Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation
or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation

Note. The foundation may be able to use a copy of this return to satisfy state reporting requirements.

OMB No. 1545-0052

2009

For calendar year 2009, or tax year beginning , 2009, and ending , 20

G Check all that apply: ☐ Initial return ☐ Initial return of a former public charity ☐ Final return
☐ Amended return ☐ Address change ☐ Name change

Use the IRS label. Otherwise, print or type. See Specific Instructions.		
Name of foundation: Tinberg Foundation		A Employer identification number: 36-3742179
Number and street (or P.O. box number if mail is not delivered to street address): 159 Sheridan Road	Room/suite	B Telephone number (see page 10 of the instructions): 847-441-9152
City or town, state, and ZIP code: Winnetka, IL 60093		C If exemption application is pending, check here ▶ ☐

D 1. Foreign organizations, check here ▶ ☐
2. Foreign organizations meeting the 85% test, check here and attach computation ▶ ☐

H Check type of organization: ☑ Section 501(c)(3) exempt private foundation
☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

E If private foundation status was terminated under section 507(b)(1)(A), check here ▶ ☐

I Fair market value of all assets at end of year *(from Part II, col. (c), line 16)* ▶ $ 2,309,886

J Accounting method: ☑ Cash ☐ Accrual ☐ Other (specify) ________
(Part I, column (d) must be on cash basis.)

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ▶ ☐

Part I **Analysis of Revenue and Expenses** *(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see page 11 of the instructions).)*

	Line	Description	(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1	Contributions, gifts, grants, etc., received (attach schedule)				
	2	Check ▶ ☐ if the foundation is not required to attach Sch. B				
	3	Interest on savings and temporary cash investments				
	4	Dividends and interest from securities	33,445	33,445		
	5a	Gross rents				
	b	Net rental income or (loss)				
	6a	Net gain or (loss) from sale of assets not on line 10				
	b	Gross sales price for all assets on line 6a				
	7	Capital gain net income (from Part IV, line 2)				
	8	Net short-term capital gain				
	9	Income modifications				
	10a	Gross sales less returns and allowances				
	b	Less: Cost of goods sold				
	c	Gross profit or (loss) (attach schedule)				
	11	Other income (attach schedule)				
	12	**Total.** Add lines 1 through 11	33,445	33,445		
Operating and Administrative Expenses	13	Compensation of officers, directors, trustees, etc.				
	14	Other employee salaries and wages				
	15	Pension plans, employee benefits				
	16a	Legal fees (attach schedule)				
	b	Accounting fees (attach schedule)				
	c	Other professional fees (attach schedule) Investment Management	3,059	3,059		
	17	Interest				
	18	Taxes (attach schedule) (see page 14 of the instructions)				
	19	Depreciation (attach schedule) and depletion				
	20	Occupancy				
	21	Travel, conferences, and meetings				
	22	Printing and publications				
	23	Other expenses (attach schedule) Filing Fees	25	25		
	24	**Total operating and administrative expenses.** Add lines 13 through 23	3,084	3,084		
	25	Contributions, gifts, grants paid	163,950			
	26	**Total expenses and disbursements.** Add lines 24 and 25	167,034	3,084		
	27	Subtract line 26 from line 12:				
	a	**Excess of revenue over expenses and disbursements**	(133,589)			
	b	**Net investment income** (if negative, enter -0-)		30,361		
	c	**Adjusted net income** (if negative, enter -0-)				

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Part II **Balance Sheets** Attached schedules and amounts in the description column should be for end-of-year amounts only. (See instructions.)	Beginning of year (a) Book Value	End of year (b) Book Value	End of year (c) Fair Market Value
Assets 1 Cash—non-interest-bearing	391,723	(40,539)	(40,539)
2 Savings and temporary cash investments			
3 Accounts receivable ▶			
Less: allowance for doubtful accounts ▶			
4 Pledges receivable ▶			
Less: allowance for doubtful accounts ▶			
5 Grants receivable			
6 Receivables due from officers, directors, trustees, and other disqualified persons (attach schedule) (see page 16 of the instructions)			
7 Other notes and loans receivable (attach schedule) ▶			
Less: allowance for doubtful accounts ▶			
8 Inventories for sale or use			
9 Prepaid expenses and deferred charges			
10a Investments—U.S. and state government obligations (attach schedule)			
b Investments—corporate stock (attach schedule)	1,426,555	1,162,637	1,200,748
c Investments—corporate bonds (attach schedule)	210,898	565,788	589,214
11 Investments—land, buildings, and equipment: basis ▶			
Less: accumulated depreciation (attach schedule) ▶			
12 Investments—mortgage loans			
13 Investments—other (attach schedule)			
14 Land, buildings, and equipment: basis ▶			
Less: accumulated depreciation (attach schedule) ▶			
15 Other assets (describe ▶ see attached)	277,000	460,000	460,463
16 **Total assets** (to be completed by all filers—see the instructions. Also, see page 1, item I)	2,306,176	2,147,886	2,209,886
Liabilities 17 Accounts payable and accrued expenses			
18 Grants payable			
19 Deferred revenue			
20 Loans from officers, directors, trustees, and other disqualified persons			
21 Mortgages and other notes payable (attach schedule)			
22 Other liabilities (describe ▶)			
23 **Total liabilities** (add lines 17 through 22)			
Net Assets or Fund Balances **Foundations that follow SFAS 117, check here** ▶ ☑ **and complete lines 24 through 26 and lines 30 and 31.**			
24 Unrestricted	2,306,176	2,147,886	
25 Temporarily restricted			
26 Permanently restricted			
Foundations that do not follow SFAS 117, check here ▶ ☐ **and complete lines 27 through 31.**			
27 Capital stock, trust principal, or current funds			
28 Paid-in or capital surplus, or land, bldg., and equipment fund			
29 Retained earnings, accumulated income, endowment, or other funds			
30 **Total net assets or fund balances** (see page 17 of the instructions)	2,306,176	2,147,886	
31 **Total liabilities and net assets/fund balances** (see page 17 of the instructions)	2,306,176	2,147,886	

Part III **Analysis of Changes in Net Assets or Fund Balances**

1 Total net assets or fund balances at beginning of year—Part II, column (a), line 30 (must agree with end-of-year figure reported on prior year's return)	1	2,306,176
2 Enter amount from Part I, line 27a	2	(133,589)
3 Other increases not included in line 2 (itemize) ▶	3	~~2,172,587~~
4 Add lines 1, 2, and 3	4	2,172,587
5 Decreases not included in line 2 (itemize) ▶ Capital losses - see attached	5	(24,700)
6 Total net assets or fund balances at end of year (line 4 minus line 5)—Part II, column (b), line 30	6	2,147,886

Part IV Capital Gains and Losses for Tax on Investment Income

	(a) List and describe the kind(s) of property sold (e.g., real estate, 2-story brick warehouse; or common stock, 200 shs. MLC Co.)	(b) How acquired P—Purchase D—Donation	(c) Date acquired (mo., day, yr.)	(d) Date sold (mo., day, yr.)
1a				
b				
c	See attached			
d				
e				

	(e) Gross sales price	(f) Depreciation allowed (or allowable)	(g) Cost or other basis plus expense of sale	(h) Gain or (loss) (e) plus (f) minus (g)
a				
b				
c				
d				
e				

Complete only for assets showing gain in column (h) and owned by the foundation on 12/31/69

	(i) F.M.V. as of 12/31/69	(j) Adjusted basis as of 12/31/69	(k) Excess of col. (i) over col. (j), if any	(l) Gains (Col. (h) gain minus col. (k), but not less than -0-) or Losses (from col. (h))
a				
b				
c				
d				
e				

2 Capital gain net income or (net capital loss) { If gain, also enter in Part I, line 7 / If (loss), enter -0- in Part I, line 7 } **2** (24,700)

3 Net short-term capital gain or (loss) as defined in sections 1222(5) and (6):
If gain, also enter in Part I, line 8, column (c) (see pages 13 and 17 of the instructions).
If (loss), enter -0- in Part I, line 8 . . . . . **3**

Part V Qualification Under Section 4940(e) for Reduced Tax on Net Investment Income

(For optional use by domestic private foundations subject to the section 4940(a) tax on net investment income.)

If section 4940(d)(2) applies, leave this part blank.

Was the foundation liable for the section 4942 tax on the distributable amount of any year in the base period? ☐ Yes ☐ No
If "Yes," the foundation does not qualify under section 4940(e). Do not complete this part.

1 Enter the appropriate amount in each column for each year; see page 18 of the instructions before making any entries.

(a) Base period years Calendar year (or tax year beginning in)	(b) Adjusted qualifying distributions	(c) Net value of noncharitable-use assets	(d) Distribution ratio (col. (b) divided by col. (c))
2008	149,156	2,575,739	.058
2007	163,961	2,583,297	.063
2006	98,100	2,123,593	.046
2005	135,615	1,986,000	.068
2004	91,101	1,696,200	.054

2	**Total** of line 1, column (d)	2	.289
3	Average distribution ratio for the 5-year base period—divide the total on line 2 by 5, or by the number of years the foundation has been in existence if less than 5 years	3	.058
4	Enter the net value of noncharitable-use assets for 2009 from Part X, line 5	4	2031,150
5	Multiply line 4 by line 3	5	117,806.70
6	Enter 1% of net investment income (1% of Part I, line 27b)	6	303.61
7	Add lines 5 and 6	7	118,110.31
8	Enter qualifying distributions from Part XII, line 4	8	163,950.00

If line 8 is equal to or greater than line 7, check the box in Part VI, line 1b, and complete that part using a 1% tax rate. See the Part VI instructions on page 18.

Part VI Excise Tax Based on Investment Income (Section 4940(a), 4940(b), 4940(e), or 4948—see page 18 of the instructions)

1a	Exempt operating foundations described in section 4940(d)(2), check here ▶ ☐ and enter "N/A" on line 1. Date of ruling or determination letter: ______ (attach copy of letter if necessary—see instructions)			
b	Domestic foundations that meet the section 4940(e) requirements in Part V, check here ▶ ☑ and enter 1% of Part I, line 27b	1	303	61
c	All other domestic foundations enter 2% of line 27b. Exempt foreign organizations enter 4% of Part I, line 12, col. (b)			
2	Tax under section 511 (domestic section 4947(a)(1) trusts and taxable foundations only. Others enter -0-)	2		
3	Add lines 1 and 2	3	303	61
4	Subtitle A (income) tax (domestic section 4947(a)(1) trusts and taxable foundations only. Others enter -0-)	4		
5	**Tax based on investment income.** Subtract line 4 from line 3. If zero or less, enter -0-	5	303	61
6	Credits/Payments:			
a	2009 estimated tax payments and 2008 overpayment credited to 2009 — 6a: 2,680 84			
b	Exempt foreign organizations—tax withheld at source — 6b			
c	Tax paid with application for extension of time to file (Form 8868) — 6c			
d	Backup withholding erroneously withheld — 6d			
7	Total credits and payments. Add lines 6a through 6d	7	2,680	84
8	Enter any **penalty** for underpayment of estimated tax. Check here ☐ if Form 2220 is attached	8		
9	**Tax due.** If the total of lines 5 and 8 is more than line 7, enter **amount owed** ▶	9		
10	**Overpayment.** If line 7 is more than the total of lines 5 and 8, enter the **amount overpaid** ▶	10	2,377	23
11	Enter the amount of line 10 to be: **Credited to 2010 estimated tax** ▶ 2377.23 **Refunded** ▶	11		

Part VII-A Statements Regarding Activities

			Yes	No
1a	During the tax year, did the foundation attempt to influence any national, state, or local legislation or did it participate or intervene in any political campaign?	1a		✓
b	Did it spend more than $100 during the year (either directly or indirectly) for political purposes (see page 19 of the instructions for definition)?	1b		✓
	If the answer is "Yes" to 1a or 1b, attach a detailed description of the activities and copies of any materials published or distributed by the foundation in connection with the activities.			
c	Did the foundation file **Form 1120-POL** for this year?	1c		✓
d	Enter the amount (if any) of tax on political expenditures (section 4955) imposed during the year: **(1)** On the foundation. ▶ $ ______ **(2)** On foundation managers. ▶ $ ______			
e	Enter the reimbursement (if any) paid by the foundation during the year for political expenditure tax imposed on foundation managers. ▶ $ ______			
2	Has the foundation engaged in any activities that have not previously been reported to the IRS? *If "Yes," attach a detailed description of the activities.*	2		✓
3	Has the foundation made any changes, not previously reported to the IRS, in its governing instrument, articles of incorporation, or bylaws, or other similar instruments? *If "Yes," attach a conformed copy of the changes*	3	✓	
4a	Did the foundation have unrelated business gross income of $1,000 or more during the year?	4a		✓
b	If "Yes," has it filed a tax return on **Form 990-T** for this year?	4b		
5	Was there a liquidation, termination, dissolution, or substantial contraction during the year? *If "Yes," attach the statement required by General Instruction T.*	5		✓
6	Are the requirements of section 508(e) (relating to sections 4941 through 4945) satisfied either: • By language in the governing instrument, or • By state legislation that effectively amends the governing instrument so that no mandatory directions that conflict with the state law remain in the governing instrument?	6	✓	
7	Did the foundation have at least $5,000 in assets at any time during the year? *If "Yes," complete Part II, col. (c), and Part XV*	7	✓	
8a	Enter the states to which the foundation reports or with which it is registered (see page 19 of the instructions) ▶ Illinois			
b	If the answer is "Yes" to line 7, has the foundation furnished a copy of Form 990-PF to the Attorney General (or designate) of each state as required by *General Instruction G? If "No," attach explanation*	8b	✓	
9	Is the foundation claiming status as a private operating foundation within the meaning of section 4942(j)(3) or 4942(j)(5) for calendar year 2009 or the taxable year beginning in 2009 (see instructions for Part XIV on page 27)? *If "Yes," complete Part XIV*	9		✓
10	Did any persons become substantial contributors during the tax year? *If "Yes," attach a schedule listing their names and addresses*	10		✓

Part VII-A Statements Regarding Activities *(continued)*

			Yes	No
11	At any time during the year, did the foundation, directly or indirectly, own a controlled entity within the meaning of section 512(b)(13)? If "Yes," attach schedule (see page 20 of the instructions)	11		✓
12	Did the foundation acquire a direct or indirect interest in any applicable insurance contract before August 17, 2008?	12		✓
13	Did the foundation comply with the public inspection requirements for its annual returns and exemption application?	13	✓	

Website address ▶

14 The books are in care of ▶ Richard and Elaine Tinberg Telephone no. ▶ 847 441 9152
Located at ▶ 159 Sheridan Winnetka IL ZIP+4 ▶ 60093

15 Section 4947(a)(1) nonexempt charitable trusts filing Form 990-PF in lieu of **Form 1041**—Check here ▶ ☐
and enter the amount of tax-exempt interest received or accrued during the year ▶ 15

Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required

File Form 4720 if any item is checked in the "Yes" column, unless an exception applies.

			Yes	No
1a	During the year did the foundation (either directly or indirectly):			
	(1) Engage in the sale or exchange, or leasing of property with a disqualified person? ☐ Yes ☑ No			
	(2) Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person? ☐ Yes ☑ No			
	(3) Furnish goods, services, or facilities to (or accept them from) a disqualified person? ☐ Yes ☑ No			
	(4) Pay compensation to, or pay or reimburse the expenses of, a disqualified person? ☐ Yes ☑ No			
	(5) Transfer any income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)? ☐ Yes ☑ No			
	(6) Agree to pay money or property to a government official? (**Exception.** Check "No" if the foundation agreed to make a grant to or to employ the official for a period after termination of government service, if terminating within 90 days.) ☐ Yes ☑ No			
b	If any answer is "Yes" to 1a(1)-(6), did **any** of the acts fail to qualify under the exceptions described in Regulations section 53.4941(d)-3 or in a current notice regarding disaster assistance (see page 20 of the instructions)?	1b		
	Organizations relying on a current notice regarding disaster assistance check here ▶ ☐			
c	Did the foundation engage in a prior year in any of the acts described in 1a, other than excepted acts, that were not corrected before the first day of the tax year beginning in 2009?	1c		✓
2	Taxes on failure to distribute income (section 4942) (does not apply for years the foundation was a private operating foundation defined in section 4942(j)(3) or 4942(j)(5)):			
a	At the end of tax year 2009, did the foundation have any undistributed income (lines 6d and 6e, Part XIII) for tax year(s) beginning before 2009? ☐ Yes ☑ No If "Yes," list the years ▶ 20___, 20___, 20___, 20___			
b	Are there any years listed in 2a for which the foundation is **not** applying the provisions of section 4942(a)(2) (relating to incorrect valuation of assets) to the year's undistributed income? (If applying section 4942(a)(2) to **all** years listed, answer "No" and attach statement—see page 20 of the instructions.)	2b		
c	If the provisions of section 4942(a)(2) are being applied to **any** of the years listed in 2a, list the years here. ▶ 20___, 20___, 20___, 20___			
3a	Did the foundation hold more than a 2% direct or indirect interest in any business enterprise at any time during the year? ☐ Yes ☑ No			
b	If "Yes," did it have excess business holdings in 2009 as a result of **(1)** any purchase by the foundation or disqualified persons after May 26, 1969; **(2)** the lapse of the 5-year period (or longer period approved by the Commissioner under section 4943(c)(7)) to dispose of holdings acquired by gift or bequest; or **(3)** the lapse of the 10-, 15-, or 20-year first phase holding period? *(Use Schedule C, Form 4720, to determine if the foundation had excess business holdings in 2009.)*	3b		
4a	Did the foundation invest during the year any amount in a manner that would jeopardize its charitable purposes?	4a		✓
b	Did the foundation make any investment in a prior year (but after December 31, 1969) that could jeopardize its charitable purpose that had not been removed from jeopardy before the first day of the tax year beginning in 2009?	4b		✓

Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required *(continued)*

5a During the year did the foundation pay or incur any amount to:
(1) Carry on propaganda, or otherwise attempt to influence legislation (section 4945(e))? ☐ Yes ☑ No
(2) Influence the outcome of any specific public election (see section 4955); or to carry on, directly or indirectly, any voter registration drive? ☐ Yes ☑ No
(3) Provide a grant to an individual for travel, study, or other similar purposes? ☐ Yes ☑ No
(4) Provide a grant to an organization other than a charitable, etc., organization described in section 509(a)(1), (2), or (3), or section 4940(d)(2)? (see page 22 of the instructions) ☐ Yes ☑ No
(5) Provide for any purpose other than religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals? ☐ Yes ☑ No

b If any answer is "Yes" to 5a(1)-(5), did any of the transactions fail to qualify under the exceptions described in Regulations section 53.4945 or in a current notice regarding disaster assistance (see page 22 of the instructions)? 5b

Organizations relying on a current notice regarding disaster assistance check here ▶ ☐

c If the answer is "Yes" to question 5a(4), does the foundation claim exemption from the tax because it maintained expenditure responsibility for the grant? ☐ Yes ☐ No

If "Yes," attach the statement required by Regulations section 53.4945-5(d).

6a Did the foundation, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☑ No

b Did the foundation, during the year, pay premiums, directly or indirectly, on a personal benefit contract? 6b ✓

If "Yes" to 6b, file Form 8870.

7a At any time during the tax year, was the foundation a party to a prohibited tax shelter transaction? ☐ Yes ☑ No

b If yes, did the foundation receive any proceeds or have any net income attributable to the transaction? 7b

Part VIII Information About Officers, Directors, Trustees, Foundation Managers, Highly Paid Employees, and Contractors

1 **List all officers, directors, trustees, foundation managers and their compensation (see page 22 of the instructions).**

(a) Name and address	(b) Title, and average hours per week devoted to position	(c) Compensation (If not paid, enter -0-)	(d) Contributions to employee benefit plans and deferred compensation	(e) Expense account, other allowances
Richard Tinberg 159 Sheridan Winnetka IL	President 0	0	0	0
Elaine Tinberg 159 Sheridan Winnetka IL	VP 0	0	0	0
Christine Tinberg 21 Wendell Cambridge Mass	Director 0	0	0	0
Richard J. Tinberg 159 Sheridan Winnetka IL	Director 0	0	0	0

2 **Compensation of five highest-paid employees (other than those included on line 1—see page 23 of the instructions). If none, enter "NONE."**

(a) Name and address of each employee paid more than $50,000	(b) Title, and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans and deferred compensation	(e) Expense account, other allowances
None				

Total number of other employees paid over $50,000 ▶

Part VIII Information About Officers, Directors, Trustees, Foundation Managers, Highly Paid Employees, and Contractors *(continued)*

3 Five highest-paid independent contractors for professional services (see page 23 of the instructions). If none, enter "NONE."

(a) Name and address of each person paid more than $50,000	(b) Type of service	(c) Compensation
None		
Total number of others receiving over $50,000 for professional services ▶		

Part IX-A Summary of Direct Charitable Activities

List the foundation's four largest direct charitable activities during the tax year. Include relevant statistical information such as the number of organizations and other beneficiaries served, conferences convened, research papers produced, etc.	Expenses
1	
2 None	
3	
4	

Part IX-B Summary of Program-Related Investments (see page 24 of the instructions)

Describe the two largest program-related investments made by the foundation during the tax year on lines 1 and 2.	Amount
1 None	
2	
All other program-related investments. See page 24 of the instructions.	
3	
Total. Add lines 1 through 3 ▶	

Part X **Minimum Investment Return** (All domestic foundations must complete this part. Foreign foundations, see page 24 of the instructions.)

1	Fair market value of assets not used (or held for use) directly in carrying out charitable, etc., purposes:		
a	Average monthly fair market value of securities	1a	1,763,838
b	Average of monthly cash balances	1b	298,243
c	Fair market value of all other assets (see page 24 of the instructions)	1c	~~[illegible]~~
d	**Total** (add lines 1a, b, and c)	1d	2,062,081
e	Reduction claimed for blockage or other factors reported on lines 1a and 1c (attach detailed explanation) — 1e		
2	Acquisition indebtedness applicable to line 1 assets	2	
3	Subtract line 2 from line 1d	3	2,062,081
4	Cash deemed held for charitable activities. Enter 1 ½ % of line 3 (for greater amount, see page 25 of the instructions)	4	30,931
5	**Net value of noncharitable-use assets.** Subtract line 4 from line 3. Enter here and on Part V, line 4	5	2,031,150
6	**Minimum investment return.** Enter 5% of line 5	6	101,557

Part XI **Distributable Amount** (see page 25 of the instructions) (Section 4942(j)(3) and (j)(5) private operating foundations and certain foreign organizations check here ▶ ☐ and do not complete this part.)

1	Minimum investment return from Part X, line 6			1	101,557
2a	Tax on investment income for 2009 from Part VI, line 5	2a	304		
b	Income tax for 2009. (This does not include the tax from Part VI.)	2b			
c	Add lines 2a and 2b			2c	304
3	Distributable amount before adjustments. Subtract line 2c from line 1			3	101,253
4	Recoveries of amounts treated as qualifying distributions			4	
5	Add lines 3 and 4			5	101,253
6	Deduction from distributable amount (see page 25 of the instructions)			6	
7	**Distributable amount** as adjusted. Subtract line 6 from line 5. Enter here and on Part XIII, line 1			7	101,253

Part XII **Qualifying Distributions** (see page 25 of the instructions)

1	Amounts paid (including administrative expenses) to accomplish charitable, etc., purposes:		
a	Expenses, contributions, gifts, etc.—total from Part I, column (d), line 26	1a	163,950
b	Program-related investments—total from Part IX-B	1b	
2	Amounts paid to acquire assets used (or held for use) directly in carrying out charitable, etc., purposes	2	
3	Amounts set aside for specific charitable projects that satisfy the:		
a	Suitability test (prior IRS approval required)	3a	
b	Cash distribution test (attach the required schedule)	3b	
4	**Qualifying distributions.** Add lines 1a through 3b. Enter here and on Part V, line 8, and Part XIII, line 4	4	163,950
5	Foundations that qualify under section 4940(e) for the reduced rate of tax on net investment income. Enter 1% of Part I, line 27b (see page 26 of the instructions)	5	304
6	**Adjusted qualifying distributions.** Subtract line 5 from line 4	6	163,646

Note. The amount on line 6 will be used in Part V, column (b), in subsequent years when calculating whether the foundation qualifies for the section 4940(e) reduction of tax in those years.

Part XIII Undistributed Income (see page 26 of the instructions)

		(a) Corpus	(b) Years prior to 2008	(c) 2008	(d) 2009
1	Distributable amount for 2009 from Part XI, line 7				101,253
2	Undistributed income, if any, as of the end of 2009:				
a	Enter amount for 2008 only				
b	Total for prior years: 20___,20___,20___				
3	Excess distributions carryover, if any, to 2009:				
a	From 2004 . . . 6,789				
b	From 2005 . . . 37,185				
c	From 2006 . . . -				
d	From 2007 . . . 41,774				
e	From 2008 . . . 22,007				
f	**Total** of lines 3a through e	107,755			
4	Qualifying distributions for 2009 from Part XII, line 4: ▶ $ 163,950				
a	Applied to 2008, but not more than line 2a				
b	Applied to undistributed income of prior years (Election required—see page 26 of the instructions)				
c	Treated as distributions out of corpus (Election required—see page 26 of the instructions)				
d	Applied to 2009 distributable amount				101,253
e	Remaining amount distributed out of corpus	62,697			
5	Excess distributions carryover applied to 2009 *(If an amount appears in column (d), the same amount must be shown in column (a).)*				
6	**Enter the net total of each column as indicated below:**				
a	Corpus. Add lines 3f, 4c, and 4e. Subtract line 5	170,452			
b	Prior years' undistributed income. Subtract line 4b from line 2b				
c	Enter the amount of prior years' undistributed income for which a notice of deficiency has been issued, or on which the section 4942(a) tax has been previously assessed				
d	Subtract line 6c from line 6b. Taxable amount—see page 27 of the instructions				
e	Undistributed income for 2008. Subtract line 4a from line 2a. Taxable amount—see page 27 of the instructions				
f	Undistributed income for 2009. Subtract lines 4d and 5 from line 1. This amount must be distributed in 2010				
7	Amounts treated as distributions out of corpus to satisfy requirements imposed by section 170(b)(1)(F) or 4942(g)(3) (see page 27 of the instructions)				
8	Excess distributions carryover from 2004 not applied on line 5 or line 7 (see page 27 of the instructions)	6,789			
9	**Excess distributions carryover to 2010.** Subtract lines 7 and 8 from line 6a	163,663			
10	Analysis of line 9:				
a	Excess from 2005 . . . 37,185				
b	Excess from 2006 . . . -				
c	Excess from 2007 . . . 41,774				
d	Excess from 2008 . . . 22,007				
e	Excess from 2009 . . . 62,697				

Part XIV Private Operating Foundations (see page 27 of the instructions and Part VII-A, question 9)

1a If the foundation has received a ruling or determination letter that it is a private operating foundation, and the ruling is effective for 2009, enter the date of the ruling . . . . . . ▶

b Check box to indicate whether the foundation is a private operating foundation described in section ☐ 4942(j)(3) or ☐ 4942(j)(5)

	Tax year (a) 2009	Prior 3 years (b) 2008	(c) 2007	(d) 2006	(e) Total
2a Enter the lesser of the adjusted net income from Part I or the minimum investment return from Part X for each year listed					
b 85% of line 2a					
c Qualifying distributions from Part XII, line 4 for each year listed					
d Amounts included in line 2c not used directly for active conduct of exempt activities					
e Qualifying distributions made directly for active conduct of exempt activities. Subtract line 2d from line 2c					
3 Complete 3a, b, or c for the alternative test relied upon:					
a "Assets" alternative test—enter: (1) Value of all assets					
(2) Value of assets qualifying under section 4942(j)(3)(B)(i)					
b "Endowment" alternative test—enter 2/3 of minimum investment return shown in Part X, line 6 for each year listed					
c "Support" alternative test—enter: (1) Total support other than gross investment income (interest, dividends, rents, payments on securities loans (section 512(a)(5)), or royalties)					
(2) Support from general public and 5 or more exempt organizations as provided in section 4942(j)(3)(B)(iii)					
(3) Largest amount of support from an exempt organization					
(4) Gross investment income					

Part XV Supplementary Information (Complete this part only if the foundation had $5,000 or more in assets at any time during the year—see page 28 of the instructions.)

1 Information Regarding Foundation Managers:

a List any managers of the foundation who have contributed more than 2% of the total contributions received by the foundation before the close of any tax year (but only if they have contributed more than $5,000). (See section 507(d)(2).)

Richard Tinberg, Elaine Tinberg

b List any managers of the foundation who own 10% or more of the stock of a corporation (or an equally large portion of the ownership of a partnership or other entity) of which the foundation has a 10% or greater interest.

None

2 Information Regarding Contribution, Grant, Gift, Loan, Scholarship, etc., Programs:

Check here ▶ ☐ if the foundation only makes contributions to preselected charitable organizations and does not accept unsolicited requests for funds. If the foundation makes gifts, grants, etc. (see page 28 of the instructions) to individuals or organizations under other conditions, complete items 2a, b, c, and d.

a The name, address, and telephone number of the person to whom applications should be addressed:

Richard / Elaine Tinberg 159 Sheridan Winnetka IL 60093 8474419152

b The form in which applications should be submitted and information and materials they should include:

Letter describing proposed use of funds, current financial statements, budget, general information regarding organization.

c Any submission deadlines:

None

d Any restrictions or limitations on awards, such as by geographical areas, charitable fields, kinds of institutions, or other factors:

None

Part XV Supplementary Information (continued)

3 Grants and Contributions Paid During the Year or Approved for Future Payment

Recipient Name and address (home or business)	If recipient is an individual, show any relationship to any foundation manager or substantial contributor	Foundation status of recipient	Purpose of grant or contribution	Amount
a *Paid during the year*				
See attached				
Total ▶ **3a**				
b *Approved for future payment*				
None				
Total ▶ **3b**				

Part XVI-A Analysis of Income-Producing Activities

Enter gross amounts unless otherwise indicated.

	Unrelated business income		Excluded by section 512, 513, or 514		(e) Related or exempt function income (See page 28 of the instructions.)
	(a) Business code	(b) Amount	(c) Exclusion code	(d) Amount	
1 Program service revenue:					
a					
b					
c					
d					
e					
f		None			
g Fees and contracts from government agencies					
2 Membership dues and assessments					
3 Interest on savings and temporary cash investments					
4 Dividends and interest from securities					
5 Net rental income or (loss) from real estate:					
a Debt-financed property					
b Not debt-financed property					
6 Net rental income or (loss) from personal property					
7 Other investment income					
8 Gain or (loss) from sales of assets other than inventory					
9 Net income or (loss) from special events					
10 Gross profit or (loss) from sales of inventory					
11 Other revenue: a					
b					
c					
d					
e					
12 Subtotal. Add columns (b), (d), and (e)					

13 **Total.** Add line 12, columns (b), (d), and (e) . . . . . . 13 ______

(See worksheet in line 13 instructions on page 28 to verify calculations.)

Part XVI-B Relationship of Activities to the Accomplishment of Exempt Purposes

Line No. ▼	Explain below how each activity for which income is reported in column (e) of Part XVI-A contributed importantly to the accomplishment of the foundation's exempt purposes (other than by providing funds for such purposes). (See page 29 of the instructions.)
	None

Part XVII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations

			Yes	No
1	Did the organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?			
a	Transfers from the reporting foundation to a noncharitable exempt organization of:			
	(1) Cash	1a(1)		✓
	(2) Other assets	1a(2)		✓
b	Other transactions:			
	(1) Sales of assets to a noncharitable exempt organization	1b(1)		✓
	(2) Purchases of assets from a noncharitable exempt organization	1b(2)		✓
	(3) Rental of facilities, equipment, or other assets	1b(3)		✓
	(4) Reimbursement arrangements	1b(4)		✓
	(5) Loans or loan guarantees	1b(5)		✓
	(6) Performance of services or membership or fundraising solicitations	1b(6)		✓
c	Sharing of facilities, equipment, mailing lists, other assets, or paid employees	1c		✓

d If the answer to any of the above is "Yes," complete the following schedule. Column **(b)** should always show the fair market value of the goods, other assets, or services given by the reporting foundation. If the foundation received less than fair market value in any transaction or sharing arrangement, show in column **(d)** the value of the goods, other assets, or services received.

(a) Line no.	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers, transactions, and sharing arrangements

2a Is the foundation directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? ☐ Yes ☑ No

b If "Yes," complete the following schedule.

(a) Name of organization	(b) Type of organization	(c) Description of relationship

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer or fiduciary) is based on all information of which preparer has any knowledge.

▶ Elaine Irving | 5/15/10 | ▶ Vice President

Signature of officer or trustee | Date | Title

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ▶ ☐	Preparer's identifying number (see **Signature** on page 30 of the instructions)
Firm's name (or yours if self-employed), address, and ZIP code ▶		EIN ▶	
		Phone no.	

The Tinberg Foundation
#36-3742179 Form 990-PF

Part II - Balance sheets - Line 10b - Investments - Corporate Stock	# Shares	Book Value	FMV
JP Morgan US Large Cap Core Plus Fund #1002	7,175.30	$ 134,895.61	$ 130,446.92
JP Morgan International Equity Index #3132	4,409.32	73,169.64	81,395.97
JP Morgan Intrepid Growth Fund #1202	3,836.32	75,000.00	75,498.72
Dodge & Cox International Stock	2,924.43	125,000.00	93,143.06
Ishares Russell 1000 Growth Index Fund	555.00	29,636.61	27,666.75
Ishares Russell Midcap Index Fund	1,734.00	136,431.27	143,072.34
Causeway International Value Fund	3,027.50	52,617.06	34,240.45
Matthews Pacific Tiger Fund - Cl 1	5,714.56	92,257.26	109,890.95
Apollo Investment Corp.	4,260.00	58,227.86	40,640.40
Eaton Vance Spl Invt Tr	4,434.33	60,790.30	74,408.11
Manning and Napier Fund Equity Series	8,006.87	111,129.56	135,876.50
Ishares Russell 2000 Index Fund	751.00	41,226.76	46,892.44
JP Morgan Asia Equity Fund #1134	3,227.69	81,620.80	100,703.90
Manning and Napier Fund World Opportunties Series	13,161.53	90,634.68	106,871.63
		$ 1,162,637.41	$ 1,200,748.14

Part II - Balance sheets - Line 10c - Investments - Corporate Bonds			
JP Morgan High Yield Bond Fund #3580	14617.648	$ 94,392.65	$ 113,140.60
JP Morgan Short Duration Bond Fund #3133	27994.581	301,249.51	303,741.20
Ishares Barclays Tips Bond Fund	886	90,146.16	92,055.40
JP Morgan Strategic Income Fund #3844	6926.407	80,000.00	80,277.06
		$ 565,788.32	$ 589,214.26

The Tinberg Foundation
#36-3742179 Form 990-PF

Part II - Balance sheets - Line 13 - Investments - Other

	# Shares	Book Value	FMV
Barc 9m RTY Tactical Note	30,000.00	30,000.00	30,426.00
Barc 9m SPX Note	40,000.00	40,000.00	40,428.00
Barclays Bren Linked to S&P GSGI	25,000.00	25,000.00	24,912.50
Credit Suisse Bren SPX 5/20/10	20,000.00	20,000.00	23,508.00
CS EAFE Bren 7/22/10	35,000.00	35,000.00	38,776.50
GS 18m Bren Linked to USD vs BRL	25,000.00	25,000.00	26,640.00
GS 9m EAFE Note	20,000.00	20,000.00	20,974.00
HSBC Bren SPX 6/16/10	60,000.00	60,000.00	68,484.00
HSBC Mkt Plus AIB 11/19/10	35,000.00	35,000.00	43,970.50
JPM EAFE Bren 8/12/10	20,000.00	20,000.00	21,244.00
JP Morgan Chase ARN SPX SX5E 9/20/10	50,000.00	50,000.00	37,740.00
Merrill Lynch ARN SPX 9/21/10	50,000.00	50,000.00	40,935.00
Merrill Lynch ARN SPX 2/19/10	50,000.00	50,000.00	42,425.00
		$ 460,000.00	$ 460,463.50

Part IV - Capital Gains and Losses for Tax on Investment Income

	Date Sold	Sales Price	Cost	Gain/(Loss)
GS 9m RTY Tactical Note	31-Dec	$ 21,400.00	$ 20,000.00	$ 1,400.00
Ishares Russell Midcap Index Fund	28-Oct	29,898.79	39,875.59	(9,976.80)
JP Morgan Fund #1134	28-Oct	15,000.00	13,379.20	1,620.80
JP Morgan Fund #3580	28-Oct	40,000.00	38,858.19	1,141.81
JP Morgan Fund #3129	28-Oct	27,524.20	37,970.42	(10,446.22)
Matthews Pacific Tiger Fund	28-Oct	15,000.00	16,897.98	(1,897.98)
JPM 9m RTY Tactical Note	29-Sep	33,000.00	30,000.00	3,000.00
Barclays SARN SPX 2/16/11	25-Aug	29,328.75	27,000.00	2,328.75
JP Morgan Fund #3132	23-Jul	20,000 00	33,596.60	(13,596.60)
Apollo Investment Corp.	17-Jul	2.82	-	2.82

Part IV - Capital Gains and Losses for Tax on Investment Income (continued)

SPDR Trust Series 1	27-May	21,093.06	29,506.65	(8,413.59)
Ishares MSCI EAFE Index Fund	27-May	59,940.81	99,151.00	(39,210.19)
Buffered Return Enhanced Note	5-Jun	32,508.00	27,000.00	5,508.00
JP Morgan Fund #1206	4-Jun	61,605.26	74,574.79	(12,969.53)
JP Morgan Fund #1002	4-Jun	30,000.00	40,104.39	(10,104.39)
JP Morgan Fund #3129	4-Jun	60,000.00	91,267.99	(31,267.99)
CME Group	5-May	48,331.73	41,546.00	6,785.73
AON Corp.	5-May	182,894.29	125,300.00	57,594.29
Ishares Dow Jones US Energy Sector Index Fund	5-May	72,494.63	51,142.31	21,352.32
Buffered Return Enhanced Note	26-May	61,200.00	50,000.00	11,200.00
JP Morgan Fund #1321	27-May	33,510.14	49,184.82	(15,674.68)
Apollo Investment Corp.	4-Mar	360.48	2,040.95	(1,680.47)
Apollo Investment Corp.	12-Mar	239.39	2,040.95	(1,801.56)
Apollo Investment Corp.	13-Mar	253.10	2,040.95	(1,787.85)
Apollo Investment Corp.	13-Mar	247.84	2,040.95	(1,793.11)
Apollo Investment Corp.	13-Mar	252.23	2,040.95	(1,788.72)
Apollo Investment Corp.	16-Mar	505.75	4,081.90	(3,576.15)
Apollo Investment Corp.	16-Mar	258.75	2,040.95	(1,782.20)
Apollo Investment Corp.	17-Mar	213.66	2,040.95	(1,827.29)
Apollo Investment Corp.	17-Mar	204.16	2,040.95	(1,836.79)
Apollo Investment Corp.	18-Mar	213.57	2,040.95	(1,827.38)
Apollo Investment Corp.	19-Mar	209.27	2,036.10	(1,826.83)
Apollo Investment Corp.	19-Mar	213.73	2,017.26	(1,803.53)
Apollo Investment Corp.	19-Mar	209.59	2,010.89	(1,801.30)
Annual Review Notes	2-Feb	27,485.00	50,000.00	(22,515.00)
Apollo Investment Corp.	12-Feb	522.46	2,040.95	(1,518.49)
Ishares Russell Midcap Growth Index Fund	18-Feb	36,604.59	70,544.64	(33,940.05)
Nelnet Student Loan Corporation	22-Jan	100,000.00	4.29	99,995.71
JP Morgan Fund #3844 Capital Gain Distribution	16-Dec			34.56
Total		$ 1,062,726 05	$ 1,087,460.51	$ (24,699.90)

Tinberg Foundation Contributions - 2009 FEIN # 36-3742179

Name of Charity	Street Address	City, State Zip	Date	Check		Amount	Purpose
Steppenwolf Theatre	758 W. North Avenue	Chicago, IL 60614	26-Feb	526	$	3,500	For general operations of the organization
Writer's Theatre	664 Vernon Avenue	Glencoe IL 60022	24-Mar	527	$	10,000	For general operations of the organization
Chicago Shakespeare Theatre	800 East Grand Avenue	Chicago IL 60611	14-Apr	528	$	4,000	For general operations of the organization
Court Theatre	5535 S. Ellis Avenue	Chicago, IL 60637	14-Apr	529	$	3,000	For general operations of the organization
Volunteer Center of New Trier Township	520 Glendale Avenue, Suite 13	Winnetka IL 60093	14-Apr	530	$	100	For general operations of the organization
Joffrey Ballet	10 E. Randolph St.	Chicago IL 60601	23-Apr	531	$	250	For general operations of the organization
American Cancer Society	Box 22718	Oklahoma City, OK 73123	8-May	532	$	250	For general operations of the organization
Vital Bridges	348 N. Ashland Ave.	Chicago IL 60607	3-Jun	534	$	250	For general operations of the organization
Chicago Botanic Garden	1000 Lake-Cook Road	Glencoe IL 60022	14-Jun	535	$	250	For general operations of the organization
North Shore Art League	620 Lincoln Avenue	Winnetka IL 60093	6-Sep	536	$	100	For general operations of the organization
Children's Memorial Hospital	2300 Children's Plaza, Box 4	Chicago, IL 60614	30-Sep	537	$	250	For general operations of the organization
Erika's Lighthouse	Box 616	Winnetka IL 60093	24-Oct	538	$	5,000	For general operations of the organization
The Challenged Athlete Foundation	P.O. box 910769	San Diego CA 92191	24-Oct	539	$	500	For general operations of the organization
Monterey Bay Aquarium	886 Cannery Row	Monterey CA 93940-1023	1-Nov	540	$	250	For general operations of the organization
Point Lobos Association	Route 1, Box 62	Carmel CA 93923	2-Nov	541	$	100	For general operations of the organization
Erika's Lighthouse	Box 616	Winnetka IL 60093	9-Dec	543	$	100	For general operations of the organization
Galapagos Conservatory	407 N. Washington, Suite 105	Falls Church, VA 22046	20-Dec	544	$	250	For general operations of the organization
Wetlands Initiative	53 West Jackson #1015	Chicago IL 60604	20-Dec	545	$	100	For general operations of the organization
Prairie Biotic Research	Box 5424	Madison, WI 53705	20-Dec	546	$	100	For general operations of the organization
Nature Conservatory	4245 N. Fairfax Dr. Suite 100	Arlington, VA 22203	20-Dec	547	$	250	For general operations of the organization
Alliance for the Great Lakes	17 North State, Suie 1390	Chicago, IL 60602	20-Dec	548	$	100	For general operations of the organization
Millikin University	1184 West Main Street	Decatur, IL 62522	20-Dec	549	$	250	For general operations of the organization
Friends of the Library	Box 8146	Northfield IL 60093	20-Dec	550	$	50	For general operations of the organization
Winnetka Historical Society	Box 365	Winnetka IL 60093	20-Dec	551	$	100	For general operations of the organization
The Winnetka Allianec for Early Childhood	1235 Oak	Winnetka IL 60093	20-Dec	552	$	100	For general operations of the organization
Samaritan Counseling Center	690 Oak St.	Winnetka IL 60093	20-Dec	553	$	50	For general operations of the organization
Family Service of Winnetka/Northfield	992 1/2 Green Bay Rd	Winnetka IL 60093	20-Dec	554	$	50	For general operations of the organization
Goodman Theatre	333 7th Avenue, 2nd Floor	New York, NY 10001	20-Dec	555	$	250	For general operations of the organization
WTTW	5400 N. St. Louis Avenue	Chicago IL 60625	20-Dec	556	$	250	For general operations of the organization
Greater Chicago Food Depository	4100 W. Ann Lurie Place	Chicago, IL 60632	20-Dec	557	$	250	For general operations of the organization
Doctors without Borders	333 7th Avenue, 2nd Floor	New York, NY 10001	20-Dec	558	$	2,000	For general operations of the organization
Plan USA	155 Plan Way	Warwick RI 02886	20-Dec	559	$	300	For general operations of the organization
Haven Youth and Family Services	560 Green Bay Road, Suite 10	Winnetka IL 60093	20-Dec	560	$	100	For general operations of the organization

Tinberg Foundation Contributions - 2009 **FEIN # 36-3742179**

Name of Charity	Street Address	City, State Zip	Date	Check	Amount	Purpose
Chicago Botanic Garden Annual Fund	1000 Lake-Cook Road	Glencoe IL 60022	20-Dec	561	$ 5,000	For general operations of the organization
Chicago Botanic Garden Endangered Plant Research Program	1000 Lake-Cook Road	Glencoe IL 60022	20-Dec	562	$ 10,000	Endangered Plant Research Program
Writers Theatre	664 Vernon Avenue	Glencoe IL 60022	20-Dec	563	$ 17,500	For general operations of the organization
CARE	70 East Lake Street #1430	Chicago IL 60601	20-Dec	564	$ 20,000	For general operations of the organization
Holy Family Ministries	790 Frontage Road #318	Northfield IL 60093	20-Dec	565	$ 5,000	For general operations of the organization
Northwestern University - Weinberg School	2020 Ridge Avenue	Evanston IL 60208	20-Dec	567	$ 10,000	Weinberg School
Posse Foundation	111 W. Jackson Blvd	Chicago IL 60604	20-Dec	568	$ 500	For general operations of the organization
Northwestern University - Kellogg School	2020 Ridge Avenue	Evanston IL 60208	20-Dec	569	$ 20,000	Kellogg School of Management
WBEZ	848 E. Grand Ave	Chicago IL 60611-3509	20-Dec	570	$ 3,500	For general operations of the organization
WBEZ - campaign for sound future	848 E. Grand Ave	Chicago IL 60611-3509	20-Dec	571	$ 5,000	Campaign for Sound Future
University of Chicago Neurovascular Surguery Research Fund	1427 E 60th St	Chicagoo IL 60637	20-Dec	572	$ 35,000	Neurovascular Surguery Research Fund
					$ 163,950	

AMENDED AND RESTATED BY-LAWS

OF

THE TINBERG FOUNDATION

(the "Corporation")

(An Illinois Not For Profit Corporation)

ARTICLE I

NAME, PURPOSE AND LOCATION

SECTION 1. NAME. The name of the Corporation is THE TINBERG FOUNDATION

SECTION 2. PURPOSE. The Corporation is organized to operate exclusively for such charitable, religious, literary, educational and scientific purposes, including, for such purposes, the making of distributions to organizations described in Sections 170(b)(1)(A) and 170(c) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States federal tax law (the "Code"), as will qualify it to be exempt from federal income tax under Section 501(c)(3) of the Code.

The Corporation shall have and exercise all rights and powers conferred on corporations under the laws of the State of Illinois, provided, however, that the Corporation is not empowered to engage in any activity which in itself is not in furtherance of its purposes as set forth in this Section, or which is not permitted to be carried on (i) by a Corporation exempt from federal income tax under Section 501(c)(3) of the Code, (ii) by a Corporation, contributions to which are deductible under Section 170(c)(2) of the Code or (iii) by a not for profit corporation under the State of Illinois General Not For Profit Corporation Act of 1986, as amended (the "Act").

The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code. The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code. The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Code. The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Code. The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code. The Corporation shall not provide an economic benefit defined as an excess benefit under Section 4958 of the Code.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

Upon liquidation or dissolution, all properties and assets of the Corporation remaining after paying or providing for all debts, liabilities and obligations of the Corporation and for necessary expenses thereof shall be distributed and paid over to such fund, foundation, or corporation organized and operated for charitable, religious, literary, educational or scientific purposes as the Board of Directors shall determine, and as shall, at the time, be qualified as a tax-exempt organization under Section 501(c)(3) of the Code and have established its tax-exempt status with the State of Illinois. Any such assets not so disposed of shall be disposed of by the District Court of the county in which the principal office of the Corporation is then located, exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes and have established tax-exempt status with the State of Illinois.

SECTION 3. LOCATION. The registered office of the Corporation shall be in the State of Illinois, but the Corporation may have such other offices within or without the State of Illinois as the Board of Directors may determine from time to time.

ARTICLE II

MEMBERSHIP

SECTION 1. MEMBERS. The initial Members of the Corporation are Richard W. Tinberg and Elaine M. Tinberg. Additional Members may be appointed or removed by vote of a majority of the Members (Richard W. Tinberg, Elaine M. Tinberg and such additional Members sometimes referred to hereinafter collectively as the "Initial Members"). The Members shall have such rights, powers and duties as are provided by the Act, by the Certificate of Incorporation and by these By-Laws, as in effect from time to time. Each Member shall remain a Member of the Corporation for his life or until his earlier death, incompetency, removal or resignation.

SECTION 2. SUCCESSOR MEMBERS. Upon the death, incompetency or resignation of both of Richard W. Tinberg and Elaine M. Tinberg, all other Members shall resign as expeditiously as possible thereafter and successor Members shall be appointed and serve as hereinafter provided in this Section 2.

(a) DESIGNATION OF CLASSES OF MEMBERS. Initially, there shall be two (2) Classes of Members: Class A and Class B. The initial Class A Member shall be Christine Elaine Tinberg (or her guardian or other legal representative during any period that she is incompetent), and the initial Class B Member shall be Richard James Tinberg (or his guardian or other legal representative during any period that he is incompetent) (each individually, an "Initial Class Member," and collectively, the "Initial Class Members").

(b) APPOINTMENT OF ADDITIONAL CLASS MEMBERS. At any time, a Class of Members may appoint one or more additional persons to serve as Members of such

Class; provided, however, that if the Initial Class Member of such class is living and not incompetent, the written consent of such Initial Class Member shall be required to appoint one or more additional persons to serve as Members of the Class.

An Initial Class Member may designate one or more persons who will serve as additional or successor Members of his or her Class during his or her life or upon his or her death by a duly acknowledged instrument delivered to the Board of Directors or by his or her Will admitted to probate in any jurisdiction.

If only one person (other than an Initial Class Member) is serving as a Member of a Class, such Member may designate one or more persons who will serve as successor Members of his Class upon his or her death by a duly acknowledged instrument delivered to the Board of Directors or by his or her Will admitted to probate in any jurisdiction, such designation only to be effective if such person is the only Member of such Class upon such person's death.

Notwithstanding the foregoing, Members of a Class must be descendants of its Initial Class Member.

(c) MEMBER APPOINTMENT IF A CLASS HAS NO MEMBERS; TERMINATION OF CLASS WHERE NO SUCCESSOR MEMBERS.

(i) If at any time a Class has no Members, then those individuals in the most senior generation of the descendants of the Initial Class Member of such Class in which there are persons living and willing to become Members of such Class (or their guardians or other legal representatives during any period that they are incompetent) shall become Members of such Class. If any individual in such senior generation was not living or not willing to become a Member of such Class at the time when this provision applied to that individual's generation, then such individual may become a Member of the Class when he or she is later living and willing to become a Member.

(ii) If at any time a Class has no Members and no descendants of the Initial Class Member of such Class are willing to become Members of such Class, such Class shall no longer exist.

SECTION 3. ANNUAL MEETING. The annual meeting of the Members shall be held annually for the purpose of electing Directors and for the transaction of such other business as may properly come before the Members at a date to be determined by the Initial Members (or, if none, the Classes of Members) from time to time.

SECTION 4. SPECIAL MEETINGS. Special meetings of the Members may be called by the President, by the Board of Directors or by the Initial Members (or, if none, the Classes of Members). The business transacted at any special meeting shall be limited to the purpose or purposes stated in the notice referred to in Section 5 of this Article.

SECTION 5. NOTICE OF MEETINGS. Notice of the time and place of such annual meeting shall be given by the Secretary by mailing a copy thereof or delivering the same to each Initial Member (or, if none, each Class of Members) not less than ten (10) nor more than fifty (50) days before such annual meeting. Written notice of a special meeting of the Members stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered to the Initial Members (or, if none, the Classes of Members) not less than five (5) nor more than sixty (60) days before the date of such meeting, or in the case of a removal of one or more directors, a merger, consolidation, dissolution, sale or lease or exchange of assets not less than twenty (20) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the person or persons calling such meeting.

SECTION 6. MEMBER VOTING RIGHTS. Without the prior approval of the Initial Members (or, if none, the Classes of Members), the Corporation shall not: (i) merge or consolidate with or into another domestic or foreign corporation; (ii) sell, lease, exchange, mortgage, transfer or pledge all or substantially all of its assets; (iii) voluntarily dissolve and wind up its affairs; or (iv) adopt a plan of distribution upon dissolution.

SECTION 7. MANNER OF VOTING. Any time an action or matter is to be taken, approved or adopted by the Members, it shall be submitted to a vote of the Initial Members, or, if none, then it shall be submitted to a vote of the Classes of Members.

(a) VOTING ON A MATTER REQUIRING ACTION BY THE INITIAL MEMBERS. Each of the Initial Members shall be entitled to one (1) vote on each matter required to be or otherwise submitted to a vote of the Members.

(i) QUORUM. A majority of the Initial Members of the Corporation then in office shall constitute a quorum for the transaction of business at any meeting of the Members.

(ii) VOTE REQUIRED FOR ADOPTION OF A MATTER. The affirmative vote of the majority of the Initial Members (either present or represented by proxy) at a meeting of the Members at which a quorum is present is required to take an action or to approve or adopt a matter voted upon by such Members.

(b) VOTING ON A MATTER REQUIRING ACTION BY THE CLASSES OF MEMBERS. Any time an action or matter is to be taken, approved or adopted by "the Classes of Members" (as opposed to actions or matters to be taken, approved or adopted by an individual Class of Members), each Class of Members shall have one (1) vote, with the vote of each Class of Members being determined in accordance with subsection (c) of this Section.

(i) QUORUM. A majority of the existing Classes of Members shall be necessary to constitute a quorum for the purpose of approving or adopting a matter by the Classes of Members.

(ii) VOTE REQUIRED FOR ADOPTION OF A MATTER. Unless otherwise provided by the Act or these By-Laws, the affirmative vote of a majority of the Classes of Members at which a quorum of Classes is present is required for the approval or adoption of a matter voted upon by the Classes of Members.

(c) VOTING ON A MATTER REQUIRING ACTION BY A CLASS OF MEMBERS. Any time an action or matter is to be taken or adopted by an individual Class of Members (as opposed to actions or matters to be taken or adopted by the Classes of Members), the following shall apply.

(i) QUORUM. A majority of the Members of a particular Class of Members shall be necessary to constitute a quorum for the purpose of approving or adopting a matter by such Class.

(ii) VOTE REQUIRED FOR ADOPTION OF A MATTER. Unless otherwise provided by the Act or these By-Laws, the affirmative vote of the majority of the Members of a Class (either present or represented by proxy) at a meeting of the Members at which a quorum of such Class is present is required to take an action or to approve or adopt a matter voted upon by such Class of Members.

(iii) INFORMAL ACTION BY A CLASS OF MEMBERS. Any action which is required to be taken, or which may be taken at a meeting of an individual Class of Members may be taken without a meeting if a written ballot setting forth the proposed action is approved and signed by all the Members of the individual Class of Members entitled to vote with respect to the subject matter thereof. Such written ballot shall have the same force and effect as a unanimous vote of the Members of the individual Class of Members.

SECTION 8. PROXIES. A Member may vote either in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

SECTION 9. INFORMAL ACTION BY MEMBERS. Any action which is required to be taken, or which may be taken, at a meeting of the Members may be taken without a meeting if a written ballot setting forth the proposed action is approved and signed by all the Initial Members (or, if none, all the Classes of Members) entitled to vote with respect to the subject matter thereof. Such written ballot shall have the same force and effect as a unanimous vote of the Initial Members (or if none, as a unanimous vote of the Classes of Members).

SECTION 10. TRANSFERABILITY OF MEMBERSHIP. A membership hereunder shall not be transferable or assignable by the Initial Members or the Classes of Members.

SECTION 11. PLACE OF MEETINGS. Meetings of the Members may be held at such place, either within or without the State of Illinois, as the Initial Members (or, if none, the Classes of Members) may designate, or if no designation is made, at the registered office of the Corporation in the State of Illinois.

SECTION 12. LIABILITIES OF THE MEMBERS. The Members shall not be liable for the debts or obligations of the Corporation.

SECTION 13. RESIGNATIONS. A Member may resign at any time by giving written notice to the President or Secretary of the Corporation. Such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 14. PROCEDURE FOR DETERMINING INCOMPETENCY. For purposes of this Article, a Member shall be considered "incompetent" if (1) such Member is a minor or is under a legal disability (under the laws of such Member's domicile) or (2) such Member has been certified in writing to be unable to manage his financial affairs by a majority of the other Members and the adult children of the Member whose competency is in question. If a Member has been declared incompetent hereunder, he will resume his status as a Member upon written acceptance of such status after the Board of Directors' receipt of written certification from a majority of the other Members and the adult children of the Member whose competency is in question that the Member has regained competency pursuant to this Section.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. GENERAL POWERS AND DUTIES. The property, business and affairs of the Corporation shall be managed by the Board of Directors. Without limiting the generality of the foregoing, the Board of Directors may exercise all such powers of the Corporation as are provided by the Act, by the Certificate of Incorporation and by these By-Laws, as in effect from time to time.

SECTION 2. NUMBER. The Board of Directors shall consist of four (4) persons; provided, however, that the number of directors on the Board of Directors may be changed from time to time by the Members, if any, otherwise by the Board of Directors, provided that the minimum number of Directors shall be three (3) and the maximum number shall be eight (8).

SECTION 3. ELECTION AND TERM. Directors shall be elected by the Initial Members (or, if none, the Classes of Members) at each annual meeting of the Members; provided, however, that if there are two or more Classes of Members, each Class of Members shall select one (1) Director, with the vote of each Class of Members being determined in accordance with Article II; provided, further, that if there are more board vacancies than there are Classes of Members, then the remaining Directors shall be elected by a majority of the Classes of Members. If there are no Members, Directors shall be elected by the Directors each annual meeting of the Board of Directors. Each Director shall serve until his successor is elected and qualified or until his earlier death, resignation or removal.

SECTION 4. VACANCIES. Any vacancy that may occur on the Board of Directors, or any directorship to be filled by reason of an increase in the number of directors, shall be filled by the Initial Members, or if none, by the Classes of Members, if any, otherwise by the Board of Directors. A Director appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

SECTION 5. MEETINGS. The annual meeting of the Board of Directors shall be held on any date as may be fixed by the President. If the annual meeting of the Board of Directors is scheduled for the same day as the annual meeting of the Members, then the meeting of the Board of Directors shall be held immediately following and at the same place as the annual meeting of the Members. Unless the Board of Directors directs otherwise, the annual meeting of the Board of Directors shall be held at the principal office of the Corporation. Additional regular meetings of the Board of Directors may be held at such time and place as may be fixed by the Board of Directors. Special meetings of the Board of Directors may be called by the President or by any two Directors, and shall be held at such time and place as may be designated in the notice of such meeting.

SECTION 6. NOTICES. Written notice of regular meetings of the Board of Directors stating the place, date and hour of the meeting shall be given to each Director at least three (3) days prior to the date of such meeting. Written notice of special meetings of the Board of Directors stating the place, date and hour of the meeting shall be given to each Director at least five (5) days prior to the date of such meeting. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purposes of, any meeting of the Board of Directors need be specified in the notice of such meeting.

SECTION 7. QUORUM. A majority of the Directors of the Corporation shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

SECTION 8. MANNER OF ACTING. The act of a majority of the Directors (either present or represented by proxy) at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by these By-Laws, by the Certificate of Incorporation or by law.

SECTION 9. INFORMAL ACTION BY DIRECTORS. Any action which is required to be taken, or which may be taken, at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the Directors then in office. Such consent shall have the same force and effect as a unanimous vote of the Board of Directors.

SECTION 10. COMMITTEES. The Board of Directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of two (2) or more directors, which, to the extent provided in such resolution, shall have and may exercise the powers of the Board of Directors in the management and affairs of the Corporation, except as otherwise limited by statute. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified members at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Any members of a committee may be removed by the Board of Directors whenever in their judgment the best interests of the Corporation would be served by such removal. Unless a committee members dies, resigns or is removed, he shall serve on the committee to which he was appointed until his successor is appointed or the committee is terminated. Unless otherwise provided in the resolution of the Board of Directors creating the committee, a majority of the members of the committee shall constitute a quorum and the act of a majority of the members present at a committee meeting where a quorum is present shall be the act of the committee. Each committee may adopt rules for its own government not inconsistent with these By-Laws. Each committee shall keep regular minutes of its meetings and report the same to the Directors when required.

SECTION 11. RESIGNATIONS. Any Director may resign at any time by giving written notice to the President, the Board of Directors, its chairman (if any), or to the Secretary of the Corporation. Such resignation shall take effect when the notice is delivered, unless a future date is specified therein, in which case such future date shall be the effective date of resignation, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 12. REMOVAL OF DIRECTORS. Directors may be removed at any time, with or without cause, by the vote of the Members, if any, at a Member's meeting called pursuant to a notice delivered to the Members stating that a purpose of the meeting is to vote upon the removal of such Directors named in the notice. If the Corporation has no Members, a Director may be removed at any time, with or without cause, by the affirmative vote of two-thirds of the Directors then in office present and voting at a meeting of the Board of Directors at which a quorum is present; provided, if the meeting is a special meeting, a Director may be so removed only if written notice of the proposed removal is delivered to all Directors at least twenty (20) days prior to such meeting.

ARTICLE IV

OFFICERS

SECTION 1. OFFICERS. The Officers of the Corporation shall consist of a President, a Secretary, and a Treasurer and such other Officers, including one or more Vice Presidents, as the Board of Directors may from time to time appoint or elect. One person may hold more than one office in the Corporation, except that one person may not hold both the offices of President and Secretary. No instrument required to be signed by more than one officer may be signed by one person in more than one capacity.

SECTION 2. ELECTION AND TERM. The Officers shall be elected at each annual meeting of the Board of Directors immediately following the election of Directors, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

SECTION 3. OTHER AGENTS The Board of Directors may from time to time appoint such agents as it shall deem necessary, each of whom shall hold office until such appointment has been revoked by the Board of Directors, and each of whom shall have such authority, perform such duties and receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

SECTION 4. PRESIDENT. The President shall be the chief executive officer and chief operating officer of the Corporation. He or she shall in general supervise and control all of the business and affairs of the Corporation, and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall generally manage and supervise the affairs of the Corporation. He or she shall keep the Board of Directors fully informed, and shall freely consult with the Board of Directors concerning the activities of the Corporation. He or she shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Corporation all contracts authorized either generally or specifically by the Board of Directors. He or she shall perform all duties incident to the office of President, subject, however, to the control of the Board of Directors.

SECTION 5. VICE PRESIDENT. The Vice President (and in the event that there is more than one Vice President, each of the Vice Presidents) shall assist the President in the discharge of his or her duties as the President may direct and shall perform such other duties as may be assigned to him or her from time to time by the President or by the Board of Directors. In the absence of the President or in the event of his or her inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board of Directors, or by the President if the Board of Directors has not made such a designation, or in the absence of any designation, then in the order of seniority of tenure as Vice President) shall perform the duties of the President, and when so acting, shall have all powers of and be subject to all the restrictions upon the President. Except in those instances when the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board of Directors or these Bylaws, the Vice President (or each of them if there are more than one) may execute for the Corporation any contracts, deeds, mortgages, bonds, or other instruments which the Board of Directors has authorized, and he or she (without previous authorization by the Board of Directors) may execute such contracts and other instruments as the conduct of the Corporation's business in its ordinary course requires, and he or she may accomplish such execution in each case either individually or with the Secretary, any Assistant Secretary, or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument.

SECTION 6. SECRETARY AND ASSISTANT SECRETARIES. The Secretary shall keep full minutes of all meetings of the Board of Directors and the Members. The Secretary shall attend the meetings of the Board of Directors and the Members and shall act as clerk thereof and record all the acts and votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law, and shall perform such other duties as may be assigned to such office. The Secretary shall have custody of the corporate seal and shall affix the same to all papers and documents whenever the seal is required to be so affixed. The Secretary shall have custody of and properly keep all the record books of the Corporation. The Assistant Secretary, or if there is more than one, the Assistant Secretaries in the order determined by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

SECTION 7. <u>TREASURER AND ASSISTANT TREASURERS</u>. The Treasurer shall keep full and correct account of receipts and disbursements in the books belonging to the Corporation, and shall deposit all monies and other valuable effects to the credit of the Corporation in such banks, trust companies or other depositories as may be designated by the Board of Directors. The Treasurer shall invest the funds of the Corporation for the account of the Corporation in such manner as the Board of Directors shall determine. The Treasurer shall dispose of, or direct agents authorized by the Board of Directors to dispose of, such funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, whenever they may so require, an account of all the transactions conducted as Treasurer and of the financial condition of the Corporation. The Assistant Treasurer, or if there is more than one, the Assistant Treasurers in the order determined by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time determine. If required by the Board of Directors, the Treasurer and each Assistant Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety as the Board of Directors may from time to time prescribe.

SECTION 8. <u>RESIGNATIONS</u>. Any Officer may resign at any time by giving written notice to the Board of Directors or to the President or the Secretary of the Corporation. Any such resignation shall take effect when the notice is delivered, unless a future date is specified therein, in which case such future date shall be the effective date of resignation, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 9. <u>REMOVAL</u>. Any Officer may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby. The removal of an Officer shall be without prejudice to the contract rights, if any, of the Officer so removed.

SECTION 10. <u>VACANCIES</u>. Any vacancy among the Officers shall be filled by the Board of Directors. Any Officer so elected shall hold office until the election at the annual meeting of the Board of Directors and the qualification of his or her successor.

ARTICLE V

INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

SECTION 1. <u>ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION</u>. Subject to Section 4 of this Article, the Corporation may indemnify any person who was or is, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a Director, Officer, Member, employee or agent of the Corporation, or who 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, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendre or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

SECTION 2. ACTIONS BY OR IN THE RIGHT OF THE CORPORATION. Subject to Section 4 of this Article, 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 or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director, Officer, Member, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Corporation, and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

SECTION 3. INDEMNIFICATION WHERE PARTY HAS BEEN SUCCESSFUL IN DEFENSE OF ACTION. To the extent that a Director, Officer, Member, employee or agent of the Corporation has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

SECTION 4. DETERMINATION THAT STANDARDS OF CONDUCT HAVE BEEN MET. Any indemnification under Sections 1 and 2 of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case, upon a determination that indemnification of the Director, Officer, Member, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article and that such indemnification complies with applicable provisions of the Code and applicable state or local law. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (iii) by the Members who are not parties to such action, suit or proceeding.

SECTION 5. PAYMENT IN ADVANCE OF FINAL DISPOSITION. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the Director, Officer, Member, employee or agent to repay such amount, unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized in this Article.

SECTION 6. NON-EXCLUSIVITY OF INDEMNIFICATION. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of the disinterested Members or disinterested Directors, or otherwise, both as to action in his 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, Member, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

SECTION 7. INSURANCE. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Member, employee or agent of the Corporation, or who 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, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article.

SECTION 8. REPORTS. If the Corporation has paid indemnity or has advanced expenses under this Article to a Director, Officer, Member, employee or agent of the Corporation, the Corporation shall report the indemnification or advance in writing to the Members with or before the notice of the next meeting of the Members, or if there is no such notice, before the next meeting of the Members.

SECTION 9. DEFINITION OF THE CORPORATION. For purposes of this Article, references to "the Corporation" shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, members, officers, employees or agents, so that any person who was a director, member, officer, employee or agent of such merging corporation, or was serving at the request of such merging corporation as a director, member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the surviving corporation as such person would have with respect to such merging corporation if its separate existence had continued.

SECTION 10. OTHER DEFINITIONS. For purposes of this Article, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article.

ARTICLE VI

LIMITED LIABILITY OF DIRECTORS, OFFICERS AND PERSONS WHO SERVE WITHOUT COMPENSATION

No Director or Officer serving without compensation, other than reimbursement for actual expenses shall be liable, and no cause of action may be brought for damages resulting (i) from the exercise of judgment or discretion in connection with the duties or responsibilities of such Director or Officer unless the act or omission involved willful or wanton conduct; or (ii) from an act or omission in rendering such services, unless the act or omission involved willful or wanton conduct. As used in this Article "willful or wanton conduct" means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property. Nothing in this Article is intended to bar any cause of action against the Corporation or change the liability of the Corporation arising out of an act or omission of any Director, Officer or person exempt from liability for negligence under this Article.

ARTICLE VII

DISPOSITION OF CERTAIN PROPERTY

Notwithstanding any of the provisions of these By-Laws to the contrary, if any property is received by the Corporation as a result of a Director's or Officer's qualified disclaimer pursuant to Section 2518 of the Code (for purposes of this Article, such Director or Officer shall be referred to as the "Disclaimant"), such property shall be held in a separate, segregated fund ("Separate Fund") which shall be administered by those Directors and Officers other than the Disclaimant. The Disclaimant shall have no rights or powers as a Director, Officer, Member or in any other capacity with respect to the disclaimed property or the principal or income of the Separate Fund in which the disclaimed property is held, including but not limited to the power to direct the distribution, enjoyment or investment of the disclaimed property.

ARTICLE VIII

CONTRACTS, BANKING, GIFTS

SECTION 1. CONTRACTS. The Board of Directors may authorize any Officer or Officers, agent or agents of the Corporation, in addition to the Officers so authorized by these By-Laws, to enter into any contract and to execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances or transactions.

SECTION 2. CHECKS, DRAFTS, ETC. The Board of Directors may authorize any Officer or Officers or agent or agents of the Corporation to issue checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, and in such manner as shall be determined by resolution of the Board of Directors.

SECTION 3. DEPOSITS AND INVESTMENTS. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories, or invested for the account of the Corporation in such manner, as the Board of Directors may determine from time to time. The Board of Directors may designate such fiscal agents, investment advisors, and custodians to direct the management of the Corporation's assets. The Board of Directors may at any time, with or without cause, discontinue the use of the services of any such fiscal agent, investment advisor or custodian.

SECTION 4. GIFTS. The Board of Directors or any Officer may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation.

SECTION 5. LOANS. No Officer or Director shall be authorized to obtain loans on behalf of the Corporation without the prior approval of the Board of Directors.

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 1. FISCAL YEAR. The fiscal year of the Corporation shall end on the 31st of December of each calendar year.

SECTION 2. COMPENSATION.

(a) Except as otherwise prohibited or limited by these By-Laws or the Certificate of Incorporation, the Corporation may pay reasonable compensation to its Officers, other employees or agents for services rendered. Such compensation shall be determined by the Board of Directors. The Board of Directors may authorize the reimbursement of expenditures reasonably incurred by Officers, other employees or agents on behalf of activities for the benefit of the Corporation.

(b) The Members and Directors of the Corporation shall serve without compensation; provided, however that nothing herein contained shall be construed to preclude any Member or Director from serving the Corporation in any other capacity and receiving reasonable compensation therefor pursuant to subsection (a) of this Section. The Board of Directors may authorize the reimbursement of expenditures reasonably incurred by Members or Directors on behalf of activities for the benefit of the Corporation.

SECTION 3. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of the Act or under the provisions of the Certificate of Incorporation or by these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

SECTION 4. TELEPHONE PARTICIPATION. The Members and the Directors of the Corporation may participate in the respective meetings of the Members or the Board of Directors through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other. Such participation in a meeting shall constitute attendance and presence in person at the meeting of the person or persons participating.

ARTICLE X

BY-LAW AMENDMENTS

These By-Laws may be amended, altered or repealed, and new By-Laws to be adopted shall be approved, as follows:

(a) if there are Members: By two-thirds of the votes cast or a majority vote of the Members, whichever is less, and by the majority vote of the Board of Directors if the amendment does not relate to the number of Directors, the composition of the board, the term of office of Directors, or the method or way in which Directors are elected or selected; or

(b) if there are no Members: By the majority vote of the Board of Directors then in office.

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