

FORM 10-Q/A  
AMENDMENT NO. 1

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the  
--- Securities Exchange Act of 1934

FOR THE QUARTERLY PERIOD ENDED JUNE 29, 1996

or

Transition Report Pursuant to Section 13 or 15(d) of the  
--- Securities Exchange Act of 1934

Commission File No. 1-9973

THE MIDDLEBY CORPORATION  
(Exact Name of Registrant as Specified in its Charter)

DELAWARE

36-3352497

-----  
(State or Other Jurisdiction of  
Incorporation or Organization)

-----  
(I.R.S. Employer Identification No.)

1400 TOASTMASTER DRIVE, ELGIN, ILLINOIS

60120

-----  
(Address of Principal Executive Offices)

-----  
(Zip Code)

Registrant's Telephone Number, including Area Code (847) 741-3300  
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Indicate by check mark whether the Registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding twelve (12) months (or for such shorter period that  
the Registrant was required to file such reports), and (2) has been subject to  
such filing requirements for the past 90 days.

YES  NO

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As of June 29, 1996, there were 8,402,488 shares of the registrant's common  
stock outstanding.

PART II. OTHER INFORMATION

The Company was not required to report the information pursuant to Items 1

through 6 of Part II of Form 10-Q for any of the three months ended June 29, 1996, except as follows:

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

On May 16, 1996, the Company held its 1996 Annual Meeting of Stockholders. The following persons were elected as directors to hold office until the 1997 Annual Meeting of Stockholders: Newell Garfield, Jr., A. Don Lummus, John R. Miller, III, Philip G. Putnam, David P. Riley, Sabin C. Streeter, William F. Whitman, Jr., Joseph G. Tompkins, Laura B. Whitman, Robert L. Yohe and Robert R. Henry. The number of shares cast for, withheld and abstained with respect to each of the nominees were as follows:

Nominee -----	For ---	Withheld -----	Abstained -----
Garfield	7,482,885	30,218	0
Lummus	7,483,485	29,618	0
Miller	7,478,285	34,818	0
Putnam	7,478,285	34,818	0
Riley	7,483,485	29,618	0
Streeter	7,483,385	29,718	0
Whitman, W.	7,481,260	31,843	0
Tompkins	7,476,968	36,118	0
Whitman, L.	7,477,997	35,106	0
Yohe	7,477,360	35,743	0
Henry	7,482,185	30,918	0

The stockholders voted to approve the ratification of the selection of Arthur Andersen LLP as independent auditors for the Company for the fiscal year ending December 28, 1996. 7,502,062 shares were cast for such selection, 9,390 shares were cast against such selection, and 1,651 shares abstained.

The stockholders voted to approve amendments to the Certificate of Incorporation and By-laws of the Company to increase the number of permitted directors from nine to eleven. 7,439,917 shares were cast for such resolution, 69,108 shares were cast against such resolution, and 4,078 shares abstained.

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The stockholders also voted to approve amendments to the Company's Amended and Restated 1989 Stock Incentive Plan to increase the number of shares available for grants from 200,000 to 400,000 shares, and to extend the duration of the plan from February 16, 1999 to February 16, 2001. 7,430,924 shares were cast for such resolution, 70,243 shares were cast against such resolution, and 11,936 shares abstained.

No broker nonvotes were received in connection with the 1996 Annual Meeting.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

a) Exhibits - The following Exhibits are filed herewith:

- Exhibit (3) (i) - Unofficial Restated Certificate of Incorporation of The Middleby Corporation, as amended to date.
- Exhibit (3) (ii) - Unofficial Amended and Restated Bylaws of The Middleby Corporation, as amended to date.
- Exhibit (4) (b) (i) - First Amendment to Loan and Security Agreement dated January 9, 1995, by and among

Middleby Marshall Inc. and Asbury Associates, Inc., as Borrowers, certain lenders named therein, as Lenders, and Sanwa Business Credit Corporation, as Agent and Lender.

- Exhibit (4) (c) (i) - Amendment Number One to Note Agreement dated as of January 1, 1995, among Middleby Marshall Inc. and Asbury Associates, Inc. as Obligor.
- Exhibit (4) (c) (ii) - Amendment Number Two to Note Agreement dated as of January 1, 1995, among Middleby Marshall Inc. and Asbury Associates, Inc. as Obligor.
- Exhibit (4) (e) (i) - Amendment One to the Intercreditor Agreement dated as of January 10, 1995, by and among Sanwa Business Credit Corporation, as Agent, The Northwestern Mutual Life Insurance Company, as the Senior Noteholder, and First Security Bank of Utah, National Association, as Security Trustee and Collateral Agent.
- Exhibit (4) (e) (ii) - Amendment Two to the Intercreditor Agreement dated as of January 10, 1995, by and among Sanwa Business Credit Corporation, as Agent, The Northwestern Mutual Life Insurance Company, as the

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Senior Noteholder, and First Security Bank of Utah, National Association, as Security Trustee and Collateral Agent.

- Exhibit (10) (iii) (d) - The Middleby Corporation Amended and Restated 1989 Stock Incentive Plan, as amended.
- Exhibit (10) (iii) (f) - 1996 Management Incentive Plan (Corporate Vice Presidents).
- Exhibit (22) - List of Subsidiaries.
- Exhibit (27) - Financial Data Schedule (EDGAR only)

b) Reports on Form 8-K - No such reports were filed during the quarter for which this report is filed.

#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

THE MIDDLEBY CORPORATION  
(Registrant)

Date: August 23, 1996

By: /s/ John J. Hastings

John J. Hastings, Executive  
Vice President, Chief  
Financial Officer and  
Secretary

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Unofficial Restated  
CERTIFICATE OF INCORPORATION OF  
THE MIDDLEBY CORPORATION  
(AS AMENDED TO AUGUST 23, 1996)

1. The name of the Corporation is The Middleby Corporation.

2. The address of the registered agent of the Corporation is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle.

The registered agent at such address is The Corporation Trust Company.

3. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

4. The Corporation shall have authority to issue 2,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock") and 20,000,000 shares of Common Stock, par value \$.01 per share ("Common Stock"). The Preferred Stock shall be issuable in series with such designations, relative rights, preferences and limitations as may be fixed from time to time by the Board of Directors.

The designations, preferences and relative, participating, optional and other special rights of the Preferred Stock (unless otherwise fixed by the Board of Directors) and the qualifications, limitations and restrictions thereof, are as follows:

(a) The shares of Preferred Stock may be divided into and issued in one or more series, and each series shall be so designated so as to distinguish the shares thereof from the shares of all other series. All shares of Preferred Stock shall be identical except in respect of particulars which may be fixed by the Board of Directors. Each share of a series shall be identical in all respects with all other shares of such series, except as to the date from which dividends thereon shall be cumulative on any series as to which dividends are cumulative. Shares of Preferred Stock of any series which have been retired in any manner, including shares redeemed or reacquired by the Corporation and shares which have been converted into or exchanged for shares of any other class, or any series of the same or any other class, shall have the status of authorized but unissued shares of Preferred Stock and may be reissued as shares of the series of which they were originally a part.

(b) Before any shares of Preferred Stock of any series shall be issued, the Board of Directors, pursuant to authority hereby expressly vested in it, shall fix by resolution or resolutions the following provisions in respect of the shares of each such series so far as the same are not inconsistent with the provisions herein applicable to all series of Preferred Stock:

(i) the distinctive designations of each series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) from time to time by like action of the Board of Directors;

(ii) the annual rate or amount of dividends payable on shares of such series, whether such dividends shall be cumulative or non-cumulative, the conditions upon which and/or the dates when such dividends shall be payable and the date from which dividends on cumulative series shall accrue and be cumulative on all shares of such series issued prior to the payment date for the first dividend of such series;

(iii) whether such series shall be redeemable and, if so, the terms and conditions of such redemption, including the time or times when and the price or prices at which shares of such series shall be redeemable;

(iv) the amount payable on shares of such series in the event of liquidation, dissolution or winding up of the affairs of the Corporation;

(v) whether such series shall be convertible into or exchangeable for shares of any other class, or any series of the same or any other class, and if so, the terms and conditions thereof, including the date or dates when such shares shall be convertible into or exchangeable for shares of any other class, or any series of the same or any other class, the price or prices or the rate or rates at which shares of such series shall be so convertible or exchangeable, and any adjustments which shall be made in such conversion or exchange prices or rates;

(vi) whether such series shall have any voting rights in addition to those prescribed by law and, if so, the terms and conditions of exercise of such voting rights; and

(vii) any other designations, preferences and relative, participating, optional or other special rights, and any qualifications, limitations and restrictions thereof.

5. (a) So long as any shares of Preferred Stock of any series shall be outstanding, the Corporation will not declare

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or pay any dividends on the Common Stock (other than dividends payable solely in shares of Common Stock) or make any distributions of any kind, either directly or indirectly, in respect of shares of Common Stock, or make any payment on account of the purchase, redemption or other acquisition of Common Stock, unless on the payment, distribution or redemption date, as the case may be, all dividends on the then outstanding shares of Preferred Stock of all series of Preferred Stock then outstanding have been paid.

(b) In case the Corporation shall not pay in full all dividends required to be paid on all shares of all series of Preferred Stock at the time outstanding to the full extent of the preference, if any, to which each such series is entitled, all series which are of equal rank with respect to such dividends, including accumulations thereof, if any, shall be entitled to such dividends in proportion to the amounts that would be payable on such series if all dividends were paid in full. Accumulations of dividends shall not bear interest.

(c) In case the Corporation shall not pay in full all amounts required to be paid on all shares of all series of Preferred Stock at the time outstanding in the event of the liquidation, dissolution or winding up of the affairs of the Corporation, the shares of all series of Preferred Stock shall share ratably in the payment of all amounts payable in the event of such liquidation, dissolution or winding up in accordance with the sums which would be payable on such shares if all amounts payable on such liquidation, dissolution or winding up were paid in full.

(d) When dividends shall have been paid (or declared and set aside for payment) on the Preferred Stock to the full extent of the preference, if any, to which the Preferred Stock is entitled, dividends on the remaining class or classes of stock may then be paid out of the funds of the Corporation which are legally available therefor.

6. The property, affairs and business of the corporation shall be managed by its Board of Directors consisting of not fewer than three (3) nor

more than eleven (11) persons. The exact number of directors within the maximum and minimum limitation specified herein shall be fixed from time to time by resolution adopted by the majority of the Board of Directors. The directors shall be elected and shall hold office for such term and be subject to removal as provided in the By-Laws of the Corporation.

7. No agreement or plan providing for the dissolution, liquidation, merger or consolidation of the Corporation or the sale, lease, or transfer of substantially all of its assets, shall be effective, unless approved by the

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affirmative vote of not less than two-thirds of the votes of all the shares of stock outstanding and entitled to vote thereon.

8. Directors, officers, employees and other agents of the Corporation, and persons who serve at its request as Directors, officers, employees, or other agents of another organization in which the Corporation directly or indirectly owns shares or of which it is a creditor, shall be indemnified by the Corporation to the fullest extent permitted by law, which indemnification shall include, but not be limited to, payment by the Corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payments if he shall be adjudicated to be not entitled to indemnification under the law. Any such indemnification shall be provided although the person to be indemnified is no longer an officer, director, employee, or agent of the Corporation or of such other organization. No indemnification shall be provided for any person with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the Corporation.

9. The name and mailing address of the incorporator is:

Christopher C. King  
Schwartz Klink & Schreiber, P.C.  
666 Third Avenue  
New York, New York 10017

10. No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty by such director as a director; provided, however, that this Article 10 shall not eliminate or limit the liability of a director (except to the extent provided by applicable law) (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. This Article 10 shall not apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to the date this Article 10 becomes effective. No amendment to or repeal of this Article 10 shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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11. All holders of the 7-1/2% Convertible Notes due 1997 (the "Subordinated Notes") of this Corporation, which may be issued in exchange for

the Cumulative Redeemable Convertible Exchangeable Voting Preferred Stock of this Corporation, shall be deemed to be stockholders of this Corporation, and the Subordinated Notes shall be deemed to be shares of stock for the purpose of any provision of the General Corporation Law of the State of Delaware or of this Certificate which requires the vote of the stockholders as a prerequisite to any corporate action.

CHRISTOPHER C. KING

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Christopher C. King  
Incorporator



UNOFFICIAL AMENDED AND RESTATED

BY-LAWS

OF

THE MIDDLEBY CORPORATION

a Delaware Corporation

(AS AMENDED TO AUGUST 23, 1996)

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ARTICLE I

STOCKHOLDERS

Section 1.1. ANNUAL MEETING.

An annual meeting of stockholders for the purpose of electing directors and of transacting such other business as may come before it shall be held each year at such date, time and place, either within or without the State of Delaware, as may be specified by the Board of Directors.

Section 1.2. SPECIAL MEETINGS.

Special meetings of stockholders for any purpose or purposes may be held at any time upon call of the Chairman of the Board, the President, or a majority of the Board of Directors, at such time and place either within or without the State of Delaware as may be stated in the call and notice. A special meeting of stockholders shall be called by the Chairman of the Board or the President upon the written request, stating time, place and the purpose or purposes of the meeting, of stockholders who together own of record at least ten percent (10%) of the outstanding stock of any class entitled to vote at such meeting.

Section 1.3. NOTICE OF MEETINGS.

Notice of stockholders' meetings, stating the place, date and hour thereof, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by the Chairman of the Board, the President or the Secretary to each stockholder of record entitled to vote thereat at least ten days but not more than sixty days before the date of the meeting, unless a different period is prescribed by law.

Section 1.4. QUORUM.

Except as otherwise provided by law or the certificate of incorporation or these By-Laws, at any meeting of stockholders, the holders of a majority of the outstanding shares of each class of stock entitled to vote at the meeting shall be present or represented by proxy in order to constitute a quorum for transaction of any business. In the absence of a quorum, a majority in interest of the stockholders present or the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 1.5 of these By-Laws until a quorum shall attend.

Section 1.5. ADJOURNMENT.

Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the

meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

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Section 1.6. ORGANIZATION.

The Chairman of the Board, or in his absence the President, or in their absence the Vice President, shall call to order meetings of stockholders and shall act as chairman of such meetings. The Board of Directors or, if the Board fails to act, the stockholders may appoint any stockholder or any director or officer of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board, the President and the Vice President.

The Secretary of the Corporation shall act as secretary of all meetings of stockholders, but in the absence of the Secretary, the chairman of the meeting may appoint any other person to act as secretary of the meeting.

Section 1.7. VOTING.

Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws and except for the election of directors, at any meeting duly called and held at which a quorum is present, a majority of the votes cast at such meeting upon a given question by the holders of outstanding shares of stock of all classes of stock of the Corporation entitled to vote thereon who are present in person or by proxy shall decide such questions. At any election of directors at which a quorum is present, the directors shall be elected by a plurality of the votes cast at such election.

Section 1.8. ACTION WITHOUT MEETING.

Any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holder of outstanding stock having not less than the minimum number of votes that would be

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necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1. NUMBER AND TERM OF OFFICE.

The property, affairs and business of the Corporation shall be managed by its Board of Directors consisting of not fewer than three (3) nor more than eleven (11) persons. The exact number of directors within the maximum and minimum limitations specified herein shall be fixed from time to time by resolution adopted by the majority of the Board of Directors.

The directors, except as provided in the next paragraph of this Section

2.1, shall be elected at the annual meeting of stockholders, and each director shall hold office, subject to the provisions of this Article, until the next annual meeting of stockholders and until his successor is duly elected and qualified.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

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Unless otherwise provided in the Certificate of Incorporation, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of shares then entitled to vote at an election of directors.

Section 2.2. CHAIRMAN OF THE BOARD.

The directors may elect one of their members to be Chairman of the Board of Directors. The Chairman shall be subject to the control of and may be removed by the Board of Directors. He shall perform such duties as may from time to time be assigned to him by the Board.

Section 2.3. MEETINGS.

The annual meeting of the Board of Directors, for the election of officers and the transaction of such other business as may come before the meeting, shall be held without notice at the same place as, and immediately following, the annual meeting of the stockholders.

Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

Special meetings of the Board of Directors shall be held at such time and place as shall be designated in the notice of the meeting whenever called by the Chairman of the Board, the President or by a majority of the directors then in office.

Section 2.4. NOTICE OF SPECIAL MEETINGS.

The Secretary, or in his absence any other officer of the Corporation, shall give each director notice of the time and place of holding of special meetings of the Board of Directors by mail at least two days before the meeting, or by telegram, cable or radiogram or personal service at least one day before the meeting. Unless otherwise stated in the notice thereof, any and all business may be transacted at any meeting without specification of such business in the notice.

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Section 2.5. QUORUM AND ORGANIZATION OF MEETINGS.

A majority of the total number of members of the Board of Directors as constituted from time to time shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from

time to time, and the meeting may be held as adjourned without further notice or waiver. Except as otherwise provided by law or by these By-Laws, a majority of the directors present at any meeting at which a quorum is present may decide any question brought before such meeting. Meetings shall be presided over by the Chairman of the Board, or in his absence by the President, or in the absence of both by such other persons as may be selected by the directors. The Secretary of the Corporation shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.6. COMMITTEES.

The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the

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Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have power or authority in reference to amending the Certificate of Incorporation of the Corporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of dissolution, or amending these By-Laws; and, unless the resolution expressly so provided, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Each committee which may be established by the Board of Directors or these By-Laws may fix its own rules and procedures. Notice of meetings of committees, other than of regular meetings provided for by the rules, shall be given to committee members. All action taken by committees shall be recorded in minutes of the meetings.

Section 2.7. ACTION WITHOUT MEETING.

Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 2.8. TELEPHONE MEETINGS.

Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board, or committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear

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each other, and participation in a meeting pursuant to this Section shall

constitute presence in person at such meetings.

ARTICLE III  
OFFICERS

Section 3.1. EXECUTIVE OFFICERS.

The executive officers of the Corporation shall be a Chairman of the Board, a President, one or more Vice Presidents, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may elect or appoint such other officers (including a Controller and one or more Assistant Treasurers and Assistant Secretaries) as it may deem necessary or desirable, each of whom shall hold office for such term as may be prescribed by the Board of Directors from time to time. Any person may hold at one time two or more offices.

Section 3.2. POWERS AND DUTIES.

The Chairman of the Board or, in his absence, the President, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman shall be the chief executive officer of the Corporation, reporting only to the Board of Directors. In the absence of the Chairman, the President shall perform all the duties of the Chairman. The officers and agents of the Corporation shall each have such powers and perform such duties in the management of the business and affairs of the Corporation as generally pertain to their respective offices, as well as such powers and duties as from time to time may be prescribed by the Board of Directors.

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ARTICLE IV

RESIGNATIONS, REMOVALS AND VACANCIES

Section 4.1. RESIGNATIONS.

Any director or officer of the Corporation, or any member of any committee, may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board of Directors, the President or the Secretary of the corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified therein, upon receipt thereof. The acceptance of such resignation shall not be necessary to make it effective.

Section 4.2. REMOVALS.

The Board of Directors, at any meeting thereof, or by written consent, may, to the extent permitted by law, at any time, remove with or without cause from office or terminate the employment of any officer or member of any committee.

Section 4.3. VACANCIES.

Any vacancy in the office of any officer through death, resignation, removal, disqualification or other cause, may be filled at any time by a majority of the directors then in office (even though less than a quorum) and, subject to the provisions of this Article, the person chosen shall hold office until his successor shall have been chosen and shall have qualified.

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ARTICLE V

## CAPITAL STOCK

### Section 5.1. STOCK CERTIFICATES.

The certificates for shares of the capital stock of the Corporation shall be in such form as shall be prescribed by law and approved, from time to time, by the Board of Directors.

### Section 5.2. 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 such shares or by his duly authorized attorney, upon the surrender to the Corporation or its transfer agent of the certificate for such shares properly endorsed.

### Section 5.3. FIXING RECORD DATE.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.

### Section 5.4. REGULATIONS.

The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, registration, cancellation and replacement of certificates for shares of stock of the Corporation.

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## ARTICLE VI

### MISCELLANEOUS

#### Section 6.1. CORPORATE SEAL.

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal" and "Delaware."

#### Section 6.2. FISCAL YEAR.

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

#### Section 6.3. NOTICES AND WAIVERS THEREOF.

Whenever any notice whatever is required by these By-Laws or by the certificate of incorporation, or by any law to be given to any stockholder, director or officer, such notice, except as otherwise provided by law, may be given personally or by mail, or, in the case of directors or officers, by telegram, cable or radiogram, addressed to such address as appears on the books of the Corporation. Any notice given by telegram, cable or radiogram shall be deemed to have been given when it shall have been delivered for transmission and any notice given by mail shall be deemed to have been given when it shall have been deposited in the United States mail with postage thereon prepaid.

Whenever a notice is required to be given by any statute, the Certificate of Incorporation or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the meeting or the time stated therein, shall be deemed equivalent in all respects to such notice.

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Section 6.4. STOCK OF OTHER CORPORATIONS OR OTHER INTERESTS.

Unless otherwise directed by the Board of Directors, the Chairman, the President, the Secretary and such attorneys or agents of the Corporation as may be from time to time authorized by the Board of Directors or the Chairman shall have full power and authority on behalf of this Corporation to attend, and to act and vote in person or by proxy at, any meeting of the holders of securities of any corporation or other entity in which this Corporation may own or hold shares or other securities, and at such meetings such persons shall possess and may exercise all the rights and powers incident to the ownership of such shares or other securities which this Corporation, as the owner or holder thereof, might have possessed and exercised if present. The Chairman, the President, the Secretary or such attorneys or agents may also execute and deliver on behalf of the Corporation powers of attorney, proxies, consents, waivers and other instruments relating to the shares or securities owned or held by this Corporation.

ARTICLE VII

AMENDMENT

The holders of shares entitled at the time to vote for the election of directors shall have the power to adopt, alter, amend or repeal the By-Laws of the Corporation by vote of not less than a majority of such shares.

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