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The New Business Corporation Act: The Basics

Office of Continuing Legal Education at the University of Kentucky College of Law

Rutheford B. Campbell Jr.

University of Kentucky College of Law, rcampbel@uky.edu

David W. Harper

Hirn, Reed, Harper & Eisinger

Stephen B. Catron

Reynolds, Catron, Johnson & Hinton

Keith G. Hanley

Brown, Todd & Heyburn

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**THE
NEW BUSINESS
CORPORATION ACT:
THE BASICS**

SATURDAY, OCTOBER 1, 1988

**Presented by the
OFFICE OF CONTINUING LEGAL EDUCATION
UNIVERSITY OF KENTUCKY COLLEGE OF LAW**

**In Cooperation with the
KENTUCKY BAR ASSOCIATION**

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**UNIVERSITY OF KENTUCKY
COLLEGE OF LAW
OFFICE OF CONTINUING LEGAL EDUCATION**

Suite 260 Law Building
Lexington, Kentucky 40506-0048
(606) 257-2921

PRESIDENT, UNIVERSITY OF KENTUCKY:

David A. Roselle

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Rutheford B Campbell

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An enormous debt of gratitude is owed to those who contribute their time, expertise and practical insight for the advance planning, the instructional presentations, and the written materials that make our seminars possible.

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PART I
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Keith G. Hanley
Brown, Todd & Heyburn
Louisville, Kentucky

THE NEW BUSINESS CORPORATION ACT: THE BASICS

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THE NEW BUSINESS CORPORATION ACT: THE BASICS

UNIVERSITY OF KENTUCKY
COLLEGE OF LAW

October 1, 1988

This outline was prepared by the following members of the Kentucky Bar Association Revised Model Business Corporation Act Committee: C. Craig Bradley, Jr., Keith G. Hanley (Chairman), John W. MacKenzie, Dustan E. McCoy, Ann Z. Stewart and Richard E. Wentz.

I. Organization and Filing Provisions.

- A. Execution - Single form of required execution for all documents which may be signed by any corporate officer.
- B. Articles of Incorporation
 - 1. Simplified contents--only corporate name, number of authorized shares, registered agent, address of principal and registered offices, and names and addresses of incorporators are required. Other provisions are permitted.
 - 2. All corporations, unless otherwise specified are assumed to have the purpose of being engaged in any lawful business and to have perpetual duration.
- C. Filing
 - 1. Present local filing requirement will be retained in Kentucky law.
 - 2. Document may specify delayed effective time and date (not later than 90 days after date actually filed).
 - 3. Articles of correction may be filed.
- D. Certification of Existence - contains more information that current "certificate of good standing" for both domestic and foreign corporations.
- E. Notice - notice provisions are centralized.
- F. Organization
 - 1. May be accomplished without a meeting with written consent of each incorporator.
 - 2. Initial bylaws may be adopted by incorporators. Certain emergency powers exist, even if no emergency bylaws have been adopted.

H. Secretary of State

1. Filing duty is defined as ministerial, rather than discretionary.
2. Certified copy of document is conclusive evidence only that document is on file, not conclusive that facts stated in the document are true.

II. Names

- A. Corporate Name Eliminates prohibition against registration of "deceptively similar" names by requiring any name which is "distinguishable" from other names upon his records.
- B. Reserved Name Broadens purposes for which a name may be reserved. Reservation period of 120 days is non-renewable.

III. Registered Agent and Registered Office

A. Change by Corporation

1. Eliminates need for action by Board of Directors to change a registered office.
2. Requires written consent by new agent to his appointment.
3. Registered agent may change street address of registered office by notifying both corporation and Secretary of State.

B. Resignation of Registered Agent

1. Avoids problem of "circularity of notice," by requiring two copies of resignation to be submitted to Secretary of State who then mails one copy to registered office and another to principal office.
2. Permits discontinuance of registered office as well as resignation of registered agent.

IV. Service of Process - Provides for service by registered or certified mail addressed to secretary of corporation at principal office.

A. Service on Domestic Corporations

1. When agent has resigned or cannot be found:
 - a. Plaintiff may serve corporation directly.
 - b. No provision for service by Secretary of State.
2. When corporation has dissolved:
 - a. Dissolution does not terminate authority of registered agent.
 - b. No provision for service by Secretary of State.
3. When corporation has been administratively dissolved by Secretary of State:
 - a. Administrative dissolution does not terminate authority of registered agent.
 - b. No provision for service by Secretary of State.

B. Service on Foreign Corporations

1. When agent has resigned or cannot be found:
 - a. Plaintiff may serve corporation directly.
 - b. No provision for service by Secretary of State.
2. When corporation has withdrawn:
 - a. Plaintiff may serve corporation directly.
 - b. Secretary of State becomes agent.
3. When certificate of authority has been revoked by Secretary of State
 - a. Plaintiff may serve corporation directly.
 - b. Secretary of State becomes agent for service of process but:
 - c. Revocation does not terminate authority of corporation's registered agent.

4. When foreign corporation is survivor in merger or share exchange with domestic corporation.

a. Secretary of State becomes agent for service of process.

V. Dissolution

Introduction: Basic concept of dissolution has been redefined by MBCA. Current law requires two filings: (a) a statement of intent to dissolve, followed by (b) articles of dissolution. MBCA authorizes filing of one document at any time after dissolution is authorized.

A. Voluntary Dissolution

1. By incorporators or initial directors when corporation has either not commenced business or not issued shares.

2. By board of directors and shareholders.

a. Board may dispense with recommendation to shareholders, unlike KRS 271A.420.

b. No provision comparable to KRS 271A.415 allowing voluntary dissolution by written consent of shareholders without board action.

3. Articles of dissolution comparable to current statement of intent to dissolve.

4. Revocation of dissolution must take place within 120 days after filing of articles of dissolution.

5. Corporation existence continues after dissolution for purposes of winding up and liquidating.

6. Bars claims not brought forth within 120 days (known claims) and two years (unknown claims) after notice.

B. Administrative Dissolution - (Cf. KRS 271A.615)

1. Sets out grounds for administrative dissolution by Secretary of State.

2. Sets out procedure for administrative dissolution.
3.
 - a. Application for reinstatement must take place within two years and reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.
 - b. MBCA does not require certificate of good standing from Revenue Cabinet prior to reinstatement.
4. Corporation may appeal from denial of reinstatement.

VI. Shareholders

A. Meetings

1. Special Meetings
 - a. 33 1/3% minimum for shareholder call.
 - b. Articles can state a different minimum.
2. Court Ordered Meetings
 - a. Technical procedures outlined.
 - b. Guidance to judiciary.
3. Action Without Meeting
 - a. Articles can provide for action by not less than 80% of votes entitled to be cast.
 - b. Doesn't apply to election of directors due to cumulative voting.
 - c. Prompt notice to those not consenting.
 - d. Effective date can be specified in consent.

B. Voting

1. General Rule--Majority of votes cast vs. majority of votes entitled to be cast.
2. Pre-meeting inspection of shareholders list--5 days.
3. Safe harbor for accepting/rejecting consents and proxies.

VII. Fundamental Corporate Changes

A. Procedure for Adoption or Approval

1. Covers

- a. Amendment of articles.
- b. Merger or share exchange.
- c. Sale of assets other than in regular course of business.
- d. Dissolution.

2. Steps

- a. Directors must recommend to shareholders unless there is a conflict of interest or other special circumstances, which is disclosed.
- b. Directors may condition submission on any basis--such as changing the normal voting requirements.
- c. Notice is sent to all shareholders whether or not entitled to vote.

3. Voting Requirements (unless greater vote or vote by voting group required)

a. Amendment of Articles

- (i) Majority of votes entitled to cast by any voting group where amendment would create dissenter's rights. (See Section VIII, A.4.)

- (ii) Majority of votes cast by every other voting group.

- b. Other fundamental corporate changes--majority of votes entitled to be cast.

B. Amendment of Articles and Bylaws

1. Directors can amend articles without shareholder approval.

- a. Enumerated housekeeping items.
- b. Other items included under other sections.

2. Shareholders have power to amend bylaws.

C. Merger and Share Exchange

1. Merger Changes.

- a. Consolidation eliminated.
- b. Approval of surviving corporation shareholders eliminated if:
 - (i) No change to surviving corporation articles.
 - (ii) Number of "voting" and "participating" shares is not increased by more than 20%

2. Share Exchange

- a. New provisions permitting acquisition of shares compulsory on acquired shareholder.
- b. No approval required by shareholders of acquiring corporation.
- c. Straight-forward substitute for the reverse triangular merger--reduced time and cost.

D. Sale of Assets Other Than In The Regular Course of Business

- 1. No substantial change from current law.

VIII. Dissenter's Rights

A. Corporate Actions Giving Rise to Dissenter's Rights

1. Merger

- a. Where shareholder is entitled to vote (See Section VII, C.1.b.).
- b. Subsidiary in a short form merger.

2. Share Exchange

3. Sale of Assets Other Than In the Regular Course of Business

4. Amendments to Articles Affecting the Following Shareholder Rights

- a. Alters or abolishes preferential right to distributions or in liquidation.

- b. Creates, alters or abolishes a redemption right.
- c. Excludes or limits voting rights other than dilution through issue of additional shares.
- d. Cashout reverse stock split.

5. Transactions Subject to Fair Price Provisions

B. Procedure for Exercise of Rights

1. Notice of Rights to Shareholders

- a. If proposed action giving rise to dissenter's rights is submitted for vote at a meeting, notice of the meeting must state that shareholders are or may be entitled to dissenter's rights.
- b. If action is taken without shareholders vote, corporation must notify all shareholders entitled to dissenter's rights of the action and send a dissenter's notice described in Section VIII, B.3. below.

2. Notice of Intent to Demand Payment

- a. Shareholder must deliver written notice of intent to demand payment before the vote.
- b. Shareholders must not vote in favor of the proposed action.
- c. Failure to deliver notice of intent eliminates dissenter's rights.

3. Dissenter's Notice

- a. Dissenter's notice must be sent to all shareholders satisfying Section VIII, B.2. no later than 10 days after the action was authorized by shareholders or, if no shareholders authorization was obtained, by the directors.
- b. Dissenter's notice must:
 - (i) state where payment demand and certificates are to be sent
 - (ii) supply a form for demanding payment

(iii) set a date by which payment demand must be received (30 60 days from notice)

(iv) contain copy of statute.

c. Shareholders sent a dissenter's notice must demand payment certifying he was a holder before announcement.

(i) on deposit of shares, all other shareholders rights are retained

(ii) dissenter's rights are lost by failure to make timely demand and deposit certificates

4. Payment

a. Corporation shall pay each dissenter as soon as the proposed action is taken or payment demand received.

(i) fair value for shares

(ii) accrued interest.

b. Payment must be accompanied by

(i) financial statements

(ii) basis of fair value and accrued interest.

5. Dissatisfied Dissenter

a. Dissatisfied dissenter has 30 days after corporation made or offered payment to make a supplemental demand.

b. Supplemental demand must state what shareholder is willing to accept.

6. Court Action

a. Corporation must commence proceeding for judicial appraisal within 60 days of receiving a supplemental demand or pay that amount.

b. Judicial procedure basically same as current Kentucky law.

IX. Directors Standard of Care and Liability
(herein the legacy of Smith v. Van Gorkum)

A. Background

1. Case law - Smith v. Van Gorkum, 488 A.2d 858 (Del. 1985)
2. Insurance problems
3. Other state's legislative actions
 - a. Delaware - shareholder can opt-out of directors' liability for breach of duty of care
 - b. Indiana - liability only for willful misconduct or recklessness
 - c. Ohio - liability requires deliberate intent to injure the corporation or reckless disregard for its interests
 - d. Pennsylvania - shareholder amendment can limit individual liability to self dealing, willful misconduct or recklessness
4. Business judgment rule; duty of care; duty of loyalty

B. Kentucky MBCA

1. Codifies the business judgment rule and business judgment doctrine
2. 3-part test
 - a. good faith
 - b. on an informed basis
 - c. honest belief acting in the best interest of the corporation
3. Duties are discharged on an informed basis if director, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, makes inquiry
4. Permits reliance on reports, etc. from:
 - a. officers and employees
 - b. professionals (lawyers, accountants, etc.)
 - c. board committees

5. Reliance must be accompanied by honest belief as to competence of persons upon which reliance is made.
6. Also, no escape for ostrich not acting in good faith if director has knowledge which makes reliance unwarranted
7. Injunctive relief director fails 3-part test
8. Money damages
 - a. fails 3-part test (described in "2" above)
 - b. failure constitutes willful misconduct, or wanton or reckless disregard for best interest of corporation and shareholders
9. Burden of proof on plaintiff to prove by clear and convincing evidence the breach and that breach was the legal cause of damages
10. Opt-out (similar to Delaware) shareholders can amend articles of incorporation to limit or eliminate directors liability; except that liability may not be limited or eliminated for transactions involving:
 - a. conflict between director's personal financial interest and the financial interests of the corporation or its shareholders
 - b. acts not in good faith, which involve intentional misconduct or are known by director to be a violation of law
 - c. unlawful distributions
 - d. improper personal benefit received by director

X. Indemnification

- A. Current Kentucky provision (KRS 271A.026) was derived from the MBCA drafter's proposal
- B. Proposed MBCA provision is virtually identical.

XI. Officers

- A. MBCA eliminates the mandatory offices of President, Secretary and Treasurer (KRS 271A.250)

- B. Offices are to be established in each corporation's Bylaws
- C. One officer must be responsible for maintaining and authenticating the records of the corporation
- D. Permits other titles such as "managing director" or "chief executive officer" (solving foreign corporation's problems with the designation of a single individual as President)

XII. Foreign Corporations

A. Certificate of Authority

- 1. Authority to transact business. Owning real or personal property in and of itself or acquiring notes, mortgages or security interests are not "transacting business".
- 2. Consequences of transacting business without authority. The Court may stay a proceeding commenced by a foreign corporation who has not qualified until the foreign corporation obtains the necessary certificate of authority.
- 3. Amended Certificate of Authority. Amended Certificate of Authority is no longer required if a corporation changes the purpose for which it was incorporated.
- 4. Corporate name of foreign corporation. The Secretary of State's inquiry is limited to establishing if the name of the foreign corporation can be distinguished from other names on file, not whether it is deceptively similar or misleading.
- 5. Change of Registered Office or Registered Agent. A corporate resolution is not required to change registered office or registered agent; however, written consent of the new agent must accompany the statement of change.
- 6. Service on Foreign Corporation. Service on a foreign corporation which has no registered agent, has withdrawn from transacting business or has had its certificate of authority revoked can be made directly by certified or

registered mail on the foreign corporation at its principal office as shown on its annual report.

B. Withdrawal

C. Revocation of Certificate of Authority

1. Grounds for revocation. Not filing amendments of Articles of Incorporation or Articles of Merger are no longer a basis for revocation. The Secretary of State can revoke a Certificate of Authority if it receives a certificate from the Secretary of State of the state of incorporation that the foreign corporation has been dissolved or merged.
2. Appeal from revocation. A foreign corporation may appeal the Secretary of State's revocation of its Certificate of Authority to the Franklin Circuit Court.

XIII. Records and Reports

A. Records

1. Corporate Records. Outlines and details the records which must be kept by the corporation.
2. Inspection of Records by Shareholders. No distinction between shareholders, any shareholder is allowed access to corporate records for a proper purpose.
3. Scope of inspection right. A shareholder has a right to request the corporation to make copies.
4. Court ordered inspection. The Court may order immediate summary relief. The Court may award a petitioning shareholder attorney's fees.

B. Reports

1. Financial statements for shareholders. Retains present language contained in KRS 271A.269(5).

2. Other reports to shareholders. If the corporation indemnifies or advances expenses to a director the corporation shall report such act to its shareholders.
3. Annual Report for Secretary of State. Adds to the information set forth in the annual report the names and business addresses of its directors and principal officers.

XIV. Transition Provisions

Will allow the corporation to voluntarily elect to be covered by the new Act prior to the effective date.

XV. Shares

A. Changes in Capital Accounts

1. Elimination of traditional distinctions between common and preference shares MBCA seeks to provide greater flexibility in establishing capital structure
2. Elimination of concepts of par value and stated capital
3. Broad powers vested in board of directors to set preferences and rights of classes of "blank stock" specific authorization of:
 - a. "Callable common stock" - i.e., shares of voting stock without preferential rights which are redeemable at the option of the corporation
 - ~~[[Cancel]]~~ b. "Puttable common stock" - i.e., shares of voting stock without preferential rights which are mandatorily redeemable at the option of the shareholder
 - c. "Upstream conversions" - i.e., shares convertible into a class of shares with superior rights and preferences or into debt securities
 - d. Classes of shares with differing voting rights, including classes with multiple or fractional voting rights
4. Minimum requirements for capital structure - articles of incorporation must authorize (and there must be outstanding at all times) one or more classes of shares with unlimited

voting rights and the right to receive net assets upon dissolution

B. Consideration for Shares

1. Elimination of statutory concepts of "par value" and "stated capital"

- a. Par value historically intended to set minimum price for shares and to represent a measure of corporation's permanent capital which could not be reduced through distributions to shareholders
- b. Use of no par and nominal par value shares has minimized the significance of par value shares as a protection for creditors
- c. MBCA eliminates minimum price requirements for the issuance of par value shares ("watered stock" problems)

2. Permissible forms of consideration

- a. MBCA expands permissible consideration to include promissory notes and future services
- b. Apparent conflict with Section 193 of Kentucky Constitution
- c. Statute modified to conform to Section 193

C. Share Options - elimination of shareholder vote requirement for executive options

D. Form of Share Certificates - authorization of uncertificated shares (note 1986 revisions to Article 8 of Kentucky Uniform Commercial Code)

E. Share Transfer Restrictions

- 1. Specific authorization in MBCA restrictions may include, among other things, absolute prohibitions on transfer necessary to preserve securities law exemptions or tax status and other contractual restraints which are not "manifestly unreasonable"
- 2. Enumerated list of permissible restrictions in recommended Kentucky statute not exclusive

F. Preemptive Rights

1. Elimination of preemptive rights unless shareholders "opt-in"
2. Exclusion for shares authorized in the articles of incorporation and issued within six months of incorporation in the event shareholders elect preemptive rights

G. Share Acquisitions

1. Elimination of concept of treasury shares
2. All reacquired shares revert to status of authorized but unissued shares

XVI. Distributions

A. General

1. New definition of "distribution"
 - a. Declaration or payment of dividends
 - b. Purchase, redemption or other acquisition of shares
 - c. Distribution of indebtedness
2. Uniform statute governing "distributions"
3. Elimination of statutory concepts of "surplus" - MBCA relies on traditional insolvency and balance sheet tests
4. MBCA provides directors with greater flexibility in making distributions

B. Restrictions on distributions

1. Distribution would render corporation unable to pay its debts as they become due in the ordinary course of business
2. Distribution would reduce corporation's total assets below sum of total liabilities and dissolution preferences

C. Determination of allowable distributions

1. Determinations may be based on financial statements prepared on the basis of

reasonable accounting principles, fair valuation or other methods reasonable under the circumstances

2. Financial statements prepared in accordance with generally accepted accounting principles not required under MBCA

PART II

EXHIBITS

Rutheford B Campbell
Dean, College of of Law
University of Kentucky
Lexington, Kentucky

David W. Harper
Hirn, Reed, Harper & Eisinger
Louisville, Kentucky

Stephen B. Catron
Reynolds, Catron, Johnston & Hinton
Bowling Green, Kentucky

Keith G. Hanley
Brown, Todd & Heyburn
Louisville, Kentucky

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Stephen B. Catron
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Keith G. Hanley

PART II

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ARTICLES OF INCORPORATION

OF

271B.2-020

KENTUCKY CORPORATION

These Articles of Incorporation, made and entered into on this the ____ day of _____, 1988, evidencing that the undersigned incorporators have declared their intention of forming a corporation pursuant to Chapter 271B of the Kentucky Revised Statutes and all other acts amendatory thereof and supplemental thereto as follows:

I.

The name of this corporation shall be Kentucky Corporation.

271B.4-10

II.

The total number of shares of stock authorized to be issued shall be One Thousand (1,000) shares of common stock.

271B.6-010

III.

The street address of the corporation's initial registered office shall be _____, Kentucky, and the name of the initial registered agent is _____.

271B.2-020

IV.

The mailing address of the corporation's principal office
and place of business is _____.

271B.2-020

V.

The names and mailing address of each incorporator is as
follows:

271B.2-020

[OPTIONAL PROVISIONS]

271B.2-020

VI.

(No "purpose" language is required in the
Articles of Incorporation--every corporation,
unless limited by the Articles of Incorporation,
is created for the purpose of engaging
in any lawful business.)

271B.3-010

VII.

Language specifically managing the
business and regulating the affairs of the
corporation may be inserted in the Articles
of Incorporation. To be considered in this
paragraph, among other things, are the
following:

- A. Reserving to the shareholders
authority to amend By-laws;
- B. A listing of the initial Board of
Directors

- C. Dispensing with or limiting the authority of the Board of Directors for corporations having 50 or fewer shareholders.

271B.8-010

If eliminating the Board of Directors, the following language may be utilized.

The business and affairs of the Corporation shall be carried on by the Shareholders of the Corporation who shall have all of the duties otherwise vested in the Board of Directors. Further, the Shareholders, when acting with the authority otherwise vested in the Board of Directors, shall be subject to the standards of conduct for Directors, as provided under the provisions of KRS Chapter 271B. Further, the liability of such Shareholders, when acting with the authority which is otherwise vested in the Board of Directors may be limited as from time to time approved by the Shareholders in accordance with KRS 271B.8-300, and may be indemnified under the provisions of KRS Chapter 271B.

VII.

The corporation elects to have preemptive rights.

271B.6-300

VIII.

A Director of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages for breach of duty as a Director, except for liability

271B.8-300

(i) for any transaction in which the Director's personal financial interest is in conflict with the financial interest of the corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or are known to the Director to be a violation of law; (iii) for unlawful distributions under KRS 271B.8-330; and (iv) for any transaction from which the Director derived an improper personal benefit.

IX.

A delayed effective date may be stated so long as not later than the 90th day after the date it is filed with the Secretary of State.

271B.1-2
271B.2-0

WITNESS the signature below on this the _____ day of

_____, 1988.

[Only one incorporator is required to sign-
271B.1-200(6)(b).]

INCORPORATOR

[A notary acknowledgement is optional-271B.1-200(7)(c).]

[A statement regarding the preparer is optional-271B.1-200(7)(d), however, local filing requirements will dictate individual practices under KRS 382.335.]
AIK:I:11c

BY-LAWS
OF KENTUCKY CORPORATION

ARTICLE I
MEETINGS OF SHAREHOLDERS

Section 1. Annual Meeting. The Annual Meeting of the Shareholders for the election of Directors and the transaction of such other business as may properly come before it shall be held at the principal office of the Corporation as designated herein or at such other place within or without the Commonwealth of Kentucky, as shall be set forth in the Notice of Meeting. The Meeting shall be held on the first (1st) business day of each year between the hours of 12:00noon and 1:00p.m., prevailing local time. 271B.7-010

Section 2. Notice. The Secretary shall give Notice of all annual and special meetings of the shareholders no fewer than ten (10) nor more than sixty (60) days before the date of such Meeting to each Shareholder entitled to vote at such Meeting as of the record date established by Article VIII of these By-laws, such Notice stating the place, date and hour of the Meeting; Notices for special meetings of the shareholders shall include a description of the purpose or purposes for which the Meeting is called. Such Notice shall be in writing addressed to each Shareholder entitled to vote at such meeting and transmitted by 271B.-050

regular United States mail, postage pre-paid, to the address of the Shareholder as it appears on the records of the Corporation (which shall be irrebutably presumed to be correct unless such Shareholder shall have filed with the Secretary of the Corporation a written Notice of Change of Address). Any and all Notices for annual or special meetings may be waived by the Shareholders by submitting a signed Waiver either before or after the Meeting, or by attendance at the Meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. 271B.7-(

Section 3. Special Meetings. Special Meetings of the Shareholders may be called at any time by a majority of the Directors or by the holders of at least 33-1/3% of all votes entitled to be cast on the issue proposed to be considered at the proposed special meeting, provided that such holders of stock sign, date, and deliver to the Association's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held. Within 20 days thereafter, the Board of Directors shall fix a date, time and place for such meeting, either within or without the Commonwealth of Kentucky, and shall give notice of such meeting in accordance with these By-laws. Only business within the purpose or purposes described in the meeting notice required by these By-laws may be conducted at a special meeting of the shareholders. 271B.7-(

Section 4. Quorum. The presence, in person or by proxy of the holders of a a majority of the issued and outstanding shares

entitled to vote thereon shall be necessary to constitute a quorum for the transaction of business at all Meetings of the Shareholders.

Section 5. Voting. A Shareholder entitled to vote at a Meeting may vote at such Meeting in person or by proxy. Each outstanding share shall be entitled to one (1) vote on each matter voted on at a shareholders meeting. Notwithstanding the foregoing, at each election for directors, each shareholder entitled to vote at such election shall have the right to cast as many votes in the aggregate as he shall be entitled to vote multiplied by the number of directors to be elected at such election; each shareholder may cast the whole number of votes for one (1) candidate, or distribute such votes among two (2) or more candidates. 271B.7-28

Section 6. Proxies. A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A telegram or cablegram appearing to have been transmitted by the proper person, or a photographic, photostatic, or equivalent reproduction of a writing appointing a proxy shall be deemed to be a sufficient, signed appointment form. Appointment of a proxy shall be effective when the appointment form is received by the secretary of the Corporation. An appointment shall be valid for 11 months unless a longer period is expressly provided in the appointment form. An appointment of a proxy shall be revocable by the shareholder unless the appointment form conspicuously 271B.7-22

states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of: a) a pledgee; b) a person who purchased or agreed to purchase the shares; c) a creditor of the Corporation who extended it credit under terms requiring the appointment; d) an employee of the Corporation whose employment contract requires the appointment; or e) a party to a voting agreement created under the provisions of KRS 271B.7-310.

The death or incapacity of the shareholder appointing a proxy shall not affect the right of the Corporation to accept the proxy's authority unless notice of the death or incapacity is received by the Secretary of the Corporation before the proxy exercises his authority under the appointment.

Section 7. Action Without a Meeting. Action required or permitted to be taken by the shareholders at a shareholders meeting may be taken without a meeting and without prior notice, if the action is taken by all shareholders entitled to vote on the action. Action taken under this section shall be evidenced by one (1) or more written consents describing the action taken, signed by the shareholder or his proxy taking the action, and delivered to the Corporation for inclusion in the minutes for filing with the corporate records. Action taken under this section shall be effective when consents representing the votes necessary to take the action under this section are delivered to the Corporation, or upon delivery of the consents representing the necessary votes, as of a different date if specified in the

271B.7-0.

consent. Any shareholder giving a consent under this Section may revoke the consent by a writing received by the Corporation prior to the time that consents representing the votes required to take the action under this Section have been delivered to the Corporation but may not do so thereafter. A consent signed under this Section shall have the effect of a meeting vote and may be described as such in any document.

ARTICLE II

DIRECTORS

Section 1. Number and Qualifications. The entire Board of Directors shall consist of no less than _____ (__) nor more than _____ (__) persons.

Section 2. Term of Office. The term of each Director shall be until the next Annual Meeting of the Shareholders following the election of the Director and until his successor is elected and qualifies. 271B.8-050

Section 3. Duties and Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation managed under the direction of its Board of Directors. The Directors shall in all cases transact the business of the Corporation by a majority present at the Meeting.

Section 4. Meetings. The Board of Directors shall meet for the election or appointment of officers and for the transaction of any other business of the Corporation as soon as practicable after the adjournment of the Annual Meeting of the 271B.8-200

Shareholders. Regular Meetings of the Board of Directors shall be held at such times as the Board of Directors may from time to time determine.

Special Meetings of the Board of Directors may be called by the Managing Director, Chairman of the Board or upon written request of 80% of the total number of Directors of the Corporation. In the event of the call of a Special Meeting of the Board of Directors by 80% of the total number of Directors, the Secretary shall give notice of such meeting no more than 10 days after receipt of such request.

Any or all Directors may participate in any Meeting, whether a regular or special meeting, or conduct the Meeting through the use of any means of communication by which all Directors participating may simultaneously hear each other during this Meeting. A Director participating in a Meeting by this means shall be deemed to be present in person at the Meeting.

Section 5. Notice of Meetings. No Notice need be given of any regular Meeting of the Board of Directors. Notice of Special Meetings shall be served upon each Director in person or by mail addressed to the Director at his last known post office address, at least 2 days prior to the date of such Meeting. Notices of Special Meetings shall contain the date, time and place of the Meeting but shall not require a description of the purpose of such Special Meeting. 271B.8-2:

Section 6. Place of Meeting. The Board of Directors shall hold its Meetings at the main offices of the Corporation, unless

such other place may be designated in the Notice of such Meeting. Meetings of the Board of Directors, upon proper Notice, may be held either within or without the Commonwealth of Kentucky at such place as may be designated in the Notice of Such Meeting.

Section 7. Waiver of Notice of Meetings. A Director may waive any Notice of such Meeting as required by these By-laws before or after the date and time of the Meeting stated in the Notice. The Waiver shall be in writing signed by the Director entitled to the Notice, and filed with the Minutes of such Meetings. A Director's attendance at or participation in a Meeting shall waive any required Notice to him of the Meeting, unless the Director at the beginning of the Meeting (or promptly upon his arrival) objects to holding the Meeting or transacting business at the Meeting and does not thereafter vote for or assent to action taken at the Meeting. 271B.8-230

Section 8. Action Without Meeting. Action to be taken at a Board of Directors Meeting may be taken without a Meeting if the action is taken by all members of the Board. The action shall be evidenced by one (1) or more written consents describing the action taken, signed by each Director, and included in the Minutes or filed with the corporate records reflecting the action taken. Any action taken under this Section shall be effective when the last Director signs the consent, unless the consent specifies a different effective date. A consent signed under this Section shall have the effect of a Meeting vote and may be described as such in any document. 271B.8-210

Section 9. Quorum. At any Meeting of the Board of Directors, the presence of a majority of the elected and qualified members of the Board of Directors shall be necessary to constitute a quorum for the transaction of business.

271B.8-2

Section 10. Voting. If a quorum is present when a vote is taken, the affirmative vote of a majority of Directors present shall be the act of the Board of Directors.

271B.8-2

Section 11. Compensation. Each Director shall be entitled to receive compensation for his services to the Corporation such compensation as fixed from time to time by the Board of Directors.

Section 12. Vacancies. Any vacancy occurring on the Board of Directors, for whatever reason, shall be filled promptly by a majority vote of all of the remaining Directors. If the Directors remaining in office constitute fewer than a quorum of the Board, they may fill the vacancy by the affirmative vote of a majority of the Directors remaining in office.

271B.8-1

Section 13. Removal of Directors. Any Director may be removed either with or without cause, at any time, by a vote of the Shareholders holding a majority of the shares then issued and outstanding and who were entitled to vote for the election of the Director sought to be removed, at any Special Meeting called for that purpose, or at the Annual Meeting of the Shareholders. A Director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If a Special Meeting of the Board of Directors shall be called

271B.8-1

for the purpose of removing a Director, then such Notice of the Special Meeting shall state that the purpose, or one or more of the purposes, of the Meeting is the removal of the Director.

271B.8-08

Section 14. Resignation. A Director may resign at any time, by delivering a written Notice to the Board of Directors, its Chairman or to the Corporation. A resignation shall be effective when the Notice is delivered unless the Notice specifies a later effective date.

271B.8-07

ARTICLE III

OFFICERS

Section 1. Officers and Qualifications. The officers of the Corporation shall be a Managing Director and a Secretary. The duties of each of the respective officers of the Corporation are set forth in these By-laws.

271B.8-40

Section 2. Election. All officers of the Corporation shall be elected annually by the Board of Directors at its Meeting held immediately after the Annual Meeting of the Shareholders.

Section 3. Removal of Officers. Any officer may be removed either with or without cause by the vote of the majority of the Board of Directors; the Directors may specify a date upon which removal shall become effective or in the absence of any date, the removal shall become effective when the successor of the officer has been elected and qualified.

Section 4. Duties of Officers. Each officer shall have the authority and shall perform the duties as follows:

PRESIDENT AND CHIEF EXECUTIVE OFFICER

The Managing Director shall be the chief executive officer of the Corporation, and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation, including but not limited to the authority to employ (and to discharge) clerks and subordinate employees, and to fix and prescribe their duties, all as may required or deemed advisable for the conduct of the business of the Corporation. The Managing Director shall, when present, preside at all Meetings of the Shareholders and shall act as Chairman of the Board of Directors, if the Board of Directors does not select a Chairman of the Board different from the Managing Director. The Managing Director may sign certificates for the shares of the Corporation and, with the Secretary or any other proper officer of the Corporation, authorized by the Board of Directors, sign deeds, mortgages, bonds, contracts, checks, drafts, obligations of the Corporation, United States Government or other bonds, all other securities of every kind for the Corporation or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors to other officers or agents of the Corporation or shall be required by law to be otherwise signed and executed; and the Managing Director in general shall perform all duties incident to the chief executive officer and such other duties and responsibilities as from time to time prescribed by the Board of Directors.

SECRETARY

The Secretary shall keep the Minutes of the Meetings of the Board of Directors and of the Shareholders, shall attend to the giving of Notice of Meetings of the Board of Directors and of Shareholders as required by these By-laws and to be responsible for the authenticating of records of the Corporation. In addition to the foregoing, the Secretary shall perform such other duties and responsibilities as from time to time prescribed by the Board of Directors. 271B.8-400

Section 5. Compensation of Officers. The officers shall receive such salary or other compensation as may be fixed from time to time by the Board of Directors.

ARTICLE IV

STOCK OF THE CORPORATION

Section 1. Certificates. The stock of the Corporation shall be represented by certificates as approved by the Board of Directors. The certificates shall be numbered consecutively and in the order in which they are issued, and each certificate shall state the registered holder's name, the number of shares represented thereby and the date of issuance of such stock certificate. All certificates representing shares issued by the Corporation shall have noted conspicuously thereon reference to the restrictions of sale or transfer which may be from time to time enacted by the Board of Directors.

Section 2. Transfer of Shares. The shares of the Corporation shall be assignable and transferable only on the

books and records of the Corporation by the registered owner, or by his duly authorized attorney-in-fact, upon surrender of the certificate duly and properly endorsed with proper evidence of authority to transfer. The Corporation shall issue a new certificate, for the shares surrendered, to the person or persons entitled thereto.

Section 3. Return Certificates. All certificates for shares returned to the Corporation for transfer shall be marked "Cancelled" or "Void" with the date of cancellation, and the transaction shall be immediately noted in the stock transfer book of the Corporation. The returned certificate may be inserted in the certificate book or may be destroyed.

ARTICLE V

DIVIDENDS

The Board of Directors may authorize and the Corporation may pay dividends to its shareholders subject to the limitations of this Article. No dividend shall be paid if, after giving it effect: a) the Corporation would not be able to pay its debts as they become due in the usual course of business; or b) the Corporation's total assets would be less than the sum of its total liabilities. The Board of Directors may base a determination that dividends are not prohibited under this Article either on financial statements prepared on the basis of accounting practices and principals that are reasonable in the circumstances or on a fair valuation or any other method that is reasonable in the circumstances.

271B.6-4

ARTICLE VI
RESTRICTIONS ON TRANSFER OF SHARES

[LANGUAGE OPTIONAL]

271B.6-270

ARTICLE VII
SEAL OF THE CORPORATION

The seal of the Corporation shall be adopted by the Board of Directors and may be changed from time to time in the discretion of the Directors. The presence or absence of the seal on or from a writing shall neither add to nor detract from the legality thereof nor effect its validity in any manner or respect.

271B.3-020
(2)

ARTICLE VIII

RECORD DATE

The record date for the determination of shareholders entitled to notice of and to vote at any annual or special meeting of the shareholders or for determining shareholders entitled to a distribution, shall be the date as from time to time established by the Directors as the "record date"; provided, however, that no such record date shall be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

271B.7-050
271B.7-070
271B.6-400
271B.1-400
(19)

ARTICLE IX

MISCELLANEOUS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general

or confined to specific instances. No loans shall be made in the name of the Corporation and no evidence of such indebtedness shall be issued in the name of the Corporation unless authorized by the Board of Directors.

ARTICLE X

AMENDMENTS

These By-laws may be altered, amended, repealed or restated by a majority of the Board of Directors of the Corporation.

CONSENT OF INCORPORATORS
FOR ORGANIZATION OF
KENTUCKY CORPORATION

The Articles of the Kentucky Corporation having been filed 271B.2-050
in the office of the Secretary of State of the Commonwealth of
Kentucky on the ____ day of _____, 1988, and the
Articles of Incorporation having not named the initial Board of
Directors, the undersigned, constituting all of the incorporators
of Kentucky Corporation do hereby unanimously consent to the
organization of the corporation pursuant to the provisions of KRS
271B.2-050, as follows:

1. The following persons are hereby named Directors of the
Corporation who shall hold office until the next succeeding
Annual Meeting of the Shareholders and until their successors
shall have been duly elected and qualified:

insert names of directors

2. The By-laws of the Corporation, which are attached hereto and incorporated by reference herein, are approved.

3. The certificate for shares of stock of the Corporation which is attached hereto is approved as the certificate for the issuance of stock in this Corporation.

4. The Board of Directors is empowered to issue the common stock of the Corporation up to the aggregate amount authorized by the Articles of Incorporation, in such amounts as from time to time shall be determined by the Board, so long as issued for consideration consisting only of an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such Corporation was created, and neither labor nor property shall be received in payment of consideration for the issuance of shares at a greater value than the market price at the time such labor was done or property delivered. Prior to the issuance of shares, the Board of Directors shall determine that the consideration received or to be received for shares to be issued is adequate.

When the Corporation receives the consideration for which the Board of Directors authorized the issuance of shares in accordance with this Consent, the shares issued shall be considered fully paid and non-assessable.

5. The following are named officers of the Corporation; each shall carry out their respective duties and responsibilities and shall serve in accordance with the By-laws of the Corporation:

Managing Director: _____

Secretary: _____

Compensation for each of the respective offices shall be established from time to time by the Board of Directors.

6. The corporate seal for the Corporation is affixed hereto and is approved as the corporate seal of this Corporation.

7. (STOCK TRANSFER RESTRICTIONS)

8. The Managing Director of the Corporation is hereby authorized from time to time to designate certain banks as the

banks in which the funds of this Corporation shall be deposited; and the Managing Director shall be and is hereby authorized and empowered to open and keep an account in such bank or banks in the name of this Corporation, and to cause to be deposited in said bank to the credit of this Corporation, any and all monies, checks or drafts belonging to the Corporation, and the bank shall be and is hereby authorized to make payments from the funds of this Corporation according to checks or drafts signed by the Managing Director of the Corporation, who is hereby authorized to sign, endorse, accept and execute any and all checks or drafts for and on behalf of the Corporation.

9. (BORROWING AUTHORITY)

The undersigned, constituting all of the incorporators of Kentucky Corporation, execute this document on the ____ day of _____, 1988.

INCORPORATOR

INCORPORATOR

Exhibit ____

MINUTES OF THE ANNUAL MEETING OF SHAREHOLDERS OF
KENTUCKY CORPORATION

_____, 19__

The Annual Meeting of Shareholders of Kentucky Corporation, a Kentucky corporation (the "Corporation"), was held at _____, on _____, 19__, at _____.m., local time [Note 1].

The Meeting was called to order by _____, President of the Corporation, who presided. _____, Secretary of the Corporation, acted as Secretary of the Meeting and recorded the minutes [Note 2].

At the request of the Chairman, the Secretary submitted to the Meeting the following:

(i) A copy of the notice of meeting, dated _____, stating the time, place and purpose of the Meeting [Note 3];

(ii) A complete list, certified by the Secretary, of the holders of the common shares of the Corporation as of the close of business on _____, the record date fixed by the Board of Directors for the shareholders entitled to notice of, and to vote at, the Meeting [Note 4]; and

(iii) An affidavit of the Secretary, showing that he caused to be mailed on _____, a copy of the notice of the Annual Meeting to all shareholders of record. [Note 5]

The Chairman directed that a copy of the notice of the Meeting together with the affidavit of mailing be annexed to the minutes of the Meeting. The Chairman ordered that the certified list of shareholders submitted to the Meeting and the minute book of the Corporation be kept open for the inspection of the shareholders throughout the course of the Meeting [Note 6].

The Chairman requested that the Secretary report the number of shares represented at the Meeting either in person or by proxy [Note 7]. The Secretary reported that, of the _____ shares issued, outstanding and entitled to vote at the Meeting, _____ shares were so represented.

Thereupon, the Chairman announced that a quorum was present for all purposes, and that the Meeting was lawfully and properly convened and competent to proceed to the transaction of the business for which it had been called [Note 8].

The Secretary then presented the minutes of all meetings of the shareholders not previously approved. Following a reading of such minutes and upon motion duly made, seconded and unanimously carried, such minutes were approved as presented.

ELECTION OF DIRECTORS [Note 9]

The Chairman stated that the next order of business was the election of directors. After the closing of nominations, and upon motion duly made, seconded and unanimously carried, it was:

RESOLVED, that each of the following persons be elected directors of the Corporation for a term commencing on the date hereof and ending at the next Annual Meeting of the Corporation's shareholders and until his or her successor shall have been elected and qualified:

RATIFICATION OF ACTS

The Chairman then gave a report of the Corporation's operations and reviewed actions taken by the Board of Directors since the last Annual Meeting of the shareholders. The Corporation's minute books and financial statements for the fiscal year ending _____ were presented for inspection. Following discussion, and upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that all acts of the Corporation's directors reflected in the minute books of the Corporation and in the Corporation's above-described financial statements, and all acts of the Corporation's officers taken pursuant thereto or ratified therein, in each case since the last Annual Meeting of the shareholders, be, and they hereby are, ratified and approved in all respects.

There being no further business to come before the Meeting, upon motion duly made, seconded and unanimously carried, the Meeting was adjourned.

Secretary

APPROVED:

Chairman

[Alternatively] Call and notice of the time, place and purpose of the foregoing Meeting is hereby waived.

Shareholder

Shareholder

Shareholder

Notes to Exhibit ____

1. KRS 271B.7-010 provides that a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. If no meeting place is stated or fixed in accordance with the bylaws, such meeting shall be held at the corporation's principal office.

2. Corporations are no longer required to have the offices of President, Secretary and Treasurer, however, one office must be designated to maintain and authenticate the records of the corporation. See KRS 271B.8-400.

3. KRS 271B.7-050(1) provides that a corporation shall notify shareholders of the date, time and place of each annual shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless the Act or the corporation's articles of incorporation require otherwise; (i) the corporation is required to give notice only to shareholders entitled to vote at the meeting; and (ii) such notice need not include the purpose(s) for which the meeting is called. See also KRS 271B.7-050(2). See KRS 271B.1-410 pertaining to notice requirements.

4. KRS 271B.7-050(4) provides that if the record date for determining shareholders entitled to notice of, and to vote at, a meeting has not been fixed by the court (under KRS 271B.7-030) or the bylaws or the Board of Directors (as provided in KRS 271B.7-070) such date is the close of business on the day before the first notice is delivered to shareholders. KRS 271B.7-070 increases from 50 days to 70 days the maximum allowable time between the record date and the meeting, but does not contain an express provision for a 10-day minimum as was contained in KRS 271A.150.

5. Alternatively, the meeting may be held pursuant to written waiver of call and notice of the time, place and purposes thereof, signed by all shareholders at the end of the minutes. See KRS 271B.7-040 (Action without meeting) and KRS 271B.7-060 (Waiver of notice).

6. A shareholders' list, arranged by voting groups, containing the names, addresses and shareholdings of all shareholders who are entitled to notice of the meeting, must be available for inspection by any shareholder, beginning 5 business days before the meeting, and continuing through the meeting. See KRS 271B.7-200.

7. Under KRS 271B.7-220, a shareholder may vote his shares in person or by proxy, the appointment of which is valid for a period of 11 months, unless a longer period is expressly provided in the appointment form. An appointment of a proxy shall be revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. "Conspicuous" is defined in KRS 271B.1-400(3).

8. KRS 271B.7-250 provides the general quorum and voting requirements applicable to each "voting group" entitled to vote separately on each matter coming before a meeting. Unless otherwise required by statute or in the corporation's articles of incorporation, a majority of the votes entitled to be cast on a matter constitutes a quorum. However, the statute eliminates the minimum quorum requirement of one-third of the shares entitled to vote contained in KRS 271A.160(1).

9. KRS 271B.7-280 provides for cumulative voting in the election of directors, as required by §207 of Kentucky's Constitution.

Exhibit ____

MINUTES OF THE ANNUAL MEETING OF
THE BOARD OF DIRECTORS OF
KENTUCKY CORPORATION

_____, 19__

The Annual Meeting of the Board of Directors of Kentucky Corporation, a Kentucky corporation (the "Corporation"), was held at _____, on _____, at _____ .m., local time, immediately following the Annual Meeting of Shareholders. Present were

_____ being [all/two-thirds/a majority, etc.] of the directors of the Corporation [Note 1]. Present by invitation were _____

[Option 1]: Waivers of Notice from all the directors are attached to these minutes as Exhibit A. [Option 2]: Due notice of this Meeting was mailed or personally delivered to each director in accordance with the Bylaws. A copy of the notice is attached to these minutes as Exhibit A [Note 2].

The President of the Corporation, _____, acted as Chairman of the Meeting and _____ acted as Secretary of the Meeting and recorded the proceedings [Note 3].

The Chairman announced that the meeting had been duly called and that a quorum was present for all purposes, and that the Meeting was lawfully and properly convened and competent to proceed to the transaction of the business for which it had been called [Note 4].

The Secretary then read the minutes of the meeting of the Board of Directors held on _____, which minutes were then approved.

RATIFICATION OF ACTS

The Chairman then gave a report of the Corporation's operations and reviewed actions taken by the officers since the last Annual Meeting of the Board of Directors. In addition, the Chairman presented for review the Corporation's minute books and financial statements for the fiscal year ending _____. Following discussion, and

upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that all acts of the Corporation's officers since the last Annual Meeting of the Board of Directors be, and they hereby are, ratified and approved in all respects.

ELECTION OF OFFICERS; SALARIES

The Chairman stated that the next order of business was the election of officers. Following nominations and upon motions separately made, seconded and carried, it was:

RESOLVED, that each of the following persons be elected to the office set out below opposite his or her name, to hold such office until the next Annual Meeting of the Board of Directors except as otherwise provided in the Bylaws [Note 3];

<u>Name</u>	<u>Office</u>
_____	President
_____	Vice President
_____	Secretary
_____	Treasurer

The Chairman stated that the next order of business was the consideration of the annual salaries of the officers of the Corporation. Following discussion and upon motion duly made, seconded and carried, it was:

RESOLVED, that commencing _____, and until changed by the Board of Directors, the salary of the President shall be \$_____ per year, the salary of the Vice President shall be \$_____ per year, the salary of the Secretary shall be \$_____ per year and the salary of the Treasurer shall be \$_____ per year, and that these salaries shall be payable in equal monthly installments on the last day of each month.

DETERMINATION OF PURCHASE PRICE
UNDER BUY-SELL AGREEMENT [Note 5]

The Chairman stated that the next order of business was the Board's determination of the "Purchase Price" of the Corporation's common stock subject to (and as defined in) the Buy-Sell Agreement dated _____, by and among the Corporation and [certain of] its shareholders. Following discussion and upon motion duly made, seconded and carried, the following preambles and resolution were adopted:

WHEREAS, the Corporation is a party to a certain Buy-Sell Agreement dated _____, by and among the Corporation and [certain of] its shareholders; and

WHEREAS, such Buy-Sell Agreement provides that the parties may from time to time fix the Purchase Price per share of the Corporation's common stock subject to the provisions thereof;

NOW, THEREFORE, BE IT:

RESOLVED, that the President of the Corporation be, and he hereby is, authorized, empowered and directed, on behalf and in the name of the Corporation, to execute such documents as shall be necessary to amend the Buy-Sell Agreement to fix a Purchase Price per share in the amount of \$_____.

DECLARATION OF DIVIDENDS [Note 6]

The Chairman then suggested that a determination be made about a possible declaration of dividends. Following discussion and upon motion duly made, seconded and carried, the following preamble and resolution were adopted:

WHEREAS, the Board of Directors has reviewed the financial statements of the Corporation and made such other inquiries as they have deemed appropriate in connection with the determination of the Corporation's ability to pay its debts as they become due in the ordinary course of its business;

NOW, THEREFORE, BE IT:

RESOLVED, that a dividend of \$_____ is declared on each common share of the Corporation, to be paid on _____, to shareholders of record on _____, and the Treasurer of the Corporation is directed to arrange for the payment of such dividend.

APPOINTMENT OF ACCOUNTING FIRM [Note 7]

The Chairman stated that the next order of business was the appointment of the Corporation's independent certified public accounting firm. Following discussion and upon motion duly made, seconded and carried, it was:

RESOLVED, that the firm of _____ is hereby designated as the Corporation's outside public accounting firm to audit the Corporation's books and records for the fiscal year ending prior to the next Annual Meeting.

There being no further business to come before the Meeting, upon motion duly made, seconded and unanimously carried, it was adjourned.

Secretary

APPROVED:

Chairman

Notes to Exhibit __

1. KRS 271B.8-200 provides that, unless the articles of incorporation or bylaws provide otherwise, the Board of Directors may permit any or all directors to participate in a meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting, and that a director participating by this means shall be deemed to be present in person at the meeting.

2. KRS 271B.8-220 provides that, unless the articles of incorporation or bylaws provide otherwise, regular meetings of the Board of Directors may be held without notice of the date, time, place or purpose of the meeting. See also KRS 271B.8-210 (Action without meeting) and KRS 271B.8-230 (Waiver of notice).

3. KRS 271B.8-400 does not require a corporation to have the offices of President, Secretary and Treasurer, however, one officer must be designated to maintain and authenticate the records of the corporation.

4. KRS 271B.8-240 provides that, unless the articles of incorporation or bylaws require a greater number, a quorum of a Board of Directors shall consist of a majority of the corporation's directors; the articles of incorporation or bylaws may specify a quorum that is less than a majority, but not fewer than one-third of the entire Board of Directors.

5. "Buy-Sell" agreements are a common means of restricting certain transfers of stock, and are often utilized by closely held corporations. See KRS 271B.6-270.

6. Whereas corporate distributions were formerly addressed by several statutes built around concepts of stated capital, capital surplus and earned surplus accounts, the elimination of these concepts under the Act has resulted in one statute (KRS 271B.6-400) which retains solvency and balance sheet tests for determining when a corporation may make a distribution to its shareholders. See also KRS 271B.1-400(6) (definition of "Distribution").

7. With respect to corporate records, see KRS 271B.16-010(2) which provides that a corporation shall maintain appropriate accounting records.

Exhibit ____

KENTUCKY CORPORATION

Limitation of Director Liability Pursuant to
KRS 271B.2-020(2)(d) [Note 1] --
Resolution for Adoption by Shareholders

RESOLVED, that the Corporation's Articles of Incorporation be and hereby are amended by adding the following new Article 10:

10. Limitation on Director Liability.
A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of duty as a director, except for liability (i) for any transaction in which the director's personal financial interest is in conflict with the financial interest of the Corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law; (iii) under KRS 271B.8-330 [Note 2]; and (iv) for any transaction from which the director derived an improper personal benefit.

FOOTNOTES TO EXHIBIT _____

1. KRS 271B.2-020(2)(d) permits a Kentucky corporation to limit the personal liability of its directors, subject to four statutory exceptions. See KRS 271B.2-020(2)(d)1 to .2-020(2)(d)4. The limitation of liability applies exclusively to directors and must be set forth in the articles of incorporation. Thus, the article containing the limitation of liability provision (the "Article") must either be included in the corporation's initial articles of incorporation, or added by amendment.

As with all articles amendments except "housekeeping" amendments pursuant to KRS 271B.10-020, the board of directors must propose the Article for submission to and approval of shareholders. See KRS 271B.10-030. However, it may be inappropriate for the board of directors to recommend the amendment to the shareholders. KRS 271B.10-030(2)(a) states:

The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment....

As the exculpation of directors for personal liability for breaches of their fiduciary duties to the corporation may present a conflict of interest, a board recommendation of the Article may not be appropriate, in which case the board must explain its decision not to recommend the Article to the shareholders.

2. KRS 271B.8-330(1) states:

A director who votes for or assents to a distribution [to shareholders] made in violation of [KRS 271B.6-400] or the articles of incorporation shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [KRS 271B.6-400] or the articles of incorporation if it is established that he did not perform his duties in compliance with [KRS 271B.8-300, (general standards of conduct for directors)].

Exhibit _____

KENTUCKY CORPORATION

Written Action by Shareholders Without Meeting
[Notes 1 & 2]

The undersigned, who together hold more than eighty percent of the outstanding shares, 100,000 shares of common stock, [Note 3] of Kentucky Corporation (the "Corporation"), do hereby take and consent to the taking of the following actions pursuant to KRS 271B.7-040.

1. They approve the following amendment to the Corporation's articles of incorporation:

Article 5 of the Corporation's articles of incorporation is amended so that as amended Article 5 shall read in its entirety as follows:

5. Authorized Capital Stock. The aggregate number of shares the Corporation shall have authority to issue shall be one hundred fifty thousand (150,000) shares, which shares shall be designated as "Common Stock."

Upon delivery to the Corporation [Note 4] of written consents representing eighty percent of the outstanding common stock of the Corporation, the foregoing amendment to the Corporation's articles of incorporation shall be effective as of [date][Note 5].

<u>Date</u>	<u>Name</u>	<u>Number of shares</u>
_____	[Signature of Shareholder]	_____
_____	[Signature of Shareholder]	_____
_____	[Signature of Shareholder]	_____

FOOTNOTES TO EXHIBIT _____

1. KRS 271B.7-040(2) permits shareholder action by written consent of not less than 80% of the votes entitled to be cast at a shareholders' meeting only when the articles of incorporation include a provision authorizing action by fewer than all of the shareholders. The statute permits shareholder action without a meeting on any matter that could be taken at a shareholders' meeting except the election of directors. See KRS 271B.7-040(2).

2. KRS 271B.7-040(3) expressly authorizes the corporation to use one or more written consents describing the shareholder action to be taken. A corporation with relatively few shareholders may prefer to have the shareholders sign a single written consent, which could then be conveniently included in the corporate minute book, whereas a corporation with more shareholders may distribute multiple consents for signature by individual shareholders. See KRS 271B.7-040(3).

3. KRS 271B.7-040(2) authorizes shareholder action without a meeting by written consent of not less than 80% (or such higher percentage required by the Act or the articles) of the votes entitled to be cast on a particular matter. When the corporation has two or more classes or series of shares outstanding, matters requiring separate action by individual "voting groups" pursuant to KRS 271B.10-040 can be taken without a meeting when shareholders representing 80% of the votes of each voting group deliver written consents to the corporation.

4. A shareholder may revoke a written consent pursuant to KRS 271B.7-040. To be effective, written revocation of the shareholder's consent must be received by the corporation before the time the consents representing the votes required to take action have been delivered to the corporation. See KRS 271B.7-040(5).

5. The effectiveness of any action by shareholders without a meeting is prescribed by KRS 271B.7-040(4), which states:

Action taken under this section shall be effective when consents representing the votes necessary to take the action under this section are delivered to the corporation, or upon delivery of the consents representing the necessary votes, as of a different date if specified in the consent.

Following the effectiveness of any action taken by written consent of fewer than all of the shareholders, the corporation must promptly give notice of the action taken to all shareholders entitled to vote on the action who did not consent in writing. See KRS 271B.7-040(7).

Exhibit _____

ARTICLES OF CORRECTION
TO THE ARTICLES OF INCORPORATION
OF KENTUCKY CORPORATION

1. These are Articles of Correction, pursuant to KRS 271B.1-240, to the Articles of Incorporation [Note 1] of Kentucky Corporation (the "Corporation").

2. These Articles of Correction correct Articles of Amendment to the Corporation's Articles of Incorporation filed by the Kentucky Secretary of State on [date] (the "Amendment"). A copy of the Amendment is attached to these Articles of Correction as Annex A. [Note 2] The Amendment incorrectly states that Article 5 of the Corporation's Articles of Incorporation authorized the Corporation to issue 50,000 shares. Article 5, as approved by the Corporation's shareholders in accordance with KRS 271B.10-030 as of [date], authorizes the Corporation to issue 150,000 shares.

3. As hereby corrected [Note 3], Article 5 of the Corporation's Articles of Incorporation reads in its entirety as follows:

5. Authorized Capital Stock. The aggregate number of shares the Corporation shall have authority to issue shall be one hundred fifty thousand (150,000) shares, which shares shall be designated as "Common Stock."

Name and Title [Note 4]

FOOTNOTES TO EXHIBIT _____

1. A Kentucky corporation may correct a document after filing by the Secretary of State if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged. See KRS 271B.1-240(1).

2. KRS 271B.1-240(2)(a) requires that the articles of correction either describe the document (including its filing date) or include a copy of the document containing the incorrect statement or defect as an attachment. To minimize confusion and avoid mistake, it would be preferable to do both.

3. The effectiveness of articles of correction is prescribed by KRS 271B.1-240(3), which states:

Articles of correction shall be effective on the effective date of the document they correct except as to persons relying on the uncorrected document adversely affected by the correction. As to those persons, articles of correction shall be effective when filed.

4. Filing requirements for all documents entitled to filing by the Secretary of State are contained in KRS 271B.1-200. The individuals authorized to sign articles of correction on behalf of the corporation are set forth in KRS 271B.1-200(6). In addition, KRS 271B.1-200(7) states:

The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain: the corporate seal; an attestation by the secretary or an assistant secretary; an acknowledgment, verification, or proof; or a statement regarding the preparer of the document which complies with KRS 382.335.

Exhibit _____

KENTUCKY CORPORATION

Articles Provision Authorizing Written Action
By Eighty Percent of Shares [Note 1]

9. Action Without Meeting. Any action required or permitted to be taken at a shareholders' meeting, except the election of directors, may be taken without a meeting and without prior notice [Note 2] if the action is taken by shareholders entitled to vote on the action who represent not less than eighty percent (80%) (or such higher percentage otherwise required by statute or these articles of incorporation) of the votes entitled to be cast on such action; provided, however, that notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given promptly after the action becomes effective [Note 3] to those shareholders entitled to vote on the action who have not consented in writing.

Footnotes

1. KRS 271B.7-040(2) permits any action (except the election of directors) by written consent of holders of fewer than all outstanding shares only when authorized by the articles of incorporation.

2. Although this provision states that no "prior notice" be sent to shareholders, the consent form required by KRS 271B.7-040(3) should be accompanied by the information about the proposed action that would be included in the notice of a shareholders' meeting pursuant to KRS 271B.7-050. See, e.g., KRS 271B.10-030(4) (notice of meeting to consider proposed articles amendment must contain or be accompanied by a copy or summary of the amendment) and KRS 271B.11-030(4) (notice of meeting to consider proposed plan or merger or share exchange must contain or be accompanied by a copy or summary of the plan).

3. An action taken by written consent of shareholders becomes effective upon delivery of consents representing the necessary votes, or as of a later date specified in the consent. See KRS 271B.7-040(4).

Exhibit ____

MINUTES OF BOARD OF DIRECTORS AUTHORIZING
REDEMPTION OF OUTSTANDING PREFERRED
STOCK AND REPURCHASE OF OUTSTANDING
COMMON STOCK [Note 1]

RESOLVED, THAT pursuant to the authority granted by Article ____ of the Company's Articles of Incorporation, the Company shall call for redemption of all of the outstanding shares of the Company's \$____ par value, Redeemable Preferred Stock, such redemption to be at such prices and effected pursuant to such terms and procedures as provided by Article ____ of the Company's Articles of Incorporation.

RESOLVED, THAT the Company is authorized to repurchase up to ____ shares of the Company's no-par value Common Stock from _____ at a price not to exceed \$____ per share. [Notes 2 and 3]

RESOLVED, THAT management is authorized to take all necessary action to implement the foregoing resolutions of this Board.

FOOTNOTES TO EXHIBIT ____

(1) Under KRS 271B.6-310, a corporation may reacquire its own shares of stock. Such an acquisition, whether by "purchase, redemption, or other acquisition" constitutes a "distribution" under the new Act. KRS 271B.1-400. Under KRS 271B.6-400, "distributions" by a corporation require only board approval, unless otherwise required in the company's articles of incorporation.

(2) Repurchases of stock raise substantial and complicated issues under the antifraud provisions of state and federal securities laws and with regard to directors' fiduciary obligations. Corporations reporting under the Securities Exchange Act of 1934 are also subject to the self-tender rules if the repurchases constitute a self-tender offer.

(3) This resolution may, obviously, require adjustment for particular situations, especially where the acquisition involved a self-tender subject to the Securities Exchange Act of 1934.

Exhibit ____

AMENDMENT TO ARTICLES OF INCORPORATION: RESOLUTION
OF THE BOARD OF DIRECTORS WHERE SHAREHOLDER
APPROVAL IS NOT REQUIRED FOR THE
AMENDMENT [Notes 1 and 2]

RESOLVED, THAT pursuant to the requirements of Article ____ of the Company's Articles of Incorporation and pursuant to the authority of KRS 271B.6.310, the Company's Articles of Incorporation shall be amended to reduce the number of authorized shares of Common Stock to ____.

FOOTNOTES TO EXHIBIT ____

(1) In certain situations, it is no longer necessary to obtain shareholder approval for amendments to the company's articles of incorporation. Typically, these involve changes that are less significant or that essentially have been pre-approved by shareholders. See, e.g., KRS 271B.10-020. The example used here is KRS 271B.6-310, which provides for a reduction in the number of authorized shares of a corporation in instances where a corporation reacquires its own stock and the corporation's articles of incorporation prohibit the reissuance of such reacquired shares. In that case, the new Act does not require shareholder approval for an amendment reducing the number of authorized shares to the extent necessary to reflect the reacquired shares.

(2) In most instances, amendments to the company's articles of incorporation require approval by the board of directors and the shareholders of the corporation. See KRS 271B.10-030 to .10-090 for required procedures.

Exhibit ____

RESOLUTION OF DIRECTORS APPROVING AN AMENDMENT TO
THE COMPANY'S ARTICLES OF INCORPORATION AND SUBMITTING
THE AMENDMENT TO SHAREHOLDERS, IN AN INSTANCE IN
WHICH SHAREHOLDERS' APPROVAL IS REQUIRED FOR APPROVAL OF
THE AMENDMENT [Note 1]

RESOLVED, THAT pursuant to the requirements of KRS 271B.10-030, the board of directors of the Company hereby recommends that Article ____ of the Company's articles of incorporation be amended to increase the number of shares of authorized no par value common stock to 1,000,000 shares and that the following be adopted as new Article ____:

"ARTICLE ____ . The Company is authorized to issue 1,000,000 shares of no par value common stock."

FOOTNOTE TO EXHIBIT ____

(1) In most instances, amendments to the company's articles of incorporation require approval by the board of directors and the shareholders of the corporation. See KRS 271B.10-030 to .10-090 for required procedures.

Exhibit ____

ARTICLES OF AMENDMENT FOR AMENDING A COMPANY'S
ARTICLES OF INCORPORATION [Note 1]

ARTICLES OF AMENDMENT FOR ABC CORP.

1. The name of the corporation is ABC Corp.
2. The text of the amendment adopted is: "ARTICLE ____ The Company is authorized to issue 1,000,000 shares of no par value common stock."
3. The foregoing amendment was adopted by a vote of shareholders of the Company on _____, 198__.
4. (a) Only holders of the Company's no par value common stock were entitled to vote on the amendment. 100,000 shares of no par value common shares were outstanding, each with one vote on the amendment. 62,000 shares of the no par value stock were indisputably represented at the meeting of shareholders at which the amendment was approved.

(b) 61,000 votes were cast in favor of the amendment, and 1,000 votes were cast against the amendment. [Note 2]

A.B. ABLE
Chairman
ABC Corp. [Note 3]

FOOTNOTES TO EXHIBIT ____

(1) See KRS 271A.10-060 for detailed procedures regarding articles of amendments.

(2) If only board approval is required for the amendment, KRS 271B.10-060(5) requires a statement to that effect in the articles of amendment. Also in such instance, the statements included in paragraphs 4(a) and (b) are not required.

(3) The filing procedures for the articles of amendment and other corporate documents are provided by KRS 271B.1-200.

Exhibit ____

DISSOLUTION: RESOLUTION OF BOARD OF DIRECTORS
PROPOSING DISSOLUTION [Note 1]

RESOLVED, THAT the board of directors hereby approves and shall submit to the shareholders of the Company a proposal that the Company be dissolved pursuant to the provisions of KRS 271B.14-020 to .14-070. [Note 2]

FOOTNOTES TO EXHIBIT ____

(1) The general provisions regarding voluntary dissolution of a corporation are found in KRS 271B.14-010 to .14-070.

(2) Under KRS 271B.14-010, the board must, in most instances, first recommend dissolution to the shareholders, who then must approve the dissolution by a majority vote.

Exhibit ____

ARTICLES OF DISSOLUTION [Note 1]

ARTICLES OF DISSOLUTION OF ABC CORP.

1. The name of the corporation is ABC Corp.
2. The dissolution was authorized by the shareholders of ABC Corp.
on _____, 198__.
3. (a) The number of votes entitled to be cast on the proposal to
dissolve was _____.
- (b) The number of votes cast for dissolution was _____; the number
of votes cast against dissolution was _____.

A.B. ABLE
Chairman
ABC Corp. [Note 2]

FOOTNOTES TO EXHIBIT ____

(1) For the requirements regarding the content of articles of dissolution, see KRS 271B.14-030.

(2) Filing procedures for articles of dissolution are found at KRS 271B.1-200.

Exhibit ____

STOCK DIVIDEND: RESOLUTION OF BOARD OF DIRECTORS AUTHORIZING
A STOCK DIVIDEND [Note 1 and 2]

RESOLVED, THAT the Company shall issue a share dividend on its no-par value common stock in an amount equal to 0.25 shares of no-par value common stock for each share of no-par value common stock outstanding, such action taken pursuant to and subject to the terms of KRS 271B.6-230. [Note 3]

RESOLVED, THAT the record date for the right to receive such share dividend shall be _____, 198_. [Note 4]

RESOLVED, THAT management is empowered to take all necessary steps to complete the foregoing.

FOOTNOTES TO EXHIBIT ____

(1) No shareholder approval is required for the authorization of stock dividends. See KRS 271B.6-230.

(2) Under the new Act, there are no prescribed accounting procedures for stock dividends. This is a change from the prior law.

(3) The requirements for a stock dividend, which is referred to as a "share dividend" under the new Act, are provided in KRS 271B.6-230.

(4) Under the new act, if the board of directors does not establish a record date for eligibility to participate in a stock dividend, the record date is the date the board authorizes the stock dividend. KRS 271B.6-230(3)