls. No sitting Board member(s) shall be present for this ballot/proxy counting, except for a person providing information to the Teller(s) to assist them in their duties, this can be a current Board member. Once instructions have been conveyed, this member shall be asked to leave by the Teller(s). Information provided to the Teller(s) shall include the reason why a vote is invalidated, and it shall be noted on the ballot.

b) The President shall, appoint two watchers to examine the ballots and, in the case of voting for slates of directors shall appoint two watchers designated by each nominated slate, none of whom shall themselves be candidates. The watchers shall watch the count as conducted by the Tellers. All watchers and tellers must be members in good standing. Refer to Article III Membership Sec. 2 b) for definition of a 'Member in good standing.'

SECTION 4. a) Special meeting of the Association may be called by the President at any time. Special meeting of the Association shall be called by the President when he/she is so requested by ten (10%) percent of the members in good standing of the Association as of January 1st of the calendar year in which the election is held. Refer to Article III Membership Sec. 2 b) for definition of a 'Member in good standing.'

b) To constitute a quorum at any meeting of the members of the Association it shall be sufficient to constitute a quorum if not less than the members entitled to cast 100 votes are present in person or by proxies.

ARTICLE VI

NOMINATION

SECTION 1. There shall be a nominating Committee which shall consist of five persons and there shall be two alternates all of whom shall be members in good standing of the Sea Gate Association. The members of this Committee shall be nominated at the annual meeting, and shall be balloted for and elected at the annual meeting. They shall hold office until the next ensuing annual meeting. Vacancies occurring in this Committee shall be filled first by the alternate number one and secondly by alternate number two. Refer to Article III Membership Sec. 2 b) for definition of a 'Member in good standing.'

SECTION 2. Nominations for directors to replace the outgoing class and to fill vacancies which may have arisen during the year, shall be made by the Nominating Committee and shall be posted in a conspicuous place in the Office of the Association, not less than 14 days prior to the Annual Meeting, and shall be-recorded and sent together with the Notice of Annual Meeting, and any other nominations that may be made independently by any fifty (50) members of the Association who shall post in the office of the office of the Association the names of such nominees over the signature of the proposers not less than 10 days prior to the Annual Meeting. No candidates or directors shall be balloted in either one of these two ways. Refer to Article IV (Government) Section 1 b with regard to temporary vacancies during the course of the year. Such independent nomination shall be set forth in the Notice of Annual Meeting.

a) Supporting signatures numbering fifty (50) need only be members of the Association, and a member in good standing. In order to be balloted a member must be in good standing as described in Article III Membership Sec. 2 b). The ballot shall not be disqualified if one of more members are not in good standing, their name(s) will be removed from the ballot prior to the community notification. If less than all five balloted members are not in good standing the remaining balloted members will replace the outgoing class one for one as specifically chosen by the nominating committee.

SECTION 3. No member of the Nominating Committee may be nominated as a member of the Board nor may he or she qualify for such nomination by resigning from said Committee.

SECTION 4. No family member (Defined as the Spouse, Child or Parent) may sit on the Board of Directors, or the Nominating Committee when a family member is a sitting Board member or a sitting Nominating Committee member.

ARTICLE VII

PURCHASE OR SALE OF REAL PROPERTY

Except for daily or short-term rental of the Chapel, the sale, purchaser, lease or re-lease or rent of any rights, easements, interests of any reality owned by the Sea Gate Association shall be approved only upon the affirmative vote of not less than 2/3 of the members present or voting by mail or proxy. Notice of such action shall have been mailed to each member of the Association thirty days before the date of the meeting during which such action will be presented for vote. Affirmative vote of 2/3 of the members present, can be cast at the Annual meeting of the Association, or a 'Special Meeting' as per Article V Sec. 4 a) at any time after January 1st following the annual meeting.

ARTICLE VIII

DUES

SECTION 1. a) The annual dues and charges payable by each property owner shall be the amount assessed and charged against the property of such owner and shall be determined by the directors in December of each year in the following manner:

b) A budget of the amount to be required to pay the expenses of conducting the business and carrying out the objectives of the Association for the next ensuing fiscal year shall be prepared and adopted by the directors and the aggregate amount thereof, together with such additional amount as, in the judgment of the director, shall be necessary to cover defaults in payment, rebates extraordinary expenses or other contingencies and deficiencies shall be assessed and charged against each parcel of real estate in Sea Gate, and the owner thereof in the proportion which the assessed valuation of such parcel of real estate, as fixed by the governmental agency or department of the City of New York responsible for making said assessments for the purpose of taxation for the year immediately preceding, bears to the aggregate assessed valuation of all of the real estate in Sea Gate, as so fixed by said Department for said year, exclusive of property owned by the Association. In cases where such parcel of real estate has been improved, other than by alteration of existing premises since the said assessed valuation was fixed, the Board of Directors shall fix the assessed valuation of said property with such improvements and the dues and charges shall then be determined and based upon the assessment as fixed by the Board of Directors.

SECTION 2. a) The dues and charges shall be and become a lien against the property on which they are levied and assessed on the day when they become due and payable, and shall remain such liens until paid.

b) They shall become due on January 1st. Payment required by January 31st before a change in status from 'In Good Standing' is in effect. Dues may be paid in twelve consecutive monthly installments commencing on January 1st of each year. The monthly installment option shall be remitted by the 1st of each month with final payment remitted on or by December 1st. Refer to Article III Membership Sec. 2 b) for definition of a 'Member in Good Standing.' The Board of Directors may provide for the payment of interest for delinquent payment of such installments. Interest shall accrue prior to the end of the month and will be charged the maximum rate permitted by law.

SECTION 3. a) If such dues & charges are not paid as provided for in Article VIII Section 2

b) or any other Board approved arrangement, the Board of Directors of the Sea Gate Association is empowered and may in its discretion bring a suit in the name of the Sea Gate Association for the recovery of the same and proceed in accordance with the provision of law to enforce the collection thereof. The unpaid dues & charges shall be referred to an attorney at law for collection. The delinquent owner shall be liable for legal fees in an amount not less than 25% of the unpaid dues & charges, plus other costs of collection if any.

SECTION 4. The Board of Directors may adopt reasonable rules and regulations enabling the Association to grant or deny exemptions to religious, charitable or educational organizations or institutions or to veterans, from the dues and charges herein, provided, and to revoke any such exemption once granted.

ARTICLE VIII (A)

SPECIAL ASSESSMENTS

SECTION 1. The Board of Directors of the Sea Gate Association is hereby authorized and empowered to approve and effect a special assessment against all members of the Sea Gate Association to provide for re-payment, in accordance with the terms and conditions of the Loan Authorization and Agreement entered into with the Small Business Administration together with such other and further agreements, notes, mortgages, security agreements and other documents which may be deemed reasonable and necessary by the Board of Directors to carry out the intent and purpose of the loan, to such extent, in such manner and amounts as will be sufficient to fully amortize the said loan in accordance with its terms. A copy of the Loan Authorization and Agreement dated May 1, 1993 is hereby specifically authorized and approved by the membership of the Sea Gate Association and all of the terms and conditions set forth herein are hereby expressly adopted.

SECTION 2. The amount so specifically assessed against the membership shall not become part of the regular budget and general funds of the Association but shall be a special assessment the receipts of which shall be maintained in a segregated account of the Association maintained either under the sole control of the Association or, if required by the Small Business Administration under joint control.

SECTION 3. All funds received by the Association from such special assessment and maintained in such segregated bank account shall solely and exclusively be used to repay the loan to the Small Business Administration and for no other purpose.

SECTION 4. This amendment to the By-Laws shall be irrevocable until the loan payable to the Small Business Administration is paid in full.

SECTION 5. All of the proceeds of the assessment shall be assigned to the Small Business Administration as collateral for the loan and the Board of Directors of the Association are authorized and empowered to extend such documents as may be deemed reasonable and necessary to effectuate the provision of this Article.

SECTION 6. The Board of Directors shall be empowered to make special assessments, only in case of an emergency occurring after January 1, 1995, or in the event of a natural disaster or the occurrence of an unanticipated event or casualty causing damage or destruction to the roads, highways, sewers, mains, bulkheads, piers, real property or infrastructure of the Association. Assessments shall, once approved by the Board, be calculated in the same manner as is provided for the calculation of dues and charges in Article VIII hereof and, shall be deemed additional dues and charges for all purpose under these By-Laws.

ARTICLE IX

MISCELLANEOUS

SECTION 1. Notice of all annual and special meetings of the Association shall be in writing, and shall be mailed or via the Sea Gate Association Portal (Once it is implemented) to the last known mailing address of each member not less than one week in advance of such meeting; and in case of special meetings, such notice shall state the subject or subjects to be acted upon.

SECTION 2. Every resident of Sea Gate, whether or not a member of the Association, shall be bound by the By-Laws of the Association and such rules and regulations as may be reasonably adopted.

ARTICLE X
AMENDMENTS

These By-Laws may be repealed, altered or amended, only at the Annual Meeting of the Association, by vote of two-thirds (2/3) of the voters present or voting by proxy, provided that notice of the such repeal, alteration or amendment shall be posted in a conspicuous place in the office for thirty (30) days prior to the meeting to consider same by office staff after petitioner hands in the petition. By Laws amendment request must initially carry support of no less than 75 signatures of members in 'Good Standing' (Refer to Article III Membership Sec. 2 b) for definition of a 'Member in good standing.'). Notice of such meeting shall be mailed to each member of the Association not less than ten (10) days prior to the date of such meeting together with a copy of the proposed amendment(s).

ARTICLE XI

INDEMNIFICATION. a) The Corporation shall indemnify to the fullest extent nor or hereafter provided for or permitted by law each person involved in, or made or threatened to be made a party to, any action, suit, claim or proceeding, arbitration, alternative dispute resolution mechanism, investigation, administrative or legislative hearing or any other actual, threatened, pending or completed proceeding, whether civil or criminal, or whether formal or informal, and including an action by or in the right of the Corporation or any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise, whether profit or non-profit (any such entity, other than the Corporation, being hereinafter referred to as an "Enterprise"), and including appeals therein (any such process being hereinafter referred to as a "proceeding"), by reason of the fact that such person, such as person's testator or intestate (I) is or was a director or officer of the Corporation, is or was serving, at the request of the Corporation, as a director, officer, or in any other capacity, any other Enterprise, against any and all judgments, fines, penalties, amounts paid in settlement, and expenses, including attorneys' fees, actually and reasonable incurred as a result of or in connection with any Proceeding, or any appeal therein, except as provided in the following paragraph.

b) No indemnification shall be made to or on behalf of any such person if a judgment or other final adjudication adverse to such person establishes that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled. In addition, no indemnification shall be made with respect to any Proceeding initiated by any such person against the Corporation, or a director or officer of the Corporation, other than to enforce the terms of this Article, unless such Proceeding was authorized by the Board of Directors. Further, no indemnification shall be made with respect to any settlement or compromise of any Proceeding unless and until the Corporation has consented to such settlement or compromise.

c) Written notice of any Proceeding for which indemnification may be sought by any person shall be given to the Corporation as soon as practicable. The Corporation shall then be permitted to participate in the defense of any such proceeding or, unless conflicts of interest or position exist between such person and the Corporation in the conduct of such defense, to assume such defense. In the event that the Corporation assumes the defense of any such Proceeding, legal counsel selected by the Corporation shall be acceptable to such person. After such an assumption, the Corporation shall not be liable to such person for any legal or other expenses subsequently incurred unless such expenses have been expressly authorized by the Corporation. In the event that the Corporation participates in the defense of any such Proceeding, such person may select counsel to represent such person in regard to such a Proceeding; however, such person shall cooperate in good faith with any request that common counsel be utilized by the parties to any Proceeding who are similarly situated, unless to do so would be inappropriate due to actual or potential differing interests between or among such parties.

d) In making any determination regarding any person's entitlement to indemnification hereunder, it shall be presumed that such person is entitled to indemnification, and the Corporation shall have the burden of proving the contrary.