

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

**MANAL MOHAMMAD YOUSEF,**  
*Plaintiff,*  
v.  
**SIXTEEN PLUS CORPORATION,**  
*Defendant,*  
  
and  
**SIXTEEN PLUS CORPORATION,**  
*Counter-Plaintiff,*  
v.  
**MANAL MOHAMMAD YOUSEF,**  
*Counter-Defendant,*  
  
and  
**SIXTEEN PLUS CORPORATION,**  
*Third-Party Plaintiff,*  
v.  
**FATHI YUSUF,**  
*Third-Party Defendant.*

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**SIXTEEN PLUS CORPORATION,**  
*Plaintiff,*  
v.  
**MANAL MOHAMMAD YOUSEF,**  
*Defendant,*  
  
and  
**MANAL MOHAMMAD YOUSEF,**  
*Counter-Plaintiff,*  
v.  
**SIXTEEN PLUS CORPORATION,**  
*Counter-Defendant.*

**CIVIL NO.: SX-2017-CV-00342**

**ACTION FOR DEBT AND  
FORECLOSURE**

**COUNTERCLAIM FOR  
DAMAGES**

**THIRD PARTY ACTION**

**JURY TRIAL DEMANDED**

*Consolidated With*

**CIVIL NO. SX-2016-CV-00065**

**ACTION FOR  
DECLARATORY JUDGMENT,  
CICO and FIDUCIARY DUTY**

**COUNTERCLAIM**

**JURY TRIAL DEMANDED**

**SIXTEEN PLUS CORPORATION'S  
REPLY TO FATHI YUSUF'S OPPOSITION  
RE ITS MOTION TO AMEND TO CLARIFY  
THE AFFIRMATIVE DEFENSE OF "IN PARI DELICTO"**

**COMES NOW** Sixteen Plus Corporation, through undersigned counsel, and submits the following in reply to Fathi Yusuf's February 10, 2023 opposition to its January 1, 2023 motion to amend two answers here (one is the pre-consolidation answer in 65 and one is the pre-consolidation answer in 342) to clarify the affirmative defense of "in pari delicto." This was a short, functional, virtually procedural motion.

### **I. Introduction**

First, Fathi Yusuf ("Fathi") does not address the actual substance of the motion to amend—at all. In his first sentence, at 2 of the opposition, Fathi informs the Court that he has more important matters to discuss than responding substantively to the instant motion, and thus he will move on to those concerns without any such response. He states he will not do "an analysis of whether the proposed amendment on a case this old is untimely or whether granting the amendment would prejudice Yusuf." That is just fine. *The instant motion should be deemed conceded*, and Sixteen Plus' minor clarifying amendment adding a single sentence to each of the answers should be allowed.

Second, instead, what Fathi actually DID file (what Sixteen Plus will refer to as the "third" brief in support of his pending, original 2017 motion to dismiss") is just a recapitulation and slight modification of many of the same points that appear in his pending, original motion to dismiss filed December 15, 2017, and in another action he filed in 2015 (344). Both Fathi's original brief and his reply (in that 2017 motion to dismiss) as well as this 'third' brief in support,<sup>1</sup> rest on significantly the same idea--

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<sup>1</sup>Rule 6-1 prohibits the filing of a third brief by the movant and makes doing so sanctionable regardless of how it is titled.

that the 650 derivative action and the 65/342 foreclosure action are so similar that they should not both be allowed.<sup>2</sup> *Compare* page 4 of the original 2017 motion to dismiss:

Sixteen Plus shareholder, Hisham Hamed, has brought a derivative action on behalf of Sixteen Plus against Mr. Yusuf, Ms. Yousuf and Isam and Jamil Yousuf, based on the same "sham" mortgage at issue in this case. Indeed, the factual allegations in the Third-Party Complaint are virtually identical to the allegations in the derivative case.

with page 2 of this new, third brief in support of that motion:

There is a related derivative action already pending – namely, case no. 2016-SX-CV-650 brought on behalf of Sixteen Plus against Yusuf, Isam Yousuf and Jamal Yousuf by Hisham Hamed. See Exhibit 1, Complaint “650” case.

Thus, the new filing is similar to the analysis submitted in 2017 with one slight twist—discussed immediately below. The idea here is that Fathi is somehow EXCUSED from having to file a substantive opposition now (despite extensions to do so from Sixteen Plus) because of a startling new insight—his revelation that he believes the company is deadlocked. The new idea, however, is just a re-tread of not only that pending original motion to dismiss, but also his even older, original “Diamond Keturah” case—brought by him in 2015. In that case (ST-2015-CV-00344, which *Fathi successfully, jointly moved to dismiss* on November 28, 2016) he argued:

21. The Hamed and Yusuf families are and have been in **a state of irreconcilable conflict and dissension regarding the operation of businesses** jointly owned by the families (or members of the families). Fathi Yusuf and Mohammed Hamed were, until very recently, partners for many years in a partnership that owned and operated three supermarkets in St. Croix and St. Thomas. Because of the deep acrimony and distrust between the partners, the partnership is being wound up and it no longer operates any of the three supermarkets. The acrimony between the two families has become intensified in the partnership litigation such that members of the two families do not speak

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<sup>2</sup> However, for some unexplained reason, consolidation and re-alignment are not supported by Fathi and are opposed by his co-conspirators.

to one another, and a physical altercation between the Hameds and Yusufs occurred earlier this year in St. Croix.

22. The chronic strife, deep mutual distrust, and dissension between the Hamed and Yusuf **families make it impossible for them to jointly manage and operate any business that they jointly own.** (Emphasis added.)

Thus, in both his 2015 344 action and his pending old motion to dismiss, the insurmountable deadlock was acrimony—despite the fact that the Hameds and Yusufs have managed to run several of these 50/50 entities for 11 years now after the litigation began in 2012. (Business is proceeding—as the discussion of Plessen in the footnote below demonstrates.) The only supposedly ‘new’ twist here is predicated on the fact Mohammad Hamed died leaving a 1-1 board of directors. So in this new third brief (i.e., surreply) *Fathi has simply substituted the ‘old reason for the deadlock’ with a ‘new, improved reason for the deadlock’.*

Without a single reference to the controlling corporate documents (which state the exact opposite of what Fathi argues) Fathi now ‘sort of’ attempts to revise and amend his pending, original old motion to dismiss--to assert an unsupported corporate law argument about a 1-1 board—without citations or exhibits. He also attempts to re-assert his arguments from the 2015 St. Thomas 344 case.<sup>3</sup>

In his new formulation, Sixteen Plus is in peril and cannot continue .....because there is a different deadlock. This is such important news that he cannot bother to oppose

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<sup>3</sup> On joint motion, that case was dismissed without prejudice. Thus, he could always try to seek leave to amend one of the cases here to add that cause of action--or to once again litigate the alleged deadlock.

the actual motion before the court.<sup>4</sup> However, he is wrong about this news being either new or perilous, for several reasons related to 'facts' he raises without citation or exhibits.

First, Mohammad had already passed away before the original motion to dismiss was filed on December 15, 2017. The board then was identical to now. These 'new' revelations were available when the pending motion to dismiss was filed—and, thus, the opposition is revealed to be just a surreply to improve the original submission. Therefore, it has probably accomplished what it was intended by this *de facto* supplementation contrary to Rule 6-1. One cannot un-ring a bell.

Second, Yusuf muses that he cannot fathom why Mark Eckard was the original counsel here. A check of the docket answers this. The instant case was brought on February 12, 2016—when the very much alive Mohammad Hamed hired Attorneys Mark Eckard, Carl Hartmann and Joel Holt to represent the company in protecting its interest in Diamond Keturah. Thus, the bringing of the case under Atty. Eckard's signature was proper with a 2-1 Hamed board, and with Mohammad making that decision to do so as the president of Sixteen Plus.<sup>5</sup> Atty. Eckard later left the jurisdiction to work for a firm in Delaware, leaving his co-counsel to continue.

Third, another mystery Fathi states he cannot unravel can be easily understood by reference to the Sixteen Plus corporate documents, **Exhibit C**,<sup>6</sup> (which, oddly, the third filling

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<sup>4</sup> There he sought dissolution of Sixteen Plus and the sale of the Diamond Keturah land due to the corporate deadlock.

<sup>5</sup> See Order, approving Plessen lease, *Hamed v. Yusuf*, 2014 WL 3697817 (V.I.Super. July 22, 2014) appeal denied at 2015 WL 877879 (February 27, 2015). (Discussion by the Court (Brady, J.) of corporate control of another 50/50 Hamed/Yusuf company—applying normal USVI corporate law and the regular corporate documents.)

<sup>6</sup> See Sixteen Plus Corporation's *Articles of Incorporation and Bylaws*, filed with the Lt. Governor's Office on February 10, 1997. The documents are clearly in the hands

in support of the motion to dismiss did not mention, attach or reference.) The documents clearly state in the by-laws that Wally Hamed, then vice-president, became the president on the death of his father on June 16, 2016.

Section 3.3 Powers and Duties of the Vice President. The Board of Directors may appoint one or more Vice Presidents. Each Vice President (except as otherwise provided by resolution of the Board of Directors) shall have the power to sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as from to time are assigned to that Vice President by the Board of Directors or by the President. **In case of the absence or disability of the President, the duties of that office shall be performed by a Vice President;** the taking of any action by any Vice President in place of the President shall be conclusive evidence of the absence or disability of the President. (Emphasis added.)

Moreover, once he was the president, according to those same by-laws, Wally had “the general powers and duties of supervision and management usually vested in the office of president of a corporation.” And more to the point here, he became “Chief Executive Officer of the Corporation and [has] general charge and control of all its business affairs and properties.”<sup>7</sup> See **Exhibit 1**, Section 3.2, pp. 5-6.

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of Fathi's lawyers and could have been included in the opposition—as they were originally supplied to Hamed by Fathi in discovery. (Stamp in lower center.) The Bates number in the lower right side also shows that Fathi obtained them as part of the FBI documents seized in the raid on the stores.

<sup>7</sup> Elsewhere Fathi relies on the fact that he, as secretary/treasurer has not kept up corporate filings as required. Thus, he suggests, the corporation should not be able to defend itself for that reason as well. This misstates the applicable statute and does not apply when (1) Manal brought the 342 action, (2) in the 65 action, Sixteen Plus is also a counterclaim defendant, and (3) the statute deals with the initiation of actions and the instant action was commenced correctly at the time of filing. Hamed is presently working to bring those filings up to date.

It should also be mentioned that Yusuf tried to put a similar Hamed/Yusuf corporate control issue before Judge Willocks at the same time as it was before Judge Brady. Plessen is another 50/50 Hamed Yusuf company where Fathi also went through two courts and lost in both—and where the company has somehow functioned admirably despite a similar corporate dispute. Judge Willocks, mostly following Judge Brady's decision, refused Yusuf's

(continued...)

Section 3.2. Powers and Duties of the President. The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. The President shall preside at all meetings of the Stockholders. The President may be a member of the Board of Directors and, if a member, shall preside at all meetings of the Board of Directors unless the Board of Directors, by a majority vote of a quorum of the Board, elects a Chairman other than the President to preside at meetings of the Board of Directors. The President may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. The President shall have the general powers and duties of supervision and management usually vested in the office of president and of corporation. The President shall be an ex-officio voting member of all standing committees. The President shall perform such other duties as from time to time are assigned to the President by the Board of Directors.

Fourth, the correct way for Fathi to argue this issue is to oppose the present motion to amend (as to the instant, wholly unrelated clarification of an affirmative defense, as the rules *require*) and **THEN** file an amended answer to raise whatever corporate or standing issues he pleases. *An even better idea would be for him to join in the pending*

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attempt at corporate machinations. See Order entered April 21, 2016, Yusuf Yusuf (derivatively for Plessen) v. Hamed, SX-13-CV-0000120—where he stated, at footnote 3, page 3:

According to Plaintiff Yusuf's Motion, Fathi filed a similar motion in the 2012 [main 370] Lawsuit, **also requesting the court to nullify the resolutions, void the acts taken pursuant to the resolutions, and appoint a receiver for Plessen.** The court denied Fathi's motion in the 2012 Lawsuit. In its July 22, 2014 memorandum opinion, the court held that: (1) Plaintiff [Mohammad Hamed] did not violate Plessen's By-Laws in providing Notice of the April 30, 2014 special meeting of the Plessen board of directors; (2) the Lease between Plessen and KAC357, Inc. according to its terms, with Hamed's personal guarantee of the tenant's performance, is intrinsically fair to Plessen; (3) the board did not violate Plessen's By-Laws by retaining Attorney Jeffrey Moorhead to defend Plessen against Defendant [Fathi's] Counterclaim in the instant action and in the shareholder derivative action; (4) the dividends authorized at the April 30, 2014 meeting, shared equally between Mohammad and Fathi, will not be disturbed; (5) the court will not rescind the board's resolution to remove Fathi as Plessen's resident agent; and (6) at this stage, the court will not appoint a receiver to oversee the liquidation of Plessen.

*motion to consolidate*, and after consolidation, simply try to reach an agreement among the parties or seek a court order regarding the correct alignment of the parties and claims.

## II. Specific Points in the Motion Not Opposed in the Opposition

The following were not addressed in Fathi's opposition, and should be deemed conceded:

- a. Fathi does not contest, raise or address the procedural history.
- b. Fathi does not contest, raise or address Hamed's framing of the issue:

The issue arises concerning the difference between "unenforceable" and "barred" versus "should decline to hear" which more adequately reflects the doctrine of "in pari delicto".

- c. Fathi does not contest or address the proposed relief:

Thus, Sixteen Plus asks to amend each of these (7 & 8) to add the following sentence.

In the alternative, the Court *should decline to hear* the substance of these matters as there was an overarching series of coupled illegal activities in which all knowingly and intentionally participated.

At 3 of Sixteen Plus' motion it raised, and Fathi does not oppose, the incorporation of the argument from Hamed's *Motion to Amend to Add Manal* in the 650 action with regard to the *Davis* factors regarding amendments, and the fact that Hamed has satisfied all of them—nor does Fathi dispute the liberal nature of the rule or the Supreme Court's position in *Davis*.



### III. Sixteen Plus' Responses to Specific Statements in the Opposition

A. At 2, Fathi states: "Third-Party Defendant Fathi Yusuf's opposition to this motion to amend is more fundamental than an analysis of whether the proposed amendment on a case this old is untimely or whether granting the amendment would prejudice Yusuf."

This was addressed above. However, (1) with regard to the propositions that this may be "a case this old" and thus the amendment is "untimely", the Court's attention is directed to the extensive treatment of this concept in the motion. Pursuant to *Davis*, the answer is a resounding no. Similarly, (2) with regard to the question of "whether granting the amendment would prejudice Yusuf" again the answer lies in prior filings. Fathi has already attempted this identical argument in his opposition to Hamed's motion to amend to add Manal as a defendant in the 650 action. Here is Hamed's reply *in toto*:

4. At 3: "[Fathi argues, there has been] undue delay as to the addition of Manal"

Fathi does not address *Davis* or Hamed's discussion of applicable law and holding in that case. All that is presented in opposition is a wordy argument with not a single word of legal support. Moreover, the wordy argument is utterly wrong on the law. Fathi argues:

Plaintiff should not be allowed now, at this late date—years later—to attempt to rectify this failure. Nothing in the recent discovery which has taken place in this case has changed the fact that Plaintiff's claims relate to Manal Yousef's mortgage and that she was a necessary party. Plaintiff should not be afforded the ability to attempt to rectify this blatant failing so late in the litigation. Failure to have added her remains a basis for dismissal of the FAC and Plaintiff should not be able to now attempt to rectify this failing.

This makes it obvious why *Davis* was avoided. This is "unfairness" language and suggests there must be some manifest injustice before amendment should be allowed because amendment might make it more likely the plaintiff will succeed than existed in the original complaint. *Davis* directly contradicts this, focusing on actual, apparent, procedural prejudice;

the prejudice cannot simply be that UHP Projects may lose the case on the merits if the amended pleading is allowed; rather, "[t]o constitute prejudice, the amendment must compromise [the defendant's] *ability to present [its] case.*" (Emphasis added.)

Fathi does not address, argue or prove any "compromise" to the defendants "ability to present [their] case". Fathi merely states that there has been no "newly discovered evidence" *significant enough* to suggest the "need" to amend. This is, therefore, basically an attempt to graft Rule 59(e) standards and the higher level of "newly discovered evidence creating a disadvantage" onto the far more liberal Rule 15(a) process—a trick which is repeatedly tried and always fails. See this distinction discussed in *DeGruy v. Wade*, 586 F. App'x 652, 655 (5th Cir. 2014).

Ordinarily, a district court has greater discretion to deny a motion under Rule 59(e) than under Rule 15(a). Rule 59(e) motions "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." *Rosenzweig*, 332 F.3d at 864. A motion to amend under Rule 15(a), however, "permit[s] liberal amendment to facilitate determination of claims on the merits," *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (Former 5th Cir. Nov. 1981), *imposing serious restrictions on the judge's discretion to deny the motion, id. Absent a strong, declared reason for the denial, a reviewing court will hold the denial of a Rule 15(a) motion to be an abuse of discretion.* (Emphasis added.)

There is no shame or impropriety in seeking "to cure the potential deficienc[ies] by amendment" at what is still a very early stage in these proceedings. *Zavian v. Pride Fin., LLC*, Civil Action No. 15-1920 (ES) (MAH), 2016 U.S. Dist. LEXIS 85158, at \*7-8 n.3 (D.N.J. June 30, 2016)

No factors militate against granting the relief Plaintiff seeks. First, the Court notes that a Pretrial Scheduling Order for this case was entered only on March 2, 2016 [D.E. 15], which sets a deadline of June 1, 2016 for any motions to add new parties or amend pleadings. Although Defendants argue that the Plaintiff could have drawn a broader class definition in the original Complaint but failed to do so, Plaintiff is now seeking to cure the potential deficiency by amendment, which was filed shortly after Defendants disclosed to Plaintiff that there were only seven members of the putative class. Leave to amend is generally granted where, during the course of discovery, a party discovers "new evidence." See, e.g., Slade v. Fauver, No. CIV.A.90-1417, 1990 U.S. Dist. LEXIS 13356, 1990 WL 153960, at \*4 (D.N.J. Sept. 24, 1990) (granting leave to amend where new claims were discovered and "proposed amendments had no dilatory purpose and no significant discovery or pretrial preparation had taken place . . ."); Kronfeld v. First Jersey Nat'l Bank, 638 F. Supp. 1454, 1460 (D.N.J. 1986) (granting motion to amend upon discovery of new evidence where it did "not appear that the amendment would cause undue delay or that plaintiffs have a dilatory motive."). Plaintiff asserts that while Defendants' Answer denied there were forty class members, it was not until January 28, 2016 that Defendants reported there were only

seven members of the putative class. Pl.'s Reply Br., March 14, 2016, D.E. 17....(Emphasis added.)

In the end, all Fathi really argues is that Hamed “could have” added all of this in 2017, immediately after Manal filed her suit—or that Hamed “could have” amended before written discovery and motions to compel had ended just a few months ago. But that is not the standard. There is no legal support for replacing the word “could” with “must.” Fathi’s argument would mean that, even when no answers have been filed, discovery is still outstanding and Judge Brady’s new Scheduling Order has just issued—even when discovery answers were received just two months before the motion—amendment would not be proper. It is apparent why no cases are cited for this proposition and there is no discussion of *Davis* or the concept of prejudice as requiring the “compromise of a defendant’s ability to present its case.”

- B. At 2, Fathi states: “The instant consolidated cases began with the filing of the “65” case on February 9, 2016 by Sixteen Plus Corporation against Manal Yousef, in a complaint signed by Mark Eckard, purportedly on behalf of Sixteen Plus.

Again, this was addressed above. It was clearly signed by Atty. Eckard, was approved by the president and vice-president, and they had the authority to do so—even absent their 1-2 majority on the Board—which they also had.

- C. At 2-3, Fathi states: “There was no resolution of the Board of Directors of the Sixteen Plus authorizing the Corporation to engage Attorney Eckard and authorizing the filing of the lawsuit. Such a resolution was never a possibility because Fathi Yusuf recognizes the mortgage as valid and enforceable. The engagement of Attorney Eckard and the bringing of the suit was done at the instance of only one director, Waleed Hamed. Nor has there been any corporate resolution to engage Attorney Holt to prosecute the 65 case on behalf of Sixteen Plus or to defend Manal Yousef’s later-filed 342 case for foreclosure against Sixteen Plus.”

This was also addressed above. Fathi is just wrong, unless he has some extraordinary citation to a USVI corporate statute that either overrides the By-Laws, or re-defines the plain English provisions in the By-Laws giving Wally the power to act as the CEO and to direct business of the corporation by requiring a resolution to conduct the corporation’s affairs. The president/CEO, Mohammed, hired and charged his attorneys with protecting the company’s rights in the Diamond Keturah land. His death did not change that retention or charge.

Moreover, on his death, Wally became the president and has the same authority. Fathi provides *no authority for the argument that a resolution is necessary whenever a president acts or passes away—or the board changes.*

In any case, as also noted above, the opposition to an unrelated motion does not provide the proper means to amend your pending motion to dismiss to retroactively join this issue. This should be disregarded as irrelevant, unresponsive and a violation of Rule 6-1.

D. At 3, Fathi states: The two members of the Board of Sixteen Plus have a fundamental disagreement concerning the validity of the mortgage given by the corporation to Manal Yousef. As a result, any prosecution of claims or defenses by Sixteen Plus Corporation in this situation must proceed derivatively, if at all.

This too was addressed above. Individual directors do not run companies. Under the By-Laws this is the province of the officers. Individual directors often disagree. *There are corporate laws and processes for addressing disagreements* — they cannot be solved in an opposition to a motion to amend in a foreclosure action — especially absent all of the many requisite procedural and factual underpinnings of such a corporate dispute.

#### **IV. Conclusion**

What Fathi has submitted is just a third brief in support of his pending original motion to dismiss—to amend that old motion by adding the suggestion of a death that occurred before the pending original was filed. It is improper. It is surreply. Or it is an attempt to re-argue a dismissed 2015 corporate law action about an alleged corporate deadlock.

What it is not is an opposition to the instant motion. The failure to address and oppose the motion should convince the Court to deem it conceded and allow the minor amendment without further, distracting detours. Sixteen Plus takes no position regarding sanctions pursuant to Rule 6.1.

The motion should be granted.

**Counsel for Sixteen Plus Corporation**

**Dated:** February 12, 2023

*/s/ Carl J. Hartmann III*

**Carl J. Hartmann III, Esq.**

(Bar # 48)

*Co-Counsel for Sixteen Plus Corp.*

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**Joel H. Holt, Esq. (Bar # 6)**

*Counsel for Sixteen Plus Corp.*

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## CERTIFICATE OF SERVICE

I hereby certify that, discounting captions, headings, signatures, quotations from authority and recitation of the opposing party's own text, this document complies with the page and word limitations set forth in Rule 6-1(e) and that on **February 12, 2023**, I served a copy of the foregoing by email and the Court's E-File system, to:

**James Hymes III, Esq.**

*Counsel for Manal Yousef*  
LAW OFFICES OF JAMES L.  
HYMES, III, P.C.  
P.O. Box 990  
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**Charlotte K. Perrell, Esq.**

**Stefan B. Herpel, Esq.**

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sherpel@dnfvi.com

**Courtesy copy** to Kevin Rames, Esq.

/s/ Carl J. Hartmann III

Articles of Incorporation  
Bylaws

of Corporations  
Plus ~~Interp~~

TO: ~~BOB CANNON~~  
NVAU HANDED

EXHIBIT  
C

295-1669

STEC 10 11:53  
OFFICE

**ARTICLES OF INCORPORATION**  
**OF**  
**SIXTEEN PLUS CORPORATION**

We, the undersigned, all being of lawful age, for the purpose of forming a corporation pursuant to Title XIII of the Virgin Islands Code do hereby make, sign and acknowledge the following as its Articles of Incorporation.

**FIRST:** The name of the corporation (the "Corporation") is  
**SIXTEEN PLUS CORPORATION**

**SECOND:** The purpose for which the Corporation is formed are:

(a) to acquire, develop, hold for investment, lease, sell, finance, and otherwise deal with property, both real and personal, including, without limitation, promissory notes and stocks;

(b) to carry on the business described above and any other related or unrelated business and activity in the Territory of the Virgin Islands, in any state, territory, district, or dependency of the United States, or in any foreign country;

(c) in general to do all, and everything necessary, proper and incidental to and for the accomplishment and attainment for the purposes enumerated, and to do any or all things herein set forth to the same extent as natural persons might do, either alone or in conjunction with any other persons, firms, associations, trust estate, agencies or corporations;

(d) to do anything permitted in Sections 31 and 32 of the Title XIII of the Virgin Islands Code, as amended from time to time;

The foregoing clauses shall be construed as general objects, purposes and powers, and shall not be held to limit or restrict in any manner the powers of the corporation permitted by law.

**THIRD:** The total authorized capital stock of the Corporation is One Thousand Six Hundred (1600) shares without par value.

**FOURTH:** The minimum amount of capital with which the Corporation shall commence business is One Thousand Six Hundred (\$1,600.00).

**FIFTH:** The principal office of the Corporation in the Virgin Islands is 4C & D Sion Farm, Christiansted, St. Croix, V.I. 00820. The name and post office address of the resident agent of the Corporation in this Territory is Waleed M. Hamed, 6-H Carlton's Garden,

YUSF210236

Hamed v. United & Yusuf- Def's Production  
0088631

295-1670



Frederiksted, St. Croix, U.S. Virgin Islands 00840. The address for the Corporation is, Sixteen Plus Corporation, 4C & D Sion Farm, Christiansted, St. Croix, U S Virgin Islands 00820.

**SIXTH:** The existence of the Corporation shall be perpetual.

**SEVENTH:** The number of directors of the Corporation shall be as set forth in the By-Laws of the Corporation but will never be less than three.

**EIGHT:** No Stockholder of the Corporation shall have any preferential or preemptive right to acquire additional shares of stock of the Corporation except to the extent that, and on such terms as, the Board of Directors from time to time may determine.

**NINTH:** To the full extent permitted under the Virgin Islands Code, as in effect on the date hereof, or as hereafter from time to time amended, no director or officer shall be liable to the Corporation or to its stockholders for money damages for any breach of any duty owed by such director or officer to the Corporation or any of its stockholders. Neither the amendment or repeal of this Article NINTH, nor the adoption of any provision of these Articles of Incorporation inconsistent with the Article NINTH, shall eliminate or reduce the protection afforded by this Article NINTH to a director or officer or former director or officer of the Corporation with respect to any matter which occurred, or any cause of action, suit or claim which but for this Article NINTH would have accrued or arisen, prior to such amendment, repeal or adoption.

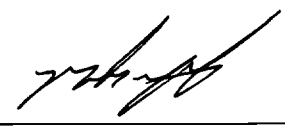
**TENTH:** The names and addresses of the incorporators are as follows:

Maher F. Yusuf  
4C & D La Grande Princess  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Waheed M. Hamed  
C/O Plaza Extra  
P.O. Box 503358  
St. Thomas, U.S. Virgin Islands 00805

Waleed M. Hamed  
6-H Carlton's Garden  
Frederiksted, St. Croix, US Virgin Islands 00840

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 6<sup>th</sup> day of February, 1997.



Maher F. Yusuf



Waheed M. Hamed



Waleed M. Hamed

**ACKNOWLEDGEMENT FOR INDIVIDUAL**

TERRITORY OF THE VIRGIN ISLANDS )  
 )ss:  
DISTRICT OF ST. CROIX )

On this 6<sup>th</sup> day of February, 1997, before me the undersigned notary public, personally appeared **Maher F. Yusuf**, known to me (or satisfactorily proven) to be the persons whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

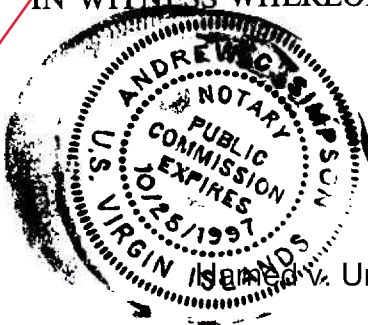
  
Notary Public

**ACKNOWLEDGEMENT FOR INDIVIDUAL**

TERRITORY OF THE VIRGIN ISLANDS )  
 )ss:  
DISTRICT OF ST. CROIX )

On this 6<sup>th</sup> day of February, 1997, before me the undersigned notary public, personally appeared **Waleed M. Hamed**, known to me (or satisfactorily proven) to be the persons whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

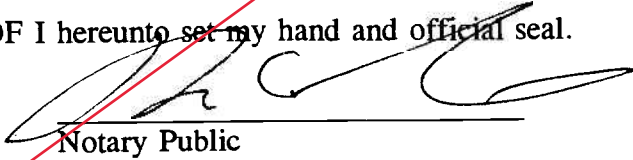
  
Notary Public

**ACKNOWLEDGEMENT FOR INDIVIDUAL**


TERRITORY OF THE VIRGIN ISLANDS                                     )  
  )ss:  
DISTRICT OF ST. CROIX   )

On this 6<sup>th</sup> day of February, 1997, before me the undersigned notary public, personally appeared **Waheed M. Hamed**, known to me (or satisfactorily proven) to be the persons whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

  
Notary Public



**A TRUE COPY**  
  
**NOTARY PUBLIC**  
My Commission Expires 10/25/97

**BY-LAWS  
OF  
SIXTEEN PLUS CORPORATION**

**ARTICLE I  
STOCKHOLDERS**

Section 1.1 **Annual Meeting.** The annual meeting of the Stockholders of the Corporation shall be held each year during the third month after the close of the Corporation's fiscal year, on a day to be duly designated by the Board of Directors, for the purpose of electing Directors and for the transaction of any other corporate business that may come before the meeting.

Section 1.2 **Special Meetings.** A special meeting of the Stockholders may be called, at any time and for any purpose or purposes, by the President, by a Vice President, or by a majority of the Board of Directors. A special meeting of the Stockholders shall be called forthwith by the President, by a Vice President, by the Secretary, or by any Director of the Corporation at any time, upon the written request of the Stockholders entitled to cast at least twenty-five percent (25%) of all the votes entitled to be cast at the meeting. However, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the Stockholders held during the preceding twelve (12) months, unless requested by the Stockholders entitled to cast a majority of all votes entitled to be cast at the meeting. Whenever a special meeting is called by written request of the Stockholders, the request shall state the purpose or purposes of the meeting. Business transacted at any special meeting of Stockholders shall be confined to the purpose or purposes stated in the notice of the meeting.

Section 1.3. **Place of Holding Meetings.** All meetings of Stockholders shall be held at the principal office of the Corporation, or elsewhere in the United States or its Territories as may be designated by the Board of Directors.

Section 1.4. **Notice of Meetings.** Written notice of each meeting of the Stockholders shall be given to each Stockholder in accordance with Section 7.2 of these By-Laws, at least ten (10) days and not more than ninety (90) days before the meeting. The notice shall state the place, day, and hour at which the meeting is to be held; in the case of a special meeting, the notice also shall state briefly the purpose or purposes of that special meeting.

Section 1.5. **Quorum.** Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, at each meeting of the Stockholders, the presence in person or by proxy of the holders of record of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting constitutes a quorum. If less than a quorum is in attendance at the time for which the meeting has been called, the meeting may be adjourned from time to time by a majority vote of the Stockholders present in person or by proxy, without any notice other than by announcement at the meeting, until a quorum is in attendance. At any adjourned meeting at which a quorum is in attendance, any business may be transacted that might have been transacted if the meeting had been held as

originally called.

Section 1.6. **Conduct of Meetings.** Each meeting of the Stockholders shall be presided over by a chairman. The chairman shall be the President of the Corporation or, if the President is not present, a Vice President, or, if none of these Officers is present, a person to be elected at the meeting. The Secretary of the Corporation or, if the Secretary is not present, any Assistant Secretary shall act as secretary of the meeting; in the absence of the Secretary and any Assistant Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

Section 1.7. **Voting.**

A. At each meeting of the Stockholders, every Stockholder entitled to vote at the meeting has one (1) vote for each share of stock standing in his or her name on the books of the Corporation on the date established for the determination of Stockholders entitled to vote at the meeting. This vote may be cast by the Stockholder either in person or by written proxy signed by the Stockholder or by the Stockholder's duly authorized attorney in fact. Unless the written proxy expressly provides for a longer period, it shall bear a date not more than eleven (11) months prior to the meeting. The written proxy shall be dated, but need not be sealed, witnessed, or acknowledged.

B. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, all elections shall be had and all questions shall be decided by a majority of the votes cast at a duly constituted meeting. If the chairman of the meeting so determines, a vote by ballot may be taken upon any election or matter. A vote by ballot shall be taken upon the request of the Stockholders entitled to cast at least ten percent (10%) of all the votes entitled to be cast on the election or matter. The chairman of the meeting may appoint one or more tellers of election. In that event, the proxies and ballots shall be held by the tellers, and all questions as to the qualification of voters, the validity of proxies and the acceptance or rejection of votes shall be decided by the tellers. If no teller is appointed, these duties shall be performed by the chairman of the meeting.

Section 1.8 **Informal Action by Stockholders.** Any action required or permitted to be taken at any meeting of the Stockholders may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 196, as from time to time amended.

## **ARTICLE II** **BOARD OF DIRECTORS**

Section 2.1. **General Powers.** The property and business of the Corporation shall be managed under the direction of the Board of Directors of the Corporation.

Section 2.2. **Number and Term of Office.** The number of Directors shall be such number as may be designated from time to time by resolution of a majority of the entire Board

of Directors. However, the number of Directors may not be less than three. Directors need not be Stockholders. Except as otherwise provided in these By-Laws, the Directors shall be elected each year at the annual meeting of the Stockholders, and each Director shall serve until his or her successor is duly elected and qualifies.

Section 2.3. **Removal of Directors.** Except as otherwise provided in this Section and unless the Charter of the Corporation provides otherwise, the Stockholders may remove any Director from office, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast for the election of Directors.

Section 2.4. **Filling of Vacancies.**

A. If a vacancy in the Board of Directors results from the removal of a Director, the Stockholders may elect a successor to fill that vacancy. However, if the Stockholders of any class or series are entitled separately to elect one or more Directors, the Stockholders of that class or series may elect a successor to fill any vacancy that results from the removal of a Director elected by the class or series.

B. Except as otherwise provided in this Section, (i) if a vacancy in the Board of Directors results from an increase in accordance with these By-Laws of the number of Directors, a majority of the entire Board of Directors may elect the person to fill that vacancy, and (ii) if a vacancy in the Board of Directors results from any other cause whether by reason of a Director's death, resignation, disqualification, or otherwise a majority of the remaining Directors, whether or not sufficient to constitute a quorum, may elect a successor to fill that vacancy.

C. A Director elected to fill a vacancy shall serve until the next annual meeting of the Stockholders and, thereafter, until his or her successor is duly elected and qualifies.

Section 2.5. **Annual and Regular Meetings.** The annual meeting of the Board of Directors shall be held immediately following the annual Stockholders' meeting at which a Board of Directors is elected. Regular meetings of the Board of Directors may be held, without notice, at such time and place as determined from time to time by resolution of the Board. However, notice of every resolution of the Board fixing or changing the time or place for the holding of regular meetings of the Board shall be mailed to each Director at least ten (10) days before the first meeting held pursuant to the resolution. Any business may be transacted at the annual meeting and at any regular meeting of the Board.

Section 2.6. **Special Meetings.** A special meeting of the Board of Directors may be called, at any time and for any purpose or purposes, by the President or by a Vice President. A special meeting of the Board of Directors shall be called forthwith by the President or by the Secretary upon the written request of a majority of the Board of Directors. Written notice of each special meeting of the Board of Directors shall be given to each Director by mailing that notice, in accordance with Section 7.2 of these By-Laws, at least three (3) days before the

meeting, or by telegraphing or hand-delivering that notice at least one (1) day before the meeting. Any business may be transacted at any special meeting of the Board. Any Director may, in writing, waive notice of the time, place, and purposes of any special meeting. Any meeting of the Board of Directors whether an annual, regular, or special meeting may be adjourned from time to time to reconvene at the same or some other place, and no notice need be given of the reconvened meeting other than by announcement at the adjourned meeting.

**Section 2.7. Place of Meeting and Offices.** The Board of Directors may hold its meetings, have one or more offices, and keep the books of the Corporation at such place or places, either within or without the Territory of the United States Virgin Islands, as determined from time to time by resolution of the Board of Directors or by written consent of all of the Directors. Members of the Board of Directors or a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time, and such participation in a meeting shall be deemed to constitute presence in person at such meeting.

**Section 2.8. Quorum.** At each meeting of the Board of Directors, a majority of the entire Board of Directors constitutes a quorum for the transaction of business. If less than a quorum is present at any meeting, a majority of those present may adjourn the meeting from time to time. Except as otherwise specifically provided by law, by the Charter of the Corporation, or by these By-Laws, the act of a majority of the Directors present at any meeting at which there is a quorum constitutes the act of the Board of Directors.

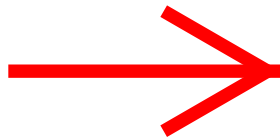
**Section 2.9. Compensation of Directors.** Directors shall not receive any stated salary for their services as such. However, each Director is entitled to receive from the corporation reimbursement of the expenses incurred by the Director in attending any annual, regular, or special meeting of the Board or of a committee of the Board. In addition, by resolution of the Board of Directors, a fixed sum may also be allowed for attendance at each annual, regular, or special meeting of the Board or of a committee of the Board. Reimbursement and compensation to a Director for attending a meeting shall be payable even if the meeting was adjourned because of the absence of a quorum. Nothing contained in this Section shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation for that service.

**Section 2.10. Executive Committee.** By resolution of a majority of the entire Board of Directors, the Board may appoint an executive committee consisting of two or more Directors. The executive committee may exercise all of the powers and authority of the Board of Directors between meetings of the Board, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the Board of Directors or in the executive committee's own membership. Vacancies in the executive committee shall be filled by the Board of Directors. The executive committee shall meet at stated times or on notice to all of its members by any one of its members. It shall fix its own rules of procedure.

Unanimous vote or consent shall be necessary in every case. The executive committee shall keep regular minutes of its proceedings and report those proceedings to the Board of Directors. Without limiting the generality of the foregoing, the executive committee is specifically authorized to execute customary banking resolutions for corporate accounts and for borrowing.


Section 2.11. **Additional Committees.** By resolution of a majority of the entire Board of Directors, the Board may designate one or more additional committees, each committee to consist of two or more Directors. To the extent provided in the resolution, each committee may exercise all of the powers and authority of the Board of Directors, except the power or authority to declare dividends or distributions on stock, to issue stock, to recommend to the Stockholders any action requiring Stockholder approval, to alter or amend these By-Laws, to approve any merger or share exchange not requiring Stockholder approval, or to fill vacancies in the Board of Directors or in the committee's own membership. Vacancies in a committee shall be filled by the Board of Directors. Each committee shall have the name designated from time to time by resolution of the Board of Directors.

Section 2.12. **Informal Action by Directors.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board may be taken without a meeting pursuant to the provisions of Title 13 V.I.C. Section 67(b), as from time to time amended.



## **ARTICLE III** **OFFICERS**

Section 3.1. **Election, Tenure, and Compensation.** The Officers of the Corporation shall be a President, a Secretary, and a Treasurer. The Corporation shall have such other Officers e.g., one or more Vice Presidents and one or more Assistant Secretaries or Assistant Treasurers as the Board of Directors from time to time considers necessary for the proper conduct of the business of the Corporation. The Officers shall be elected by the Board of Directors and shall serve at the pleasure of the Board. The President shall be a Director; the other Officers may, but need not be, Directors. Any two or more offices, except those of President and Secretary, may be held by the same person; however, no Officer may execute, acknowledge, or verify any instrument in more than one capacity if that instrument is required by law or by these By-Laws to be executed, acknowledged, or verified by two or more Officers. The compensation or salary paid all Officers of the Corporation may be fixed by resolutions of the Board of Directors. Except where otherwise expressly provided in a contract duly authorized by the Board of Directors, all Officers, agents, and employees of the corporation are subject to removal at any time by the Board of Directors and shall hold office at the discretion of the Board of Directors or of the Officers appointing them.



Section 3.2. **Powers and Duties of the President.** The President shall be the Chief Executive Officer of the Corporation and shall have general charge and control of all its business affairs and properties. The President shall preside at all meetings of the Stockholders. The President may be a member of the Board of Directors and, if a member, shall preside at all



meetings of the Board of Directors unless the Board of Directors, by a majority vote of a quorum of the Board, elects a Chairman other than the President to preside at meetings of the Board of Directors. The President may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. The President shall have the general powers and duties of supervision and management usually vested in the office of president and of corporation. The President shall be an ex-officio voting member of all standing committees. The President shall perform such other duties as from time to time are assigned to the President by the Board of Directors.

Section 3.3 **Powers and Duties of the Vice President.** The Board of Directors may appoint one or more Vice Presidents. Each Vice President (except as otherwise provided by resolution of the Board of Directors) shall have the power to sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as from time to time are assigned to that Vice President by the Board of Directors or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by a Vice President; the taking of any action by any Vice President in place of the President shall be conclusive evidence of the absence or disability of the President.

Section 3.4 **Secretary.** The Secretary shall give, or cause to be given, notice of all meetings of Stockholders and Directors and all other notices required by law or by these Stockholders and of the Directors in books provided for that purpose and shall perform such other duties as from time to time are assigned to the Secretary by the Board of Directors or the President. The Secretary shall attest to or witness all instruments executed by or on behalf of the Corporation requiring same. In general, the Secretary shall perform all the duties generally incident to the office of Secretary of a corporation, subject to the control of the Board of Directors and the President.

Section 3.5. **Treasurer.** The Treasurer shall have custody of all the funds and securities of the Corporation and shall keep full and accurate account of receipts and disbursements in books belonging to the corporation. The Treasurer shall deposit all of the Corporation's money and other valuables in the name and to the credit of the Corporation in such depository or depositories as from time to time designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as ordered by the Board of Directors, taking proper vouchers for those disbursements. The Treasurer shall render to the President and the board of Directors, whenever either of them so requests, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Directors, for the faithful performance of the duties of his or her office and for the removal from office, of all books, papers, vouchers, money, and other property belonging to the Corporation, of whatever kind, in his or her possession or under his or her control. In general, the Treasurer shall perform all the duties generally incident to the office of treasurer of a corporation, subject to the control of the Board of Directors and the President.

Section 3.6. **Assistant Secretary.** The Board of Directors or the President may appoint one or more Assistant Secretaries. Each Assistant Secretary (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Secretary in the absence or disability of the Secretary and shall have such other powers and shall perform such other duties as from time to time are assigned to that Assistant Secretary by the Board of Directors or the President. In case of the absence or disability of the Secretary, the duties of that office shall be performed by an Assistant Secretary; the taking of any action by any Assistant Secretary in place of the Secretary shall be conclusive evidence of the absence or disability of the Secretary.

Section 3.7. **Assistant Treasurer.** The Board of Directors may appoint one or more Assistant Treasurers. Each Assistant Treasurer (except as otherwise provided by resolution of the Board of Directors) shall have the power to perform all duties of the Treasurer in the absence or disability of the Treasurer and shall have such other powers and shall perform such other duties as from time are assigned to that Assistant Treasurer by the Board of Directors or the President. In case of the absence or disability of the Treasurer, the duties of that office shall be performed by an Assistant Treasurer; the taking of any action by any Assistant Treasurer in place of the Treasurer; the conclusive evidence of the absence or disability of the Treasurer.

Section 3.8. **Subordinate Officers.** The Corporation may have such subordinate officers as the Board of Directors from time to time deems advisable. Each subordinate officer shall hold office for such period and shall perform such duties as from time to time are prescribed by the Board of Directors, the President, or the committee or officer designated pursuant to this Article.

#### **ARTICLE IV** **CAPITAL STOCK AND OTHER SECURITIES**

Section 4.1. **Issue of Certificates of Stock.** The certificates for shares of the capital stock of the Corporation shall be of such form, not inconsistent with the Charter of the Corporation, as has been approved by the Board of Directors. All certificates shall be signed by the President or by a Vice President and countersigned by the Secretary or by an Assistant Secretary. Any signature or countersignature may be either manual or facsimile signature. All certificates for each class of stock shall be consecutively numbered. The name and address of the person owning the shares issued shall be entered in the Corporation's books.

Section 4.2. **Transfer of Shares.** Shares of the capital stock of the Corporation may be transferred on the books of the Corporation only by the holder of those shares, in person or by his or her attorney in fact, and only upon surrender and cancellation of certificates for a like number of shares. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificates representing the same number of shares may be issued until the former certificate or certificates for the same number of shares have been so surrendered and canceled.

Section 4.3. **Registered Stockholders.** The Corporation is entitled to treat the holder of record of any shares of stock as the holder in fact of those shares. Accordingly, the Corporation is not bound to recognize any equitable or other claim to, or interest in, those shares in the name of any other person, whether or not the Corporation has had express or other notice of that claim or interest, except as expressly provided by the laws of the Territory of the United States Virgin Islands.

Section 4.4. **Record Date and Closing of Transfer Books.** The Board of Directors may set a record date or direct that the stock transfer books be closed for a stated period for the purpose of making any proper determination with respect to Stockholders, including which Stockholders are entitled to be notified of a meeting, vote at a meeting, receive a dividend, or be allotted other rights. The record date may not be more than fifty (50) days before the date on which the action requiring the determination will be taken. The transfer books may not be closed for a period longer than twenty (20) days. In the case of a meeting of Stockholders, the record date or the closing of the transfer books shall be at least ten (10) days before the date of the meeting.

Section 4.5. **Lost Certificates.** The Board of Directors may direct a new certificate to be issued in place of any certificate that is alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. In its discretion and as a condition precedent to the issuance of a new certificate, the Board of Directors may require the owner of the certificate or the owner's legal representative to give bond, with sufficient surety, to indemnify the Corporation against any loss or claim that may arise by reason of the issuance of a new certificate.

Section 4.6. **Restrictions on Transfer.** Notwithstanding any other provision of these By-Laws to the contrary, no securities issued by the Corporation may be transferred unless (i) those securities are registered with the Securities and Exchange Commission or other jurisdiction, as appropriate, or (ii) the Corporation has received an opinion of counsel for the transferor or transferee, acceptable to counsel for the Corporation, that the transfer would not violate applicable state and federal securities laws, provided, however, that the restrictions set forth in clauses (i) and (ii), above, shall be deemed waived as to a specific transfer of securities in the event the Corporation transfers such securities on its books without having received either evidence of such registration or such opinion of counsel.

## **ARTICLE V** **BANK ACCOUNTS AND LOANS**

### **Section 5.1. Bank Accounts.**

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority to deposit any funds of the Corporation in such financial institutions as from time to time have been designated by the Board of Directors. Such Officers or agents of the Corporation as from time to time have been designated

by the Board of Directors shall have authority to withdraw any or all of the funds of the Corporation so deposited in a financial institution, upon checks, drafts, or other instruments or orders of the payment of money, drawn against the account or in the name or behalf of the Corporation, and made or signed by those designated Officers or agents.

B. From time to time the Corporation shall certify to each financial institution in which funds of the Corporation are deposited, the signatures of the Officers or agents of the Corporation authorized to draw against those funds. Each financial institution with which funds of the Corporation are deposited is authorized to accept, honor, cash, and pay, without limit as to amount, all checks, drafts, or other instruments or orders for the payment of money, when drawn, made, or signed by Officers or agents so designated by the Board of Directors, until the financial institution has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

C. If the Board of Directors fails to designate the persons by whom checks, drafts, and other instruments or orders for the payment of money may be signed, as provided in this Section, all checks, drafts, and other instruments or orders for the payment of money shall be signed by the President or a Vice President and countersigned by the Secretary or Treasurer or by an Assistant Secretary or Assistant Treasurer of the Corporation.

#### Section 5.2. Loans.

A. Such Officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority (i) to effect loans, advances, or other forms of credit at any time or times for the Corporation, from such banks, trust companies, institution, corporations, firms, or persons, in such amounts and subject to such terms and conditions, as the Board of Directors from time to time has designated; and (ii) as security for the repayment of any loans, advances, or other forms of credit authorized, to assign, transfer, endorse, and deliver, either originally or in addition or substitution, any or all personal property, real property, stocks, bonds, deposits, accounts, documents, bills, accounts receivable, and other commercial paper and evidences of debt or other securities, or any rights or interests at any time held by the Corporation; and (iii) in connection with any loans, advances, or other forms of credit so authorized, to make, execute, and deliver one or more notes, mortgages, deeds of trust, financing statements, security agreements, acceptances, or written obligations of the Corporation, on such terms and with such provisions as to the security or sale or disposition of them as those Officers or agents deem proper; and (iv) to sell to, or discount or rediscount with, the banks, trust companies, institutions, corporations, firms, or persons making those loans, advances, or other forms of credit, any and all commercial paper, bills, accounts receivable, acceptances, and other instruments and evidences of debt at any time held by the Corporation, and, to that end, to endorse, transfer, and deliver the same.

B. From time to time the Corporation shall certify to each bank, trust company, institution, corporation, firm, or person so designated, the signatures of the Officers or agents so authorized. Each bank, trust company, institution, corporation, firm, or person so designated

is authorized to rely upon such certification until it has received written notice that the Board of Directors has revoked the authority of those Officers or agents.

## **ARTICLE VI** **INDEMNIFICATION**

Section 6.1. **Indemnification to Extent Permitted by Law.** The Corporation shall indemnify to the full extent permitted by law any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the person 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, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation.

Section 6.2. **Payment of Expenses in Advance of Final Disposition of Action.** Expenses (including attorneys' fees) incurred in defending a civil, criminal, administrative, or investigative action, suit, or proceeding shall be paid by the Corporation in advance of the final disposition of that action, suit, or proceeding, on the conditions and to the extent permitted by law.

Section 6.3. **Non-Exclusive Right to Indemnity; Insurer to Benefit of Heirs and Personal Representatives.** The rights of indemnification set forth in this Article are in addition to all rights to which any Director, Officer, employee, agent, trustee, administrator, or other fiduciary may be entitled as a matter of law, and shall continue as to a person who has ceased to be a Director, Officer, employee, agent, trustee, administrator, or other fiduciary, and shall inure to the benefit of the heirs and personal representatives of that person.

Section 6.4. **Insurance.** The Corporation may 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, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or is or was serving at the request of the Corporation as a trustee or administrator or in any other fiduciary capacity under any pension, profit sharing, or other deferred compensation plan, or under any employee welfare benefit plan of the Corporation, against any liability asserted against and incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the Corporation would have the power or would be required to indemnify that person against that liability under the provisions of this Article or the laws of this State.

Section 6.5. **Certain Persons not to be Indemnified.** Notwithstanding the provisions of this Article, the Corporation may not indemnify any bank, trust company, investment adviser, or actuary against any liability which that entity or person may have by reason of acting as a

"fiduciary" of any employee benefit plan (as that term is defined in the Employees Retirement Income Security Act, as amended from time to time) established for the benefit of the Corporation's employees.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

Section 7.1. **Fiscal Year.** The fiscal year of the Corporation shall be such as has been duly designated by the Board of Directors.

Section 7.2. **Notices.**

A. Except as otherwise provided by law or these By-Laws, whenever notice is required by law or these By-Laws to be given to any Stockholder, Director, or Officer, it shall be construed to mean either (i) written notice personally served against written receipt at the address that appears for that person on the books of the Corporation, or (ii) written notice transmitted by mail, by depositing the notice in a post office or letter box, in a post-paid sealed wrapper, addressed to the Stockholder, Director, or Officer at the address that appears for that person on the books of the Corporation or, in default of any other address for a Stockholder, Director, or Officer, at the general post office situated in the city or county of his or her residence, which notice shall be deemed to be given at the time it is thus mailed.

B. All notices required by law or these By-Laws shall be given by the Secretary of the Corporation. If the Secretary is absent or refuses or neglects to act, the notice may be given by any person directed to do so by the President or, with respect to any meeting called pursuant to these By-Laws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

C. Any Stockholder, Director, or Officer may waive any notice required to be given under these By-Laws.

Section 7.3. **General Counsel.** The Board of Directors may appoint a general counsel to have dominion over all matters of legal import concerning the Corporation. It shall be the duty of the Officers and the Directors to consult from time to time with the general counsel (if one has been appointed), as legal matters arise. The general counsel shall be given notice of all meetings of the Board of Directors, in the manner provided in Section 2.5 and 2.6 of the By-Laws, and the general counsel shall be accorded the opportunity to attend these meetings for the purpose of consulting with and advising the Board of Directors on any matters of a legal nature. The general counsel to the Corporation shall be subject to removal and replacement by the Board of Directors.

Section 7.4. **Corporate Seal.** The Board of Directors may provide a suitable seal, bearing the name of the Corporation, which shall be in the charge of the Secretary. The Board of Directors may authorize one or more duplicate seals and provide for their custody.

Regardless of whether a seal is adopted by the Board of Directors, whenever the Corporation is required to place its corporate seal on a document, it shall be sufficient to meet the requirements of any law, rule, or regulation relating to a corporate seal to place the word ("seal") adjacent to the signatures of the person authorized to sign the document on behalf of the Corporation.

Section 7.5. **Books and Records.** The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its Stockholders and Board of Directors and of any executive or other committee when exercising any of the powers or authority of the Board of Directors. The books and records of the Corporation may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form, but may be maintained in the form of a reproduction.

Section 7.6. **Bonds.** The Board of Directors may require any Officer, agent or employee of the Corporation to give a bond to the Corporation, conditioned upon the faithful discharge of his or her duties, with such surety and in such amount as is satisfactory to the Board of Directors.

Section 7.7. **Severability.** The invalidity of any provision of these By-Laws shall not affect the validity of any other provision, and each provision shall be enforced to the extent permitted by law.

Section 7.8. **Gender.** Whenever used in these By-Laws, the masculine gender includes all genders.

## **ARTICLE VIII** **AMENDMENTS**

The Board of Directors has full power and authority to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual, regular, or special meeting a part of the general business of that meeting subject to the power of the Stockholders to amend, alter, supplement, or repeal these By-Laws, or any provision of them, at any annual meeting as part of the general business of that meeting, or at any special meeting for which the notice of that special meeting stated the substance of the proposed amendment, alteration, supplement, or repeal.