

# **HURON VALLEY SWIM CLUB BYLAWS**

*Amended As of December 08, 2022*

## **ARTICLE I: Name**

The name of the Corporation shall be HURON VALLEY SWIM CLUB.

## **ARTICLE II: Purpose**

The purpose of the Corporation shall be to provide swimming pools, tennis courts, picnic grounds, and allied recreational and educational facilities for its members.

## **ARTICLE III: Members**

### **Section 1. Definition**

A membership includes up to two persons over 18 living in the same household, designated on the application or member roster, and all unmarried children under 27 years of age (as of February 15), subject to proof of residency, at the discretion of HVSC Board and/or Management.

### **Section 2. Membership Types**

There shall be three classes of family membership: Regular Membership whose total shall be limited to 435 families, Senior Membership, whose total shall not be limited, and Lifetime Membership.

### **Section 3. Membership Application**

New Regular Membership applicants shall be accepted by submission of a membership application and in accordance with Article III, Section 2. No application shall be excluded because of race, color, national origin, sex, religion, age, sexual orientation, disability, or veteran status.

### **Section 4. Waiting List**

- (a) If no vacancy in Regular membership exists, a proposed new Regular member may be added to the waiting list by, or at the direction of, the Board of Directors, and may thereafter be admitted to Regular membership by the Board, as vacancies occur and in the order of priority established by the waiting list.
- (b) Children of families holding current memberships of at least ten (10) consecutive years who lose eligibility for inclusion in such memberships because of marriage, change of residence, age, or for other reasons may apply for their own Regular membership and shall be given preference by being placed at the head of any waiting list on November 1 following receipt of their application for Regular

Membership, and any applications received after November 1 shall be placed at the top of the waiting list the following year.

- (c) When a membership is offered, it may be accepted in the year it is offered, or family it is offered to may elect to defer making the decision for one year. If the family elects to defer, they will retain their position on the waiting list for that year. If the family does not accept a second offer of membership, its name will be deleted from the waiting list.

### **Section 5. Separation and Divorce**

Memberships are not transferable and any member withdrawing must return the membership to the Corporation. In the event of either a separation of the spouses or domestic partners of a member family or institution of divorce proceedings, each spouse may elect to retain full membership privileges (as they apply to their immediate family members) for up to one complete swim season (generally Memorial Day weekend through Labor Day).

The election to retain full membership privileges shall be made by notifying the Board of Directors in writing of the fact of separation and date thereof. During such period, the membership shall continue to be considered a single-family membership and all correspondence shall be sent to the address of record. Changes to the address of record shall be in writing, signed by both spouses. Failure to comply with the notice requirement shall permit the Board to regard the original membership as being retained solely by the member residing at the address of record.

At the time of entry of Judgment of Divorce, only one spouse shall be permitted to retain the original family membership. Provided, however, that in the event the Judgment of Divorce is entered during the swim season and further provided that divorced couple has not previously elected to retain full membership privileges for one complete season, then both parties shall be entitled to retain full membership privileges for the remainder of the complete swim season. The Corporation will honor the directions or decision of the court awarding said divorce or a written agreement of the parties designating the spouse who shall have the right to retain said membership. The other spouse may apply for his or her own said membership and shall be given preference by being placed at the head of any waiting list on November 1 following the receipt of their application for said membership and will be expected to pay the then current initiation fee and the then current annual dues: provided, however, any such application must be submitted no later than 6 months after the date said divorce becomes final or the time the written agreement is signed by the parties.

The Board shall be specifically authorized to modify the application of this bylaw and to decide related issues not specifically addressed by this bylaw in the event the interests of the applicant member/spouse or their immediate family members or the Huron Valley Swim Club require it.

### **Section 6. Inactive Status**

- (a) A member family may request that they be placed on inactive status for a period of one year. The request must be in writing and received by the Board by March 1 of the calendar year for which the family wishes to be inactive. A member family may request inactive status once every

seven-year period. In addition to the unrestricted right to request inactive status for a period of one year, a member family may request two additional years of inactive status (for a total of three years) if circumstances result in the member's residence being more than 300 miles from HVSC. The use of the facilities by the inactive family is suspended for the duration of the period of inactivity except as a guest of an active member family. A member family that is placed on inactive status shall pay annual dues not to exceed 25% of their annual dues (Regular or Senior) and shall be established in accordance with Article 5. Inactive member families are not counted as part of the 435 Regular Memberships.

- (b) If a member family is placed on inactive status pursuant to Article III Section 6(a) above, Regular membership shall be granted to the next family on the waiting list.

### **Section 7. Senior Membership**

A member family may apply for a transfer to Senior membership. The Board of Directors shall grant such a request provided that all of the following apply:

- (a) The head of the member family has reached age 60 or older on or before February 15 of the calendar year in which the request is made and the request accompanies the annual Senior Membership dues payment;
- (b) The member family has held such a membership for ten consecutive years; and
- (c) The vacancy created in the Regular membership is filled in accordance with Article III, Section 3.

If all requests for Senior membership cannot be accommodated because of the unavailability of sufficient Regular memberships, a priority system for considering such requests will be used, as follows:

- (a) members holding current Senior memberships will receive first priority,
- (b) thereafter, older members in terms of date of birth will have priority, and
- (c) if there are more candidates with the same date of birth, higher priority will be accorded those who have most recently served on the Board of Directors.

Senior memberships shall retain investment in accordance with Article IV, Section 2. The Senior membership annual dues shall not exceed 50% of the Regular membership annual dues and shall be established annually in accordance with Article V.

### **Section 8. Lifetime Membership**

A Regular or Senior member may be granted Lifetime Membership upon request, provided that the member has been a Regular or Senior member for not less than 45 consecutive years.

## **ARTICLE IV: Investment**

### **Section 1. Initiation Fee**

Members who join the Corporation will pay the Corporation a onetime initiation fee of \$2,000.00 which may be paid in three installments: one payment of \$1,000.00 by May 15th of the first year of membership, a second payment of \$500.00 by January 1st of the following year and a third payment of \$500 by January 1st one year later.

### **Section 2. Action on Resignations and Applications**

Resignation of members and action on applications for new membership will be considered November 1 to May 15 of each year and during the swimming season, if necessary.

### **Section 3. Capital Fund**

A Capital Fund shall be maintained by the Corporation for the purpose of providing funds for necessary repairs or replacement of existing facilities or the addition of new facilities to the Club.

## **ARTICLE V: Annual Dues**

### **Section 1. Billing**

The Board of Directors, prior to January 15 of each year shall bill the membership for the annual dues.

### **Section 2. Payment Timing**

Active members' dues may be paid in two installments of two equal payments; the first payment postmarked by February 1st and the second payment postmarked by March 1st. A service charge, not to exceed 10% of the total dues, the exact amount to be determined yearly by the Board of Directors, will be assessed on late dues payments. The first payment will be nonrefundable. If the second payment is not made by March 1st, the membership may be automatically terminated without further action by the Board of Directors, provided prior notice in writing of intent to terminate sent to the address listed in the membership directory. A terminated member may petition the Board for reinstatement no later than March 21 by setting forth the reasons for their failure to pay the dues. The Board may act promptly in deciding whether or not said terminated membership shall be reinstated, but in any event the decision of the Board shall be final and conclusive.

### **Section 3. Family Member Designation**

The annual dues shall be payable by the head of the family holding the membership. At the time of payment of dues and before the then current season starts, the head of each family shall designate the persons to be included in the membership for the current calendar year, subject to the provisions of Article III, Section I.

### **Section 4. Setting Dues**

The annual Regular, Senior, and Inactive member family dues, as well as the Initiation Fees, for the succeeding year shall be established by majority vote of the membership at its annual meeting pursuant to the following procedures and subject to the following provisions: The notice of the annual meeting of the members shall include the recommendation of the Board for the amount of the said membership

dues. If the membership does not establish the amount of the said membership dues for the succeeding year at said meeting, then the recommendation of the Board in the notice to the membership, limited however to 105% of the said dues for the previous year, shall be the amount of the said dues for the succeeding year.

### **Section 5. Refunds**

The Board of Directors may authorize the refund of annual dues paid, provided that (1) a written request for a refund or for a leave of absence is received on or before April 1, and (2) the membership is filled in accordance with Article III, Section 3. The amount of the dues established for a membership on leave of absence shall be deducted from the annual dues refunded.

## **ARTICLE VI: Meetings of the Corporation**

### **Section 1. Annual Meeting**

The annual meeting of the Corporation shall be held after the close of the season, but in no case later than January 1st of the following year, at such time and place as may be determined by the Board of Directors. The annual meeting shall be for the purpose of electing directors, presenting reports, and for the transaction of such other business as may be generally stated in the notice or may be brought before it.

### **Section 2. Special Meetings**

Special meetings of the Corporation may be called by the president and shall be called by the president upon the written request of not less than 40 memberships in the Corporation, all of whom shall be at least 18 years of age, which special request shall state the purpose of the special meeting.

### **Section 3. Meeting Notice**

Notice of any meetings of the Corporation shall be communicated by the secretary to each membership at least five days before the date of the meeting at the address appearing in the records of the Corporation. The notice of the annual meeting shall include the names of candidates for the current year's Board, nominated by the nominating committee.

### **Section 4. Voting**

Each membership shall be entitled to one vote.

### **Section 5. Quorum**

At any meeting of the Corporation, 40 members shall constitute a quorum, which number shall include only one person from any one membership.

### **Section 6. Proxy Voting**

There shall be no voting by proxy.

## **ARTICLE VII: Directors**

### **Section 1. Board Eligibility and Composition**

The Corporation shall be managed by a Board of nine Directors (the "Board") who shall be members not less than 18 years of age, who are full members of the club who have completed payment of the initiation fee (not less than 3 years as Regular Members), to be elected at the annual meeting. Prior to the first annual meeting, the Board shall consist of those designated in the articles of incorporation.

### **Section 2. Nominating Committee**

Prior to the opening of the season, the President, with the approval of the Board, shall appoint a nominating committee of not less than three members, none of whom shall be officers or directors. The names of the nominating committee shall be posted at the Club throughout the season for the information of the membership. The nominating committee shall nominate the candidates for the vacancies in the Board to be filled at the annual meeting and advise the secretary of the names of the nominees no later than 35 days before the annual meeting. The Secretary shall give notice thereof to all active members at least 20 days before the annual meeting. Additional nominations may be made by filing with the secretary at least 15 days prior to the date of the annual meeting a nomination of one or more candidates signed by at least 15 members (no more than one from each membership) of the Corporation. The Secretary shall give notice to all active members of any additional nominations at least 2 days before the annual meeting.

### **Section 3. Election of Board Members**

At each annual meeting three Directors shall be elected for terms of three years. Any vacancy in the Board shall be filled by election at the next annual meeting, and prior to that time, the Board, in its discretion, may fill the vacancy by temporary appointment.

### **Section 4. Election of Board President and Officers**

The first meeting of the Board held following the annual meeting of the Corporation will elect the President and remaining officers.

### **Section 5. Regular Board Meetings**

Regular meetings of the Board shall be held as determined by the Board.

### **Section 6. Special Board Meetings**

Special meeting of the Board may be called by the President and shall be called by the President upon the written request of not less than five Directors.

### **Section 7. Meeting Notice**

Notice of any meeting of the Directors shall be communicated by the Secretary to each Director no less than two days before the date of the meeting. Such notice may be waived by all of the Directors in writing.

### **Section 8. Board Quorum**

Five Directors shall constitute a quorum at a meeting of the Board.

### **Section 9: Removal of Directors**

The Board, by two-thirds vote of all board members, may remove any Director from office, with or without cause.

## **ARTICLE VIII: Officers and Fiscal Agent**

### **Section 1. Officers**

The Officers of the Corporation shall be the President, Vice President, Secretary, and Treasurer all of whom shall be members of the Board and elected by the Board for terms of one year and until their successors are elected and qualified. Any vacancy in office shall be filled by the Directors for the unexpired portion of the term. No Officer shall be eligible to serve more than three consecutive one-year terms in the same office.

### **Section 2. President**

The President shall preside at all meetings of the Corporation and Board, and shall perform such other duties as may be prescribed by these bylaws or the Board.

### **Section 3. Vice President**

The Vice President shall perform the duties of the President in case of the President's absence or disability.

### **Section 4. Secretary**

The Secretary shall keep the minutes of the Corporation and the Board, have custody of the records of the Corporation other than those kept by the Treasurer or the Fiscal Agent, and perform such other duties as may be prescribed by these Bylaws or the Board.

### **Section 5. Treasurer**

The Treasurer shall have custody of all the assets of the Corporation, collect the membership fees, annual dues, and any other revenues of the Corporation. The Treasurer shall consult with the Fiscal Agent regarding the Corporation's financial affairs, budget accounts and actual expenditures. All checks and orders for the payment of moneys of the Corporation shall be signed by at least two persons from a group consisting of the Officers of the Corporation and the Fiscal Agent. The financial reports prepared by the Fiscal Agent shall be reviewed by the Treasurer. The Treasurer shall make a report of the financial status of the Corporation at the annual meeting.

### **Section 6. Fiscal Agent**

The Fiscal Agent shall keep the checkbook and accounts of the Corporation and maintain all records and accounts pertaining thereto. The Fiscal Agent shall assist the treasurer in preparing a financial

statement for each annual meeting of the Corporation as the Board may require. The Fiscal Agent shall be appointed by and responsible to the Board for the performance of these duties.

**Section 7. Officer Compensation Forbidden**

The Officers shall receive no compensation for services rendered to the Corporation.

**ARTICLE IX: Committees**

**Section 1. Standing Committees**

The following standing committees may be appointed by the President as needed for the purpose of assisting the Officers of the Corporation in the performance of their duties. The chairperson of these committees shall be approved by the Board.

- (a) Administration and Operation/Rules
- (b) Pool and Grounds/Long Range Planning
- (c) Finance
- (d) Membership Engagement/IT
- (e) Social
- (f) Tennis
- (g) Swimming and Diving

**Section 2. Presidential Authority**

All committees shall be under the supervision, and subject to the authority, of the President who is an ex officio member of all standing and special committees of the Club.

**Section 3. Administration and Operation/Rules**

The Administration and Operation/Rules committee shall advise the President and the Board respecting the day-to-day operation of the Corporation, including all matters relating to personnel.

**Section 4. Pool and Grounds/Long Range Planning**

The Pool and Grounds committee shall plan for and supervise improvements, maintenance, and repair of the grounds and facilities of the Corporation. The committee shall prepare studies, plans, and recommendations for the Board concerning: (1) the long-term operation, maintenance, and development of the Club facilities, property, and programs; (2) Club financing; and (3) any changes in the Club's objectives or general character, which it determines are appropriate.

**Section 5. Finance**

The Finance Committee shall prepare the annual budget for submission to and approval by the Board, and advise the President and the Board respecting the financial affairs of the Corporation.



## **Section 6. Membership**

The Membership committee shall investigate and report to the Board concerning applicants for membership. The committee shall investigate charges of misconduct and other activities prejudicial to the best interest of the Corporation and report its findings to the Board in those instances where denial of the use of the corporate facilities is recommended.

## **Section 7. Social**

The Social committee is responsible for the planning and execution of all parties, holiday events, and other official club gatherings.

## **Section 8. Tennis**

The Tennis committee shall prepare the program of instruction and activities of the tennis facilities of the Corporation and make recommendations to the Board regarding personnel, maintenance, and use of said facilities.

## **Section 9. Swimming and Diving**

The Swimming and Diving committee shall review the program of instruction, competition, and participation in the swimming and diving activities of the Corporation in cooperation with the employed staff. The committee shall provide publicity and seek membership support in the conduct of swimming and diving programs and shall make

recommendations to the Board with regard to personnel, maintenance, and use of the swimming and diving facilities.

## **Section 10. Other Committees**

The President shall be authorized to appoint such other committees as the President shall deem necessary for the welfare of the Corporation. The chairman of such committees shall be approved by the Board.

# **ARTICLE X: Suspension of Members**

## **Section 1. Reasons for Suspension**

Any person may be suspended by the Board, temporarily or permanently, from use of the swimming pool and any other facilities of the Corporation, for:

- (a) Acts endangering or damaging the property of the Corporation or any members;
- (b) Acts endangering or affecting the health or safety of any member or staff member;
- (c) Acts disturbing the peace of any member or their enjoyment of the facilities of the Corporation; or
- (d) Violation of the bylaws or rules of the Corporation.

## **Section 2. Suspension Authority**

Suspension of any person shall require the affirmative vote of two-thirds of the Directors present at any meeting of the Board after such person has been given an opportunity to be heard by the Board; provided that the Board of Directors may delegate authority to expel from and refuse admission to the swimming pool and any other facilities of the Corporation until such time as a meeting of the Board is held. In acting upon the suspension of any person, the Board shall specify the period of time during which the suspension is effective.

## **Section 3. Forfeiture of Rights and Use**

All persons belonging to the Corporation under "suspended membership" shall forfeit their rights in the Corporation and the use of the facilities during the period of suspension.

## **ARTICLE XI: Guests**

No guests will be admitted to the swimming pool and any other facilities of the Corporation except in accordance with rules proposed by the Rules committee and approved by the Board. The rules as approved by the Board shall be posted and displayed in public view at the club during the season.

## **ARTICLE XII: Insurance**

### **Section 1. Liability Insurance**

The Corporation shall carry public liability insurance for personal injury and property damage.

### **Section 2. No Liability for Accident or Injury**

The Corporation assumes no responsibility, and members and their guests have no claim against the Corporation, its Officers, Directors, or employees, for any accident or injury to any person or their property.

## **ARTICLE XIII: Review or Audit**

The accounts of the Corporation shall be reviewed or audited annually as determined by the Board, and a report shall be made at the annual meeting of the Corporation. The person conducting the review or audit shall not be an Officer or Director of the Corporation.

## **ARTICLE XIV: Capital Expenditure**

The Board may not borrow any money or otherwise sell or encumber the assets of the Corporation unless approved by a majority of the membership present at any regular or special meeting of the

Corporation and a quorum as required by Article VI, Section 5, is present at the time such approval is granted.

#### **ARTICLE XV: Amendments**

Amendments to these Bylaws may be adopted by the affirmative vote of two-thirds of the members present at any meeting of the Corporation where a quorum is present provided written notice of the general purpose and scope of the proposed amendment is included in the call of the meeting. Changes to the language of any such proposed amendment may be introduced and voted on at any meeting provided that such changes are within the general purpose and scope set forth in the written notice to members.

#### **Article XVI: Indemnification**

##### **Section 1. Indemnification of Directors and Officers: Claims by Third Parties**

The Corporation shall, to the fullest extent authorized or permitted by the Michigan Nonprofit Corporation Act (hereinafter "MNCA") or other applicable law, as the same presently exist or may hereafter be amended, but in the case of any such amendment, only to the extent such amendment permits the Corporation to provide broader indemnification rights than before such amendment, indemnify a Director or Officer ("Indemnitee") who was or is a party, or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the Corporation, by reason of the fact that he or she is or was a Director or Officer of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, Partner, trustee, employee, or agent of another foreign or domestic Corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation or its members, and with respect to a criminal action or proceeding, if the Indemnitee had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation or its members, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

##### **Section 2. Indemnification of Directors and Officers: Claims Brought by or in the Right of the Corporation**

The Corporation shall, to the fullest extent permitted by the MNCA or other applicable law, as the same presently exist or may hereafter be amended, but, in the case of any such amendment, only to the extent such amendment permits the Corporation to provide broader indemnification rights than before such amendment, indemnify an Indemnitee who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a Director or Officer of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, partner, trustee, employee or agent of another foreign or domestic Corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with the action or suit, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation or its members. Indemnification shall not be made under this Section for a claim, issue, or matter in which the Indemnitee has been found liable to the Corporation, except as follows: A Director, Officer, employee, or agent of the Corporation who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth the Section 1 and 2 or was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

### **Section 3. Actions Brought by the Indemnitee**

Notwithstanding the provisions of Section 1 and 2 of this Article XVI, the Corporation shall not be required to indemnify an Indemnitee in connection with an action, suit, proceeding or claim (or part thereof) brought or made by such Indemnitee except as otherwise provided herein with respect to the enforcement of this Article XVI, unless such action, suit proceeding or claim (or part thereof) was authorized by the Board of Directors of the Corporation.

### **Section 4. Approval of Indemnification**

An indemnification under Sections 1 or 2 of this Article XVI, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Indemnitee is proper in the circumstances because such Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2 of this Article XVI, as the case may be and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of Directors who were not parties or threatened to be made parties to the action, suit, or proceeding.
- (b) If the quorum described in subdivision cannot be obtained by a majority vote of a committee duly designated by the Board and consisting solely of two or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

- (c) By independent legal counsel in a written opinion, which counsel shall be selected in one of the following ways:
  - (i) By the Board or its committee in the manner prescribed in Subsections (a) or (b);
  - (ii) If a quorum of the Board cannot be obtained under Subsection (a) and a committee cannot be designated under Subsection (b), by the Board.
- (d) By all independent Directors who are not parties or threatened to be made parties to the action, suit, or proceeding.
- (e) By the shareholders, but shares held by Directors, Officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

### **Section 5. Advancement of Expenses**

The Corporation may pay or reimburse the reasonable expenses incurred by a Director, Officer, employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if all of the following apply:

- (a) The person furnishes the Corporation with a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 1 and 2.
- (b) The person furnishes the Corporation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct. The undertaking must be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.
- (c) A determination is made that the facts then known to those making the determination would not preclude indemnification under the MNCA.

### **Section 6. Partial Indemnification.**

If an Indemnitee is entitled to indemnification under Sections 1 or 2 of this Article XVI for a portion of expenses including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the Corporation may indemnify the Indemnitee for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the Indemnitee is entitled to be indemnified.

### **Section 7. Indemnification of Employees and Agents**

Any person who is not covered by the foregoing provisions of this Article XVI and who is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, may be indemnified to the fullest extent authorized or permitted by the Act or other applicable law, as the same exists or may hereafter be amended, but, in the case of any such amendment, only to the extent such amendment permits the Corporation to provide broader indemnification rights than before such amendment, but in any event only to the extent authorized at any time or from time to time by the Board of Directors.

## **Section 8. Other Rights of Indemnification**

The indemnification or advancement of expenses provided under Section 1 through 7 of this Article XVI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles of Incorporation, Bylaws, or contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in Sections 1 to 8 of this Article XVI continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

## **Section 9. Definitions**

- (a) "Other enterprises" shall include employee benefits plans;
- (b) "Fines" shall include any excise taxes assessed on a person with respect to an employee plan; and
- (c) "Serving at the request of the Corporation" shall include any service as a director, officer, employee, or agent of the Corporation which imposes duties on, or involves services by, the director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interest of the Corporation or its shareholders" as referred to in Section 1 and 2 of this Article XVI.

## **Section 10. Liability Insurance**

The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another Corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the pertinent provisions of the Act.

## **Section 11. Application to a Resulting or Surviving Corporation or Constituent Corporation**

The definition for "Corporation" found in Section 569 of the MNCA, as the same exists or may hereafter be amended, is and shall be specifically excluded from application to this Article. The indemnification and other obligations of the Corporation set forth in this Article shall be binding upon any resulting or surviving corporation after any merger or consolidation of the Corporation. Notwithstanding anything to the contrary contained herein or in Section 569 of the MNCA, no person shall be entitled to the indemnification and other rights set forth in the Article for acting as a director or officer of another corporation prior to such other corporation entering into a merger or consolidation with the Corporation.

## **Section 12. Enforcement**

If a claim under this Article XVI is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Act for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, a committee thereof, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such claimant has met the applicable standard of conduct set forth in the Act, nor a determination by the Corporation (including its Board of Directors, a committee thereof, independent legal counsel or its shareholders) that the claimant has not met such applicable standard or conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

## **Section 13. Contract With the Corporation**

The right to indemnification conferred in this Article XVI shall be deemed to be a contract right between the Corporation and each director or officer who serves in any such capacity at any time while this Article XVI is in effect, and any repeal or modification of this Article XVI shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

## **Section 14. Severability**

Each and every paragraph, sentence, term, and provision of this Article XVI shall be considered severable in that, in the event a court finds any paragraph, sentence, term or provision to be invalid or unenforceable, the validity and enforceability, operation, or effect of the remaining paragraphs, sentences, terms, or provisions shall not be affected, and this Article XVI shall be construed in all respects as if the invalid or unenforceable matter has been omitted.

**END**