

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **November 29, 2006**

CONTINENTAL AIRLINES, INC.

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE

(State or Other Jurisdiction of Incorporation)

1-10323

(Commission File Number)

74-2099724

(IRS Employer Identification No.)

1600 Smith Street, Dept. HQSEO, Houston, Texas

(Address of Principal Executive Offices)

77002

(Zip Code)

(713) 324-2950

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

| | |
|--------------------------|--|
| <input type="checkbox"/> | Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425) |
| <input type="checkbox"/> | Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12) |
| <input type="checkbox"/> | Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)) |
| <input type="checkbox"/> | Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)) |

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On November 29, 2006, the Board of Directors (the "Board") of Continental Airlines, Inc. (the "Company") adopted and approved amendments to Section 2.3 of the Company's Bylaws (the "Amendments") in connection with the implementation of a director resignation policy (the "Director Resignation Policy"). The Amendments took effect on November 30, 2006 in accordance with the resolutions adopted by the Board.

Under Section 2.3 of the Bylaws as in effect prior to November 30, 2006, a director's resignation was effective at the time specified therein or, if no such time was specified, at the time received by the Company.

Section 2.3 of the amended Bylaws now provides that (i) a director's resignation is effective either at the time received by the Company or on a later effective date specified in the resignation, which may be conditioned on the occurrence of one or more events, including the director's failure to receive a specified vote for re-election, (ii) a resignation conditioned on the director failing to receive a specified vote for re-election may be irrevocable, and (iii) in the event a director fails to receive the specified vote for re-election (in an uncontested election), the Board (or a committee designated by the Board) shall determine whether to accept the resignation within 60 days after certification of the election results.

The amended Bylaws are filed as Exhibit 3.2 to this Current Report on Form 8-K, and are incorporated herein by reference.

Item 8.01. Other Events.

On November 29, 2006, in connection with the implementation of the Director Resignation Policy, the Board adopted and approved amendments to the Company's Corporate Governance Guidelines providing that the Corporate Governance Committee will not recommend for renomination, and the Board will not nominate for re-election, any incumbent director until such director has submitted an irrevocable resignation conditioned on (1) the director receiving more "withhold" votes than votes "for" re-election in an uncontested election of directors and (2) the acceptance of the resignation by the Board (or a designated committee) following consideration in accordance with the Company's Bylaws.

The Board also adopted and approved amendments to the Corporate Governance Guidelines providing that the presiding director for executive sessions of the Company's non-management directors will be the Chair of the Executive Committee of the Board, who will at all times be a non-management member of the Board.

The amendments to the Corporate Governance Guidelines described above were effective November 30, 2006 and are available in the "Investor Relations" section of the Company's Website at www.continental.com.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- 3.2 Bylaws of Continental Airlines, Inc., as amended through November 30, 2006

SIGNATURE

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

CONTINENTAL AIRLINES, INC.

December 4, 2006

By /s/ Lori A. Gobillot

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Lori A. Gobillot

Staff Vice President and Assistant General
Counsel

EXHIBIT INDEX

3.2 Bylaws of Continental Airlines, Inc., as amended through November 30, 2006

**BYLAWS
OF
CONTINENTAL AIRLINES, INC.**

Including all amendments through November 30, 2006

TABLE OF CONTENTS

ARTICLE I Stockholders *

Section 1.1 Annual Meeting *

Section 1.2 Special Meetings *

Section 1.3 Place of Meeting *

Section 1.4 Notice of Meetings *

Section 1.5 Quorum *

Section 1.6 Voting *

Section 1.7 Presiding Officer and Secretary *

Section 1.8 Proxies *

Section 1.9 List of Stockholders *

Section 1.10 Notice of Stockholder Business and Nominations *

Section 1.11 Inspectors of Elections; Opening and Closing the Polls *

ARTICLE II Directors *

Section 2.1 Powers and Duties of Directors; Number *

Section 2.2 Election; Term; Vacancies *

Section 2.3 Resignation *

Section 2.4 Removal *

Section 2.5 Meetings *

Section 2.6 Quorum and Voting *

Section 2.7 Written Consent of Directors in Lieu of a Meeting *

Section 2.8 Compensation *

ARTICLE III Committees of the Board of Directors *

Section 3.1 Creation *

Section 3.2 Committee Procedure *

Section 3.3 Certain Definitions *

ARTICLE IV Officers, Agents and Employees *

Section 4.1 Appointment and Term of Office *

Section 4.2 Resignation and Removal *

Section 4.3 Compensation and Bond *

Section 4.4 Chairman of the Board *

Section 4.5 Chief Executive Officer *

Section 4.6 President *

Section 4.7 Chief Operating Officer *

Section 4.8 Chief Financial Officer *

Section 4.9 Vice Presidents *

[Section 4.10 Treasurer *](#)

[Section 4.11 Secretary *](#)

[Section 4.12 Assistant Treasurers *](#)

[Section 4.13 Assistant Secretaries *](#)

[Section 4.14 Delegation of Duties *](#)

[Section 4.15 Prohibition on Loans to Directors and Executive Officers *](#)

[ARTICLE V Limitation of Liability and Indemnification *](#)

[Section 5.1 Limitation of Liability of Directors *](#)

[Section 5.2 Mandatory Indemnification of Directors and Officers *](#)

[Section 5.3 Permissive Indemnification of Non-Officer Employees and Agents *](#)

[Section 5.4 General Provisions *](#)

[ARTICLE VI Common Stock *](#)

[Section 6.1 Certificates *](#)

[Section 6.2 Transfers of Stock *](#)

[Section 6.3 Lost, Stolen or Destroyed Certificates *](#)

[Section 6.4 Stockholder Record Date *](#)

[ARTICLE VII Ownership by Aliens *](#)

[Section 7.1 Foreign Stock Record *](#)

[Section 7.2 Maximum Percentage *](#)

[Section 7.3 Recording of Shares *](#)

[ARTICLE VIII General Provisions *](#)

[Section 8.1 Fiscal Year *](#)

[Section 8.2 Dividends *](#)

[Section 8.3 Checks, Notes, Drafts, Etc. *](#)

[Section 8.4 Corporate Seal *](#)

[Section 8.5 Waiver of Notice *](#)

[ARTICLE IX Restated Certificate of Incorporation to Govern *](#)

[Section 9.1 Restated Certificate of Incorporation to Govern *](#)

BYLAWS

OF

CONTINENTAL AIRLINES, INC.

Incorporated under the Laws of the State of Delaware

ARTICLE I Stockholders

Section 1.1 Annual Meeting. The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of any other proper business shall be held at such time and date in each year as the Board of Directors may determine

from time to time. The annual meeting in each year shall be held at such place within or without the State of Delaware as may be fixed by the Board of Directors, or if not so fixed, at the principal business office of the Corporation.

Section 1.2 Special Meetings. Subject to the rights of the holders of any class or series of preferred stock of the Corporation, or any other series or class of stock as set forth in the Amended and Restated Certificate of Incorporation of the Corporation (as it may be amended from time to time in accordance with its terms and applicable law, the "Restated Certificate of Incorporation"), to elect additional Directors under specified circumstances, special meetings of the stockholders may be called only by (i) stockholders holding Common Stock constituting more than 50% of the voting power of the outstanding shares of Common Stock, (ii) the Chief Executive Officer or (iii) the Board of Directors.

Section 1.3 Place of Meeting. The Board of Directors may designate the place of meeting for any meeting of the stockholders. If no designation is made by the Board of Directors, the place of meeting shall be the principal executive offices of the Corporation.

Section 1.4 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, unless notice is waived in writing or by electronic transmission by all stockholders entitled to vote at the meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, and, in the case of a special meeting, the purpose for which the meeting is called.

Unless otherwise provided by law, and except as to any stockholder duly waiving notice, the notice of any meeting shall be given personally or by mail or by electronic transmission in the manner provided by law, not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, 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, however, the adjournment is for more than 30 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.

Section 1.5 Quorum. Except as otherwise provided by law, by the Restated Certificate of Incorporation, or by these Bylaws in respect of the vote required for a specified action, at any meeting of stockholders the holders of a majority of the aggregate voting power of the outstanding stock entitled to vote thereat, either present or represented by proxy, shall constitute a quorum for the transaction of any business, but the stockholders present, although less than a quorum, may adjourn the meeting to another time or place and, except as provided in the last paragraph of Section 1.4, notice need not be given of the adjourned meeting.

Section 1.6 Voting. Except as otherwise provided by the Restated Certificate of Incorporation or these Bylaws, whenever Directors are to be elected at a meeting, they shall be elected by a plurality of the votes cast at the meeting by the holders of stock entitled to vote. Whenever any corporate action, other than the election of Directors, is to be taken by vote of stockholders at a meeting, it shall be authorized by a majority of the votes cast at the meeting by the holders of stock entitled to vote thereon, except as otherwise required by law, by the Restated Certificate of Incorporation or by these Bylaws.

Except as otherwise provided by law, or by the Restated Certificate of Incorporation or these Bylaws, each holder of record of stock of the Corporation entitled to vote on any matter at any meeting of stockholders shall be entitled to one vote for each share of such stock standing in the name of such holder on the stock ledger of the Corporation on the record date for the determination of the stockholders entitled to vote at the meeting.

Upon the demand of any stockholder entitled to vote, the vote for Directors or the vote on any other matter at a meeting shall be by written ballot, but otherwise the method of voting and the manner in which votes are counted shall be discretionary with the presiding officer at the meeting.

Section 1.7 Presiding Officer and Secretary. At every meeting of stockholders the Chairman of the Board or the Chief Executive Officer, as designated by the Board of Directors, or, if neither is present, or in the absence of any such designation, the appointee of the meeting, shall preside. The Secretary, or in his or her absence an Assistant Secretary, or if none be present, the appointee of the presiding officer of the meeting, shall act as secretary of the meeting.

Section 1.8 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy executed in writing by the stockholder or as otherwise permitted by law, or by his or her duly authorized attorney-in-fact. Such proxy must be filed with the Secretary of the Corporation or his or her representative at or before the time of the meeting.

Section 1.9 List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder in the manner provided by law. The list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law.

The stock ledger shall be the only evidence as to which stockholders are the stockholders entitled to examine the stock ledger or the list required by this Section 1.9, or to vote in person or by proxy at any meeting of stockholders.

Section 1.10 Notice of Stockholder Business and Nominations.

A. Annual Meetings of Stockholders.

(1) Subject to Section 2.2 of these Bylaws, nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting delivered pursuant to Section 1.4 of these Bylaws, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who complied with the notice procedures set forth in clauses (2) and (3) of paragraph (A) of this Section 1.10 and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A) (1) of this Section 1.10, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than seventy days nor more than ninety days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than twenty days, or delayed by more than seventy days, from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the ninetieth day prior to such annual meeting and not later than the close of business on the later of the seventieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A) (2) of this Section 1.10 to the contrary, in the event that the number of Directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for Director or specifying the size of the increased Board of Directors made by the Corporation at least eighty days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.10 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

(B) Special Meeting of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 1.4 of these Bylaws. Subject to Section 2.2 of these Bylaws, nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which Directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Section 1.10 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice as required by paragraph (A) (2) of this Section 1.10 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth day prior to such special meeting and not later than the close of business on the later of the seventieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(C) General. (1) Only persons who are nominated in accordance with the procedures set forth in this Section 1.10 shall be eligible to serve as Directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.10. Except as otherwise provided by law, the Restated Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 1.10 and, if any proposed nomination or business is not in compliance with this Section 1.10, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Section 1.10, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 1.10, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.10. Nothing in this Section 1.10 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act. Section 1.11 Inspectors of Elections; Opening and Closing the Polls. The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or

representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act, at the meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by the General Corporation Law of the State of Delaware (the "GCL").

The chairman of the meeting shall fix and announce at the meeting the time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

ARTICLE II Directors

Section 2.1 Powers and Duties of Directors; Number. The business of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not directed or required to be exercised or done by the stockholders by the Restated Certificate of Incorporation, by these Bylaws, or by law. Except as otherwise permitted by or consistent with Foreign Ownership Restrictions (as defined below), at no time shall more than one-third of the Directors in office be Aliens (as defined in the Restated Certificate of Incorporation). The Board shall adopt the Annual Capital Expenditure Budget and the Annual Financial Plan, both as defined in Section 3.3, for each fiscal year not later than the last day of the preceding fiscal year or at such later time as shall be determined by resolution of the Board. "Foreign Ownership Restrictions" means applicable statutory, regulatory and interpretive restrictions regarding foreign ownership or control of U.S. air carriers as amended or modified from time to time.

The number of Directors which shall constitute the whole Board of Directors shall be determined from time to time by resolution of the Board of Directors (provided that no decrease in the number of Directors which would have the effect of shortening the term of an incumbent Director may be made by the Board of Directors). If the Board of Directors makes no such determination, the number of Directors shall be thirteen.

Section 2.2 Election; Term; Vacancies. Each Director shall hold office until the next annual election and until his or her successor is elected and qualified, or until his earlier death, resignation or removal. The Directors shall be elected annually by the stockholders in the manner specified by the Restated Certificate of Incorporation and these Bylaws, except that if there be a vacancy in the Board of Directors by reason of death, resignation or otherwise, such vacancy may also be filled for the unexpired term by a majority affirmative vote of the Board of Directors.

Section 2.3 Resignation.

(A) Any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Any such resignation shall take effect at the time received by the Corporation, unless the resignation specifies a later effective date or an effective date determined upon the happening of one or more events, such as failing to receive a specified vote for re-election as a Director.

(B) A Director's resignation which is conditioned upon the Director failing to receive a specified vote for re-election as a Director may provide that it is irrevocable.

(C) If an incumbent Director does not receive the vote for re-election specified in his or her conditional resignation in an uncontested election of Directors, the Board of Directors (or a committee designated by the Board of Directors) shall, no later than 60 days following the date of the certification of the election results, consider the attendant circumstances and any other factors it deems relevant and determine whether to accept the Director's resignation. If the Board of Directors (or the committee designated by the Board of Directors to make such determination) determines not to accept the Director's resignation, then such resignation shall not be effective with respect to the applicable election.

(D) For purposes of this Section 2.3, an "uncontested election" shall mean an election of Directors where the only nominees are those nominated by the Board of Directors.

Section 2.4 Removal. Any Director may be removed at any time, with or without cause, by vote at a meeting or written consent of the holders of stock entitled to vote on the election of such Director pursuant to the Restated Certificate of Incorporation.

Section 2.5 Meetings.

(A) Annual Meeting. Immediately after each annual meeting of stockholders, the duly elected Directors shall hold an inaugural meeting for the purpose of organization, election of officers, and the transaction of other business, at such place as shall be fixed by the person presiding at the meeting of stockholders at which such Directors are elected.

(B) Regular Meetings. Regular meetings of the Board of Directors shall be held on such dates and at such times and places as shall be designated from time to time by the Board of Directors; provided, that regular meetings of the Board of Directors can be waived at the request of the Chief Executive Officer if at least a majority of the Directors agree in writing or by electronic transmission to such waiver at least seven days before the date of the meeting to be so waived. The Secretary shall forward to each Director, at least five days before any such regular meeting, a notice of the time and place of the meeting, together with the agenda for the meeting or in lieu thereof a notice of waiver if the regular meeting has been waived.

(C) Special Meetings. Special meetings of the Directors may be called by the Chairman of the Board, the Chairman of the Executive Committee, the Chief Executive Officer or a majority of the Directors, at such time and place as shall be specified in the notice or waiver thereof. Notice of each special meeting, including the time and place of the meeting and the agenda therefor, shall be given by the Secretary or by the person calling the meeting to each Director by causing the same to be delivered personally or by facsimile transmission not later than the close of business on the second day next preceding the day of the meeting.

(D) Location; Methods of Participation. Meetings of the Board of Directors, regular or special, may be held at any place within or without the State of Delaware at such place as is indicated in the notice or waiver of notice thereof. Members of the Board of Directors, or of any committee designated by the Board, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

Section 2.6 Quorum and Voting. A majority of the total number of Directors (excluding those who must recuse themselves by law) ("Recused Directors") shall constitute a quorum for the transaction of business, but, if there be less than a quorum at any meeting of the Board of Directors, a majority of the Directors present may adjourn the meeting from time to time, and no further notice thereof need be given other than announcement at the meeting which shall be so adjourned. Except as otherwise provided by law, by the Restated Certificate of Incorporation, or by these Bylaws, the affirmative vote of a majority of the Directors present at a meeting (excluding Recused Directors) at which a quorum is present shall be the act of the Board of Directors.

Section 2.7 Written Consent of Directors in Lieu of a 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 of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.8 Compensation. Directors may receive compensation for services to the Corporation in their capacities as Directors or otherwise in such manner and in such amounts as may be fixed from time to time by the Board of Directors.

ARTICLE III Committees of the Board of Directors

Section 3.1 Creation. The Board of Directors, by resolution or resolutions passed by a majority of the whole Board of Directors, may designate one or more committees, each to consist of such number of Directors of the Corporation as shall be specified in such resolution. Each committee of the Board shall have and may exercise such powers and duties as may be provided in such resolution, except that no such committee shall have the power to elect Directors or the power or authority reserved for the whole Board of Directors pursuant to Section 141(c)(2) of the GCL, except as otherwise set forth in such Section 141(c)(2).

Section 3.2 Committee Procedure. Each committee of the Board of Directors shall meet at the times stated by the Board in the resolution or resolutions establishing such committee or on notice to all members given by any member of such committee. The Board by resolution or resolutions shall establish the rules of procedure to be followed by each committee, which shall include a requirement that such committee keep regular minutes of its proceedings and deliver to the Secretary the same.

Section 3.3 Certain Definitions.

(A) Annual Capital Expenditure Budget. When used in these Bylaws, the term "Annual Capital Expenditure Budget" shall mean an annual capital expenditure budget, which shall be approved by the Board of Directors not later than the last day of the preceding fiscal year (or at such later time determined by the Board pursuant to Section 2.1).

(B) Annual Financial Plan. When used in these Bylaws, the term "Annual Financial Plan" shall mean an annual financial plan, which shall be approved by the Board of Directors not later than the last day of the preceding fiscal year (or at such later time determined by the Board pursuant to Section 2.1).

ARTICLE IV Officers, Agents and Employees

Section 4.1 Appointment and Term of Office. The officers of the Corporation shall include a Chairman of the Board, a Chief Executive Officer, a President, and a Secretary, and may also include a Chief Operating Officer, a Chief Financial Officer, a Treasurer, one or more Vice Presidents (who may be further classified by such descriptions as "executive", "senior", "assistant", "staff" or otherwise, as the Board of Directors shall determine), one or more Assistant Secretaries and one or more Assistant Treasurers. All such officers shall be appointed by the Board of Directors. Any number of such offices may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. Except as may be prescribed otherwise by the Board of Directors in a particular case, all such officers shall hold their offices at the pleasure of the Board for an unlimited term and need not be reappointed annually or at any other periodic interval. The Board of Directors may appoint, and may delegate power to appoint, such other officers, agents and employees as it may deem necessary or proper, who shall hold their offices or positions for such terms, have such authority and perform such duties as may from time to time be determined by or pursuant to authorization of the Board of Directors.

Section 4.2 Resignation and Removal. Any officer may resign at any time upon written notice to the Corporation. Any officer, agent or employee of the Corporation may be removed by the Board of Directors with or without cause at any time. The Board of Directors may delegate such power of removal as to officers, agents and employees not appointed by the Board of Directors. Such

removal shall be without prejudice to a person's contract rights, if any, but the appointment of any person as an officer, agent or employee of the Corporation shall not of itself create contract rights.

Section 4.3 Compensation and Bond. The compensation of the officers of the Corporation shall be fixed by the Board of Directors, but this power may be delegated to any officer by the Board of Directors. The Corporation may secure the fidelity of any or all of its officers, agents or employees by bond or otherwise.

Section 4.4 Chairman of the Board. The Chairman of the Board shall be selected from the members of the Board of Directors and shall preside at all meetings of the Board of Directors. In addition, the Chairman of the Board shall have such other powers and duties as may be delegated to him or her by the Board of Directors. The Chairman of the Board shall not be deemed to be an officer of the Corporation for purposes of Article IV of these Bylaws unless he or she shall also be the Chief Executive Officer.

Section 4.5 Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and, in the absence of the Chairman of the Board (or if there be none), he or she shall preside at all meetings of the Board of Directors. The Chief Executive Officer shall have general charge of the business affairs of the Corporation. He or she may employ and discharge employees and agents of the Corporation, except such as shall be appointed by the Board of Directors, and he or she may delegate these powers. The Chief Executive Officer may vote the stock or other securities of any other domestic or foreign corporation of any type or kind which may at any time be owned by the Corporation, may execute any stockholders' or other consents in respect thereof and may in his or her discretion delegate such powers by executing proxies, or otherwise, on behalf of the Corporation. The Board of Directors by resolution from time to time may confer like powers upon any other person.

Section 4.6 President. The President shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.7 Chief Operating Officer. The Chief Operating Officer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.8 Chief Financial Officer. The Chief Financial Officer shall have general charge of the financial affairs of the Corporation, and shall have such other powers and duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.9 Vice Presidents. Each Vice President shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.10 Treasurer. The Treasurer shall have charge of all funds and securities of the Corporation, may endorse the same for deposit or collection when necessary and deposit the same to the credit of the Corporation in such banks or depositories as the Board of Directors may authorize. He or she may endorse all commercial documents requiring endorsements for or on behalf of the Corporation and may sign all receipts and vouchers for payments made to the Corporation. He or she shall have all such further powers and duties as generally are incident to the position of Treasurer or as may be assigned to him or her by the Board of Directors or the Chief Executive Officer.

Section 4.11 Secretary. The Secretary shall distribute all materials to be distributed in connection with regular and special meetings of the Board of Directors, record all the proceedings of the meetings of the stockholders and Directors in a book to be kept for that purpose and shall also record therein all action taken by written consent of the Directors, and committees of the Board of Directors in lieu of a meeting. He or she shall attend to the giving and serving of all notices of the Corporation. He or she shall have custody of the seal of the Corporation and shall attest the same by his or her signature whenever required. He or she shall have charge of the stock ledger and such other books and papers as the Board of Directors may direct, but he or she may delegate responsibility for maintaining the stock ledger to any transfer agent appointed by the Board of Directors. He or she shall have all such further powers and duties as generally are incident to the position of Secretary or as may be assigned to him or her by the Board of Directors or the Chief Executive Officer.

Section 4.12 Assistant Treasurers. In the absence or inability to act of the Treasurer, any Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. The performance of any such duty shall, in respect of any other person dealing with the Corporation, be conclusive evidence of his or her power to act. An Assistant Treasurer shall also perform such other duties as the Treasurer or the Board of Directors may assign to him or her.

Section 4.13 Assistant Secretaries. In the absence or inability to act of the Secretary, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. The performance of any such duty shall, in respect of any other person dealing with the Corporation, be conclusive evidence of his or her power to act. An Assistant Secretary shall also perform such other duties as the Secretary or the Board of Directors may assign to him or her.

Section 4.14 Delegation of Duties. In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may confer for the time being the powers or duties, or any of them, of such officer upon any other officer or upon any Director.

Section 4.15 Prohibition on Loans to Directors and Executive Officers. The Corporation shall not directly or indirectly extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any member of the Board of Directors or executive officer of the Corporation, as such terms are used in Section 13(k) of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

ARTICLE V Limitation of Liability and Indemnification

Section 5.1 Limitation of Liability of Directors. No Director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (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 GCL, or (iv) for any transaction from which the Director derived any improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of Directors of the Corporation shall be eliminated or limited to the full extent permitted by the GCL, as so amended.

Section 5.2 Mandatory Indemnification of Directors and Officers. The Corporation shall indemnify to the full extent permitted by the laws of the State of Delaware as from time to time in effect any person who was or is a party or is threatened to be made a party to, or otherwise requires representation by counsel in connection with, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether or not an action by or in the right of the Corporation), by reason of the fact that he or she is or was a Director or officer of the Corporation, or, while serving as a Director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity. The right to indemnification conferred by this Section 5.2 also shall include the right of such persons described in this Section 5.2 to be paid in advance by the Corporation for their expenses (including attorneys' fees) to the full extent permitted by applicable law as from time to time in effect. The right to indemnification conferred on such persons by this Section 5.2 shall be a contract right.

Section 5.3 Permissive Indemnification of Non-Officer Employees and Agents. The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether or not an action by or in the right of the Corporation) by reason of the fact that the person is or was an employee (other than an officer) or agent of the Corporation, or, while serving as an employee (other than an officer) or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the extent (i) permitted by the laws of the State of Delaware as from time to time in effect, and (ii) authorized in the sole discretion of the Chief Executive Officer and at least one other of the following officers: the President, the Chief Financial Officer, or the General Counsel of the Corporation (the Chief Executive Officer and any of such other officers so authorizing such indemnification, the "Authorizing Officers"). The Corporation may, to the extent permitted by Delaware law and authorized in the sole discretion of the Authorizing Officers, pay expenses (including attorneys' fees) reasonably incurred by any such employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon such terms and conditions as the Authorizing Officers authorizing such expense advancement determine in their sole discretion. The provisions of this Section 5.3 shall not constitute a contract right for any such employee or agent.

Section 5.4 General Provisions. The rights and authority conferred in any of the Sections of this Article V shall not be exclusive of any other right which any person seeking indemnification or advancement of expenses may have or hereafter acquire under any statute, provision of the Restated Certificate of Incorporation or these Bylaws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Neither the amendment or repeal of this Article V or any of the Sections thereof nor the adoption of any provision of the Restated Certificate of Incorporation or these Bylaws or of any statute inconsistent with this Article V or any of the Sections thereof shall eliminate or reduce the effect of this Article V or any of the Sections thereof in respect of any acts or omissions occurring prior to such amendment, repeal or adoption or an inconsistent provision.

ARTICLE VI Common Stock

Section 6.1 Certificates. Certificates for stock of the Corporation shall be in such form as shall be approved by the Board of Directors and shall be signed in the name of the Corporation by the Chairman of the Board or the Chief Executive Officer or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. Such certificates may be sealed with the seal of the Corporation or a facsimile thereof. Any of or all the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 6.2 Transfers of Stock. Upon surrender to any transfer agent of the Corporation of a certificate for shares of the Corporation duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation, provided such succession, assignment or transfer is not prohibited by the Restated Certificate of Incorporation, these Bylaws, applicable law or contractual prohibitions, to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new stock certificate in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen

or destroyed certificate or his or her legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate. The Board of Directors may require such owner to satisfy other reasonable requirements.

Section 6.4 Stockholder 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 60 nor less than ten days before the date of such meeting, nor more than 60 days prior to any other action. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to give such consent, or to receive payment of such dividend or other distribution, or to exercise such rights in respect of any such change, conversion or exchange of stock, or to participate in such action, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any record date so fixed.

If no record date is fixed by the Board of Directors, (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived by all stockholders entitled to vote at the meeting, at the close of business on the day next preceding the day on which the meeting is held and (b) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE VII Ownership by Aliens

Section 7.1 Foreign Stock Record. There shall be maintained a separate stock record, designated the "Foreign Stock Record," for the registration of Voting Stock, as defined in Section 7.2, that is Beneficially Owned (as defined in the Restated Certificate of Incorporation) by Aliens, as defined in the Restated Certificate of Incorporation ("Alien Stock"). The Beneficial Ownership by Aliens of Voting Stock shall be determined in conformity with regulations prescribed by the Board of Directors.

Section 7.2 Maximum Percentage. At no time shall ownership of shares representing more than the Maximum Percentage, as defined below, be registered in the Foreign Stock Record. As used herein, (a) "Maximum Percentage" means the maximum percentage of voting power of Voting Stock, as defined below, which may be voted by, or at the direction of, Aliens without violating Foreign Ownership Restrictions or adversely affecting the Corporation's operating certificates or authorities, and (b) "Voting Stock" means all outstanding shares of capital stock of the Corporation issued from time to time by the Corporation and Beneficially Owned by Aliens which, but for the provisions of Section 1 of Article Sixth of the Restated Certificate of Incorporation, by their terms may vote (at the time such determination is made) for the election of Directors of the Corporation, except shares of Preferred Stock that are entitled to vote for the election of Directors solely as a result of the failure to pay dividends by the Corporation or other breach of the terms of such Preferred Stock.

Section 7.3 Recording of Shares. If at any time there exist shares of Voting Stock that are Alien Stock but that are not registered in the Foreign Stock Record, the Beneficial Owner thereof may request, in writing, the Corporation to register ownership of such shares on the Foreign Stock Record and the Corporation shall comply with such request, subject to the limitation set forth in Section 7.2. The order in which Alien Stock shall be registered on the Foreign Stock Record shall be chronological, based on the date the Corporation received a written request to so register such shares of Alien Stock. If at any time the Corporation shall find that the combined voting power of Voting Stock then registered in the Foreign Stock Record exceeds the Maximum Percentage, there shall be removed from the Foreign Stock Record the registration of such number of shares so registered as is sufficient to reduce the combined voting power of the shares so registered to an amount not in excess of the Maximum Percentage. The order in which such shares shall be removed shall be reverse chronological order based upon the date the Corporation received a written request to so register such shares of Alien Stock.

ARTICLE VIII General Provisions

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin the first day of January and end on the last day of December of each year.

Section 8.2 Dividends. Dividends upon the capital stock may be declared by the Board of Directors at any regular or special meeting and may be paid in cash or in property or in shares of the capital stock. Before paying any dividend or making any distribution of profits, the Directors may set apart out of any funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may alter or abolish any such reserve or reserves.

Section 8.3 Checks, Notes, Drafts, Etc. Checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money shall be signed by such officer or officers or person or persons as the Board of Directors or a duly authorized committee thereof, the Chief Executive Officer or the Treasurer may from time to time designate.

Section 8.4 Corporate Seal. The seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board of Directors, the name of the Corporation and the words "Corporate Seal" and "Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 8.5 Waiver of Notice. Whenever notice is required to be given by statute, or under any provision of the Restated Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. In the case of a stockholder, such waiver of notice may be signed by such stockholder's attorney or proxy duly appointed in writing or as otherwise permitted by law. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors or members of a committee of Directors need be specified in any written waiver of notice or any waiver by electronic transmission.

ARTICLE IX Restated Certificate of Incorporation to Govern

Section 9.1 Restated Certificate of Incorporation to Govern. Notwithstanding anything to the contrary herein, if any provision contained herein is inconsistent with or conflicts with a provision of the Restated Certificate of Incorporation, such provision herein shall be superseded by the inconsistent provision in the Restated Certificate of Incorporation, to the extent necessary to give effect to such provision in the Restated Certificate of Incorporation.