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

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the quarterly period ended **April 30, 2002**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file Number **1-8929**

ABM INDUSTRIES INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware

94-1369354

(State or other jurisdiction of incorporation or organization)

(IRS Employer Identification No.)

160 Pacific Avenue, Suite 222, San Francisco, California 94111

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **415/733-4000**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Number of shares of Common Stock outstanding as of May 31, 2002: 49,025,599.

TABLE OF CONTENTS

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Item 3. Qualitative and Quantitative Disclosures about Market Risk

PART II. OTHER INFORMATION

Item 4. Submission of Matters to a Vote of Stockholders

Item 6. Exhibits and Reports on Form 8-K

SIGNATURES

Exhibit 3.2

Exhibit 10.69

ABM Industries Incorporated
Form 10-Q
For the three months and six months ended April 30, 2002

Table of Contents

PART I	FINANCIAL INFORMATION	Page
Item 1	Condensed Consolidated Financial Statements	2
	Notes to the Condensed Consolidated Financial Statements	7
Item 2	Management's Discussion and Analysis of Financial Condition and Results of Operations	13
Item 3	Qualitative and Quantitative Disclosures About Market Risk	27
PART II OTHER INFORMATION		
Item 4	Submission of Matters to a Vote of Stockholders	27
Item 6	Exhibits and Reports on Form 8-K	28

PART I. FINANCIAL INFORMATION**Item 1. Condensed Consolidated Financial Statements**

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands except share amounts)

	April 30, 2002	October 31, 2001
ASSETS:		
Current assets:		
Cash and cash equivalents	\$ 2,725	\$ 3,052
Trade accounts receivable, net	344,364	367,201
Inventories	29,502	25,974
Deferred income taxes	26,914	26,806
Prepaid expenses and other current assets	40,607	42,508
	<u>444,112</u>	<u>465,541</u>
Investments and long-term receivables	13,715	13,871
Property, plant and equipment, at cost:		
Land and buildings	5,016	4,996
Transportation equipment	14,896	15,546
Machinery and other equipment	71,486	73,543
Leasehold improvements	14,855	14,802
	<u>106,253</u>	<u>108,887</u>
Less accumulated depreciation and amortization	(66,698)	(65,951)
	<u>39,555</u>	<u>42,936</u>
Goodwill	124,465	113,199
Deferred income taxes	34,761	35,400
Other assets	11,498	12,153
	<u>668,106</u>	<u>683,100</u>
Total assets	<u>\$668,106</u>	<u>\$683,100</u>

(Continued)

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands except share amounts)

	April 30, 2002	October 31, 2001
LIABILITIES AND STOCKHOLDERS' EQUITY:		
Current liabilities:		
Current portion of long-term debt	\$ —	\$ 10,877
Bank overdraft	1,687	—
Trade accounts payable	37,743	50,671
Income taxes payable	6,259	6,816
Accrued liabilities:		
Compensation	59,846	62,854
Taxes — other than income	20,123	20,409
Insurance claims	49,676	48,193
Other	37,938	36,179
Total current liabilities	213,272	235,999
Long-term debt (less current portion)	—	942
Retirement plans	21,896	21,483
Insurance claims	64,215	63,499
Total liabilities	299,383	321,923
Stockholders' equity:		
Common stock, \$0.01 par value, 100,000,000 shares authorized; 49,829,000 and 48,778,000 shares issued at April 30, 2002 and October 31, 2001, respectively	498	488
Additional paid-in capital	142,099	130,998
Accumulated other comprehensive income	(760)	(763)
Retained earnings	243,556	230,454
Cost of treasury stock (900,000 shares)	(16,670)	—
Total stockholders' equity	368,723	361,177
Total liabilities and stockholders' equity	\$668,106	\$683,100

The accompanying notes are an integral part of the condensed consolidated financial statements.

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF INCOME

(In thousands except per share amounts)

	Three Months Ended April 30,		Six Months Ended April 30,	
	2002	2001	2002	2001
Revenues:				
Sales and other income	\$476,861	\$490,494	\$952,837	\$960,913
Gain on insurance claim	4,300	—	4,300	—
Total revenues	481,161	490,494	957,137	960,913
Expenses:				
Operating expenses and cost of goods sold	419,574	425,403	842,781	837,802
Selling, general and administrative	38,791	41,467	78,407	81,886
Interest	232	796	497	1,709
Goodwill amortization	—	3,068	—	5,978
Total expenses	458,597	470,734	921,685	927,375
Income before income taxes	22,564	19,760	35,452	33,538
Income taxes	8,575	7,706	13,472	13,080
Net income	\$ 13,989	\$ 12,054	\$ 21,980	\$ 20,458
Net income per common share				
Basic	\$ 0.28	\$ 0.25	\$ 0.45	\$ 0.43
Diluted	\$ 0.27	\$ 0.24	\$ 0.43	\$ 0.41
Average number of common shares outstanding				
Basic	49,256	47,472	49,110	46,878
Diluted	51,494	49,826	51,086	49,371
Dividends per common share	\$ 0.090	\$ 0.083	\$ 0.180	\$ 0.165

The accompanying notes are an integral part of the condensed consolidated financial statements.

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE SIX MONTHS ENDED APRIL 30, 2002 AND 2001**

(In thousands)

	<u>2002</u>	<u>2001</u>
Cash flows from operating activities:		
Cash received from customers	\$ 971,422	\$ 952,218
Other operating cash receipts	7,353	2,595
Interest received	303	276
Cash paid to suppliers and employees	(924,655)	(910,134)
Interest paid	(614)	(1,820)
Income taxes paid	(13,498)	(18,098)
	<u>40,311</u>	<u>25,037</u>
Cash flows from investing activities:		
Additions to property, plant and equipment	(3,880)	(8,714)
Proceeds from sale of assets	603	1,418
Decrease (increase) in investments and long-term receivables	156	(513)
Purchase of businesses	(11,577)	(13,306)
	<u>(14,698)</u>	<u>(21,115)</u>
Cash flows from financing activities:		
Common stock issued, including tax benefit	9,740	12,732
Common stock purchases	(16,670)	—
Dividends paid	(8,878)	(8,030)
Increase (decrease) in bank overdraft	1,687	(12,857)
Long-term borrowings	—	47,000
Repayments of long-term borrowings	(11,819)	(42,856)
	<u>(25,940)</u>	<u>(4,011)</u>
Net decrease in cash and cash equivalents	(327)	(89)
Cash and cash equivalents beginning of period	3,052	2,000
Cash and cash equivalents end of period	\$ 2,725	\$ 1,911

(Continued)

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE SIX MONTHS ENDED APRIL 30, 2002 AND 2001**

(In thousands)

	<u>2002</u>	<u>2001</u>
Reconciliation of net income to net cash provided by operating activities:		
Net income	\$ 21,980	\$20,458
Adjustments:		
Depreciation	7,113	6,874
Amortization	529	6,074
Provision for bad debts	2,123	2,434
Gain on sale of assets	(157)	(47)
Gain on sale of business	—	(718)
Decrease (increase) in deferred income taxes	531	(1,641)
Decrease (increase) in trade accounts receivable	22,098	(5,170)
Increase in inventories	(3,528)	(1,561)
Increase in prepaid expenses and other current assets	1,900	(1,788)
Decrease (increase) in other assets	126	(424)
Decrease in income taxes payable	(557)	(3,377)
Increase in retirement plans accrual	413	1,141
Increase (decrease) in insurance claims liability	2,199	(1,736)
(Decrease) increase in trade accounts payable and other accrued liabilities	(14,459)	4,518
Total adjustments to net income	<u>18,331</u>	<u>4,579</u>
Net cash provided by operating activities	<u>\$ 40,311</u>	<u>\$25,037</u>
Supplemental data:		
Non-cash investing activities:		
Common stock issued for net assets of business acquired	\$ 1,371	\$ 1,666

The accompanying notes are an integral part of the condensed consolidated financial statements.

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. General

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all material adjustments which are necessary to present fairly ABM Industries Incorporated and subsidiaries (the Company) financial position as of April 30, 2002, the results of operations for the three and six months then ended, and cash flows for the six months then ended. These adjustments are of a normal, recurring nature.

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company's Form 10-K, as amended, for the fiscal year ended October 31, 2001, as filed with the Securities and Exchange Commission.

2. Stock Split

On March 12, 2002, the Company's Board of Directors approved a 2-for-1 split of its common stock in the form of a stock dividend of one additional share for each share held pre-split, payable to stockholders of record on March 29, 2002. A total of 24,914,000 shares of common stock were issued in connection with the stock split. The par value of the shares was not changed from \$0.01. A total of \$249,140 was reclassified from the Company's additional paid in capital account to the Company's common stock account. All shares and per share amounts have been restated to retroactively reflect the stock split.

3. Treasury Stock

On September 16, 2001, the Company's Board of Directors authorized the purchase of up to two million shares (post-split) of its outstanding stock at any time through December 31, 2001. On December 17, 2001, the Board of Directors extended this authorization to purchase until December 31, 2002. As of April 30, 2002, the Company had purchased 900,000 shares at a cost of \$16,670,000.

4. Goodwill — Adoption of Statement of Financial Accounting Standards No. 142

In July 2001, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 142, “Goodwill and Other Intangible Assets”. SFAS No. 142 became effective in fiscal years beginning after December 15, 2001, with early adoption permitted. The Company has adopted the provisions of SFAS No. 142 beginning with the first quarter of fiscal 2002. In accordance with this standard, goodwill is no longer amortized but will be subject to an annual assessment for impairment. The Company is required to perform goodwill impairment tests on an annual basis and, in certain circumstances, between annual tests. As of April 30, 2002, no impairment of the Company’s goodwill carrying value has been indicated. As of April 30, 2002, all other intangible assets, consisting principally of contract rights with a net book value of \$4.4 million, are included in other assets and will continue to be amortized over the contract periods.

Transitional disclosure of earnings excluding goodwill amortization is as follows:

	Three months ended April 30,	
	2002	2001
Net income	\$13,989,000	\$12,054,000
Goodwill amortization (after tax)	—	1,871,000
Adjusted net income	13,989,000	13,925,000
Preferred stock dividends	—	(128,000)
Adjusted net income available to common stockholders	\$13,989,000	\$13,797,000
Net income per common share — basic:		
Net income	\$ 0.28	\$ 0.25
Goodwill amortization	—	0.04
Adjusted net income	\$ 0.28	\$ 0.29
Net income per common share — diluted:		
Net income	\$ 0.27	\$ 0.24
Goodwill amortization	—	0.04
Adjusted net income	\$ 0.27	\$ 0.28
Average common shares outstanding — basic	49,256,000	47,472,000
Average common shares outstanding — diluted	51,494,000	49,826,000

	Six months ended April 30,	
	2002	2001
Net income	\$21,980,000	\$20,458,000
Goodwill amortization (after tax)	—	3,647,000
Adjusted net income	21,980,000	24,105,000
Preferred stock dividends	—	(256,000)
Adjusted net income available to common stockholders	\$21,980,000	\$23,849,000
Net income per common share — basic:		
Net income	\$ 0.45	\$ 0.43
Goodwill amortization	—	0.08
Adjusted net income	\$ 0.45	\$ 0.51
Net income per common share — diluted:		
Net income	\$ 0.43	\$ 0.41
Goodwill amortization	—	0.07
Adjusted net income	\$ 0.43	\$ 0.48
Average common shares outstanding — basic	49,110,000	46,878,000
Average common shares outstanding — diluted	51,086,000	49,371,000

5. Net Income per Common Share

The Company has reported its earnings in accordance with Statement of Financial Accounting Standards No. 128, “Earnings per Share”. Basic net income per common share, after the reduction for preferred stock dividends, is based on the weighted average number of shares outstanding during the period. Diluted net income per common share, after the reduction for preferred stock dividends, is based on the weighted average number of shares outstanding during the period, including common stock equivalents. Preferred stock dividends no longer apply after the redemption of preferred stock on September 4, 2001. The calculation of net income per common share is as follows:

	Three months ended April 30,	
	2002	2001
Net income	\$13,989,000	\$12,054,000
Preferred stock dividends	—	(128,000)
Net income available to common stockholders	\$13,989,000	\$11,926,000
Average common shares outstanding — basic	49,256,000	47,472,000
Effect of dilutive securities:		
Stock options	2,238,000	2,234,000
Other	—	120,000
Average common shares outstanding — diluted	51,494,000	49,826,000
Net income per common share — basic	\$ 0.28	\$ 0.25
Net income per common share — diluted	\$ 0.27	\$ 0.24

[Table of Contents](#)

	Six months ended April 30,	
	2002	2001
Net income	\$21,980,000	\$20,458,000
Preferred stock dividends	—	(256,000)
Net income available to common stockholders	\$21,980,000	\$20,202,000
Average common shares outstanding — basic	49,110,000	46,878,000
Effect of dilutive securities:		
Stock options	1,976,000	2,373,000
Other	—	120,000
Average common shares outstanding — diluted	51,086,000	49,371,000
Net income per common share — basic	\$ 0.45	\$ 0.43
Net income per common share — diluted	\$ 0.43	\$ 0.41

For purposes of computing diluted net income per common share, weighted average common share equivalents do not include stock options with an exercise price that exceeds the average fair market value of the Company's common stock for the period. For the six months ended April 30, 2002, options to purchase approximately 415,000 shares of common stock at a weighted average exercise price of \$18.36 were excluded from the computation. For the six months ended April 30, 2001, options to purchase approximately 790,000 shares of common stock at a weighted average exercise price of \$17.46 were excluded from the computation.

6. Comprehensive Income

Accumulated other comprehensive income at April 30, 2002 and October 31, 2001 consists of foreign currency translation adjustments. Comprehensive income for the three and six month periods ended April 30, 2002 approximated net income.

7. Acquisitions

The Company acquired the service contracts and selected assets of Triumph Security Corporation and Triumph Cleaning Corporation with customers located in New York City effective January 26 and 28, 2002, respectively. On February 28, 2002, the Company acquired the security contracts, accounts receivable and selected assets of Foulke Associates, Inc. with customers located throughout Georgia, Florida, Maryland, Pennsylvania and Virginia.

These business combinations were accounted for under the purchase method of accounting. The aggregate consideration paid for these acquisitions was \$8,800,000, including \$7,118,000 allocated to goodwill. The aggregate purchase price does not include payments of contingent consideration based upon the future results of operations of the businesses acquired. As these acquisitions were not material, pro forma information is not included in the accompanying unaudited condensed consolidated financial statements. The operations of the acquired businesses have been included in the Company's financial statements from the respective date of acquisition.

In addition, during the six months ended April 30, 2002, contingent payments in cash and common shares were made on prior period acquisitions as provided by the respective purchase agreements. Total cash paid was \$2,777,000 and common shares with a fair market value of \$1,371,000 at the date of issuance were issued on January 30, 2002. All amounts paid were added to goodwill.

8. Segment Information

The Company's operations have been grouped into seven segments as defined under Statement of Financial Accounting Standards (SFAS) No. 131. The results of operations from the Company's six operating divisions that are reportable under SFAS No. 131 for the three and six months ended April 30, 2002, as compared to the three and six months ended April 30, 2001, are more fully described below. Included in Other Divisions are ABM Service Network, CommAir Mechanical Services, and Easterday

[Table of Contents](#)

Janitorial Supply Company, which was sold on April 30, 2001. For comparative purposes, goodwill amortization has been segregated from the operating profits of the divisions for the three and six months ended April 30, 2001 and reported separately.

	Three months ended April 30,	
	2002	2001
	(in thousands)	
Sales and Other Income:		
ABM Janitorial Services	\$284,229	\$293,481
ABM Engineering Services	42,667	41,637
Ampco System Parking	39,364	41,699
American Commercial Security Services	34,631	24,147
Amtech Lighting Services	32,071	31,627
Amtech Elevator Services	28,234	31,400
Other Divisions	15,532	26,419
Corporate	133	84
	<u>\$476,861</u>	<u>\$490,494</u>
Operating Profit:		
ABM Janitorial Services	\$ 16,327	\$ 18,144
ABM Engineering Service	2,339	2,110
Ampco System Parking	1,783	2,138
American Commercial Security Services	1,065	614
Amtech Lighting Services	2,095	2,117
Amtech Elevator Services	608	1,653
Other Divisions	74	1,749
Corporate Expenses	(5,795)	(4,901)
Goodwill Amortization	—	(3,068)
	<u>\$ 18,496</u>	<u>\$ 20,556</u>
Gain on Insurance Claim	4,300	—
Interest Expense	(232)	(796)
	<u>\$ 22,564</u>	<u>\$ 19,760</u>

	Six months ended April 30,	
	2002	2001
	(in thousands)	
Sales and Other Income:		
ABM Janitorial Services	\$571,029	\$570,432
ABM Engineering Services	86,337	84,411
Ampco System Parking	77,274	84,561
American Commercial Security Services	66,794	48,723
Amtech Lighting Services	64,638	63,154
Amtech Elevator Services	54,727	59,789
Other Divisions	31,688	49,645
Corporate	350	198
	<u>\$952,837</u>	<u>\$960,913</u>
Operating Profit:		
ABM Janitorial Services	\$ 27,170	\$ 31,658
ABM Engineering Services	4,660	4,490
Ampco System Parking	2,831	4,098
American Commercial Security Services	2,260	1,110
Amtech Lighting Services	4,004	4,395
Amtech Elevator Services	1,524	2,966
Other Divisions	772	2,669
Corporate Expenses	(11,572)	(10,161)
Goodwill Amortization	—	(5,978)
	<u>\$ 31,649</u>	<u>\$ 35,247</u>
Gain on Insurance Claim	4,300	—
Interest Expense	(497)	(1,709)

Income Before Income Taxes

\$ 35,452

\$ 33,538

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

On March 12, 2002, the Company's Board of Directors approved a 2-for-1 split of the Company's common stock in the form of a stock dividend of one additional share for each share held pre-split, payable to stockholders of record on March 29, 2002. A total of 24.9 million shares of common stock were issued in connection with the stock split. The par value of the shares was not changed from \$0.01. A total of \$249,140 was reclassified from the Company's additional paid in capital account to the Company's common stock account. All shares and per share amounts have been restated to retroactively reflect the stock split.

Financial Condition

Funds provided from operations and bank borrowings have historically been the sources for meeting working capital requirements, financing capital expenditures and acquisitions, and paying cash dividends. Management believes that funds from these sources will remain available and adequately serve the Company's liquidity needs. The Company has an unsecured revolving credit agreement with a syndicate of U.S. banks that provides a \$150 million line of credit expiring July 1, 2002. At the Company's option, the credit facility provides interest at the prime rate or IBOR+.35%. As of April 30, 2002, the total amount outstanding was approximately \$31.6 million, which was entirely comprised of standby letters of credit. This agreement requires the Company to meet certain financial ratios, places some limitations on outside borrowing and prohibits declaring or paying cash dividends exceeding 50% of the Company's net income for any fiscal year. Based on the status of current discussions, the Company expects to enter into a three-year agreement with a syndicate of U.S. banks

Table of Contents

on or about June 21, 2002 that will provide a \$150 million line of credit. The Company also had a separate loan agreement with a major U.S. bank. This loan bore interest at a fixed rate of 6.78%. On March 8, 2002, the loan balance of \$942,000 was paid off. The Company's effective interest rate for all borrowings for the six months ended April 30, 2002 was 4.20%.

At April 30, 2002, working capital was \$230.8 million, as compared to \$229.5 million at October 31, 2001. The largest component of working capital consists of trade accounts receivable that totaled \$344.4 million at April 30, 2002 compared to \$367.2 million at October 31, 2001. These amounts were net of allowances for uncollectible accounts of \$6.4 million and \$9.4 million at April 30, 2002 and October 31, 2001, respectively. As of April 30, 2002, accounts receivable that were over 90 days past due had increased \$2 million to \$57.9 million (17% of the total outstanding) from \$55.9 million (15% of the total outstanding) at October 31, 2001. The balances over 90 days past due related to the World Trade Center and adjacent customers were \$14 million and \$6 million as of April 30, 2002 and October 31, 2001, respectively.

During the six months ended April 30, 2002, net cash provided by operating activities amounted to \$40.3 million, as compared to \$25.0 million for the six months ended April 30, 2001. The increase in cash provided from operations is primarily due to greater cash collections in the six months ended April 30, 2002, compared with the six months ended April 30, 2001, and receipt of \$6.5 million proceeds from the September 11 insurance claim in April of 2002.

Net cash used in financing activities was \$25.9 million in the six months ended April 30, 2002, compared to \$4.0 million in the six months ended April 30, 2001. The change is principally due to the purchase of 900,000 shares of treasury stock at a cost of \$16.7 million.

On December 19, 2001, the Company advanced \$1.2 million and on April 12, 2002, \$600,000 to SiteStuff, Inc. as part of a secured convertible promissory note agreement. SiteStuff, Inc. is an e-commerce enterprise within the real estate industry designed to provide owners and managers of real estate the ability to aggregate their buying power for procurement of goods and services. The provisions of this note agreement provide for additional advances payable upon written request by SiteStuff, Inc. at any time prior to May 13, 2003, up to a maximum advance of the lesser of \$4.0 million or 80% of its current customer receivables. Interest of 5% on any outstanding amount is payable in arrears at the end of each calendar quarter. The note is secured by the customer accounts of SiteStuff, Inc. as well as records, cash accounts and proceeds related to those accounts. On

[Table of Contents](#)

or before June 13, 2003, outstanding amounts under this note are convertible, at the option of the Company, into Series D preferred stock at the price defined in the SiteStuff, Inc. certificate of incorporation.

The Company self-insures, generally up to \$500,000 per occurrence, certain insurable risks such as general liability, property damage and workers' compensation. It is the Company's policy to annually retain an outside actuary to review the adequacy of its self-insurance claim reserves.

Contractual Obligations and Commercial Commitments

The Company is contractually obligated to make future payments under non-cancelable operating lease agreements. As of April 30, 2002, future contractual payments are as follows:

(In thousands)	Payments Due By Period				
	Total	Less than 1 year	1 - 3 years	4 - 5 years	After 5 years
Contractual Obligations					
Operating Leases	\$194,636	\$46,669	\$56,124	\$29,458	\$62,385

Additionally, the Company has the following commercial commitments:

(In thousands)	Amount of Commitment Expiration Per Period				
	Total Amounts Committed	Less than 1 year	1 - 3 years	4 - 5 years	After 5 years
Commercial Commitments					
Standby Letters of Credit	\$31,579	\$31,579	—	—	—
Financial Responsibility Bonds	61,449	61,449	—	—	—
Total	\$93,028	\$93,028	—	—	—

September 11 Insurance Claims

The Company has commercial insurance policies covering business interruption, property damage and other losses related to the September 11 tragic incident. As previously reported by the Company, the World Trade Center complex in New York was the Company's largest single job site with annual sales of approximately \$75 million (3% of ABM's consolidated sales). The Company has been working with its carrier, Zurich Insurance, in

[Table of Contents](#)

providing preliminary claim information regarding the property damage and lost business income. Zurich has neither accepted nor denied coverage for the various claims as of the date of this filing. However, Zurich filed a Declaratory Judgment Action in the Southern District of New York claiming the loss of the business profit falls under a Contingent Business Interruption Sub-limit within the policy of \$10 million. The trial date has been set for July 2002. Based on review of the policy and consultation with coverage counsel and other claim experts, the Company believes that its business interruption claim does not fall under the \$10 million sub-limit on contingent business interruption. Zurich's filing does not impact any other aspects of the claim. The Company received a portion of the insurance proceeds in the amount of \$6.5 million in April of 2002, of which \$5 million was for business interruption and \$1.5 million was for property damage. The Company realized \$4.3 million of pretax gain from the \$6.5 million proceeds in the second quarter of 2002.

Acquisitions

The Company acquired the service contracts and selected assets of Triumph Security Corporation and Triumph Cleaning Corporation with customers located in New York City effective January 26 and 28, 2002, respectively. The terms included a cash payment of \$2.8 million made at closing plus five annual contingent payments based on variable gross profits to be made during the sixth through the tenth year after the effective closing date.

On February 28, 2002, the Company acquired the security contracts, accounts receivable and selected assets of Foulke Associates, Inc. with customers located throughout Georgia, Florida, Maryland, Pennsylvania and Virginia. The terms included a \$6.0 million cash payment at closing plus annual contingent payments based on operating profit to be made over four years.

Recent Development

On June 11, 2002, the Company announced that the Company and Lakeside Building Maintenance, Inc. (Lakeside) signed a non-binding letter of intent whereby a subsidiary of the Company would acquire Lakeside during the third quarter of 2002, subject to customary conditions such as satisfactory completion of due diligence, a definitive agreement and antitrust clearance. With annual revenues exceeding \$160 million, Chicago-based Lakeside is the largest privately-owned janitorial contractor in the Midwest, with operations in Cincinnati, Cleveland, Columbus, Detroit,

[Table of Contents](#)

Indianapolis, Louisville, Milwaukee, Nashville and St. Louis. The letter of intent contemplates that Lakeside's founder and chief executive officer and its president would continue to manage Lakeside separate and apart from the Company's other subsidiaries operating in the Midwest.

Results of Operations

The following discussion should be read in conjunction with the condensed consolidated financial statements of the Company. All information in the discussion and references to the years and quarters are based on the Company's fiscal year and second quarter which ended on October 31 and April 30, respectively.

Three Months Ended April 30, 2002 vs. Three Months Ended April 30, 2001

Net income for the second quarter of 2002 was \$14 million (\$0.27 per diluted share), an increase of 16.1% from the net income of \$12.1 million (\$0.24 per diluted share) for the second quarter of 2001, which included \$1.9 million (\$0.04 per diluted share) of after-tax goodwill amortization. The other items impacting the period-to-period change are analyzed in the following paragraphs.

The results for the second quarter of 2002 were affected by the destruction of the World Trade Center and adjacent facilities. The Company incurred a quarterly reduction of \$19 million in revenues and \$2.5 million in pretax income from that earned in the second quarter of 2001 from the loss of these facilities. The divisions affected by this loss were Janitorial, Lighting and Engineering. Second quarter revenues and pretax income for 2002 included a gain of \$4.3 million from the \$6.5 million proceeds from the September 11 insurance claim. Additionally, the Janitorial operating expenses in New York City increased by \$1.5 million in the second quarter of 2002, as a result of World Trade Center related increases in seniority-based payroll (\$650,000) and unemployment insurance costs (\$900,000).

Sales and other income (hereinafter called sales) for the second quarter of 2002 of \$476.9 million decreased by only 2.8% compared to \$490.5 million for the second quarter of 2001 despite the loss of the World Trade Center and Easterday Janitorial Supply. Easterday, which was sold effective April 30, 2001 at a pretax gain of \$718,000, contributed \$8.5 million to sales for the second quarter of 2001. Offsetting the loss of the World Trade Center and Easterday sales in the second quarter of 2002 was new business in the Security Division.

[Table of Contents](#)

As a percentage of sales and other income (hereinafter called sales), operating expenses and cost of goods sold were 88.0% for the second quarter of 2002, compared to 86.7% for the second quarter of 2001. Consequently, as a percentage of sales, the Company's gross profit (sales minus operating expenses and cost of goods sold) of 12.0% in the second quarter of 2002 was lower than the gross profit of 13.3% for the second quarter of 2001. The decline was due primarily to the sale of Easterday Janitorial Supply and loss of the World Trade Center account, both of which had higher gross profit margins than those initially realized on newly added business. Also, as explained earlier, the additional \$1.5 million of Janitorial operating expenses in the second quarter of 2002 related to the destruction of the World Trade Center could not be absorbed through increased pricing.

Selling, general and administrative expenses for the second quarter of 2002 were \$38.8 million compared to \$41.5 million for the corresponding three months of 2001. As a percentage of sales, selling, general and administrative expenses decreased to 8.1% for the three months ended April 30, 2002 from 8.5% for the same period in 2001 primarily due to the sale of Easterday Janitorial Supply effective April 30, 2001. Easterday's selling, general and administrative expenses were \$2.9 million or 34% of its sales for the second quarter of 2001.

Interest expense was \$232,000 for the second quarter of 2002 compared to \$796,000 for the same period in 2001, a decrease of \$564,000. This decrease was primarily due to lower weighted average borrowings and interest rates during the second quarter of 2002, compared to the same period in 2001.

The estimated effective federal and state income tax rate was 38% for the second quarter of 2002, compared to 39% for the second quarter of 2001. The lower tax rate was mostly due to an increase in estimated federal tax credits.

Segment Information

The results of operations from the Company's six reportable operating divisions for the three months ended April 30, 2002, compared to the same period in 2001 are more fully described below. The comparison of the three-month periods are related to the sales and operating profits in Note 8, which exclude goodwill amortization from both periods, to provide a comparable analysis.

Sales for ABM Janitorial Services (also known as American Building Maintenance) were 3.2% lower in the second quarter of 2002 as compared to the same quarter of 2001. Weaknesses in sales were primarily in the Northeast, Southeast and Northwest regions

Table of Contents

mostly due to direct and indirect effects of the events of September 11. Operating profits in the second quarter of 2002 were 10.0% lower than the same period in 2001 due to the loss of the higher margin business in the Northeast region. Furthermore, \$1.5 million of additional operating expenses attributable to the destruction of the World Trade Center including a higher state unemployment tax rate and an increase in seniority-based payroll in New York City (as explained earlier) could not be absorbed through increased pricing.

Sales for ABM Engineering Services increased 2.5% from the second quarter of 2001 to the second quarter of 2002 due to an increased customer base in all regions and the resolution of disputed additional work performed for the Port Authority of New York. This was partially offset by the lost revenues from the World Trade Center contract. Operating profits increased by 10.9% from the second quarter of 2001 to the second quarter of 2002 primarily due to the increased business.

Ampco System Parking (also known as Ampco System Airport Parking and Ampco Express Airport Parking) sales decreased by 5.6% and its operating profits decreased 16.6% during the second quarter of 2002 compared to the second quarter of 2001. The decrease in sales was primarily due to the loss of an airport contract, the conversion of lease contracts to management fee contracts, and the effects of the terrorist attacks of September 11 on sales at airport and hotel facilities. The decrease in operating profits resulted from the decline in sales and increased insurance costs, which could not be fully absorbed through increased pricing.

American Commercial Security Services sales increased 43.4% due to the acquisitions of Sundown Security in June 2001, Triumph Security in January 2002, and Foulke Security in February 2002, as well as winning several large accounts including Microsoft. Tag sales, or sales in addition to the contractual fees, were also higher due to heightened security after the September 11 terrorist attack. Operating profits increased 73.5% due to increased sales and improvement in gross margin as a result of tight control over labor cost.

Amtech Lighting Services reported a 1.4% increase in sales during the second quarter of 2002 as compared to the second quarter of 2001, while operating profits decreased slightly by 1.0%. Sales from new business offset the loss of the World Trade Center account but at a lower profit margin.

Sales for Amtech Elevator Services decreased by 10.1% in the second quarter of 2002 compared to the same period in 2001 primarily due to lost service contacts in San Francisco and Orange

[Table of Contents](#)

County. The Division also experienced reduced modernization sales due to non-renewal of contracts. Operating profits decreased by 63.2% for the second quarter of 2002 compared to the corresponding quarter of 2001 primarily due to the lost jobs, increased modernization material and labor costs, particularly in the Chicago office, as well as higher operating expenses, including data processing and insurance.

Sales for Other Divisions were down 41.2% and operating profits decreased 95.8% during the second quarter of 2002 compared to the same period last year. The decline in operating profits was primarily due to a \$500,000 write-down of work-in-progress and reduced project work in the Mechanical Division in the second quarter of 2002 and the pretax gain of \$718,000 from the sale of Easterday Janitorial Supply in the second quarter of 2001.

Six Months Ended April 30, 2002 vs. Six Months Ended April 30, 2001

Net income for the first six months of 2002 was \$22 million (\$0.43 per diluted share), an increase of 7.4% from the net income of \$20.5 million (\$0.41 per diluted share) for the first six months of 2001, which included \$3.7 million (\$0.07 per diluted share) of after tax goodwill amortization. The other items impacting the period-to-period change are analyzed in the following paragraphs.

The results for the first half of 2002 were affected by the destruction of the World Trade Center and adjacent facilities. The Company incurred a reduction of \$38 million in revenues and \$5 million in pretax income from the loss of these facilities during the first half of 2002, compared to the same period of 2001. The divisions affected by this loss were Janitorial, Lighting and Engineering. Second quarter revenues and pretax income for 2002 included a gain of \$4.3 million from the \$6.5 million proceeds from the September 11 insurance claim. Additionally, the Janitorial operating expenses in New York City increased by \$1.5 million in the second quarter of 2002, as a result of World Trade Center related increases in seniority-based payroll (\$650,000) and unemployment insurance costs (\$900,000).

Sales for the first six months of 2002 of \$952.8 million decreased by only 0.8% compared to \$960.9 million for the first half of 2001 despite the loss of the World Trade Center and Easterday Janitorial Supply. Easterday, which was sold effective April 30, 2001 at a pretax gain of \$718,000, contributed \$16 million to sales for the first half of 2001. Offsetting the loss of the World Trade Center and Easterday sales in the first six months of 2002 was new business in the Security Division.

Table of Contents

As a percentage of sales, operating expenses and cost of goods sold were 88.4% for the first half of 2002, compared to 87.2% for the same period of 2001. Consequently, as a percentage of sales, the Company's gross profit (sales minus operating expenses and cost of goods sold) of 11.6% in the first six months of 2002 was lower than the gross profit of 12.8% for the first six months of 2001. The decline was due primarily to the sale of Easterday Janitorial Supply and loss of the World Trade Center account, both of which had higher gross profit margins than those initially realized on newly added business. Also, as explained earlier, the operating expenses for the first six months of 2002 included the additional \$1.5 million of Janitorial operating expenses related to the destruction of the World Trade Center and the higher insurance expense which could not be fully absorbed through increased pricing in the first quarter of 2002.

Selling, general and administrative expenses for the first six months of 2002 were \$78.4 million compared to \$81.9 million for the corresponding six months of 2001. As a percentage of sales, selling, general and administrative expenses decreased to 8.2% for the period ended April 30, 2002 from 8.5% for the same period in 2001 primarily due to the sale of Easterday Janitorial Supply effective April 30, 2001. Easterday's selling, general and administrative expenses were \$5.6 million or 35% of its sales for the first six months of 2001.

Interest expense was \$497,000 for the first half of 2002 compared to \$1.7 million for the same period in 2001, a decrease of \$1.2 million. This decrease was primarily due to lower weighted average borrowings and interest rates during the first half of 2002, compared to the same period in 2001.

The estimated effective federal and state income tax rate was 38% for the first six months of 2002, compared to 39% for the first six months of 2001. The lower tax rate was mostly due to an increase in estimated federal tax credits.

Segment Information

The results of operations from the Company's six reportable operating divisions for the six months ended April 30, 2002, compared to the same period in 2001 are more fully described below. The comparison of the six-month periods are related to the sales and operating profits in Note 8, which exclude goodwill amortization from both periods, to provide a comparable analysis.

Sales for ABM Janitorial Services increased slightly by 0.1% in the first half of 2002 as compared to the same period of the

[Table of Contents](#)

prior year, as new business was sufficient to offset the loss of the World Trade Center. However, operating profits were down 14.2% in the first six months of 2002 as compared to the same period of 2001 due to the loss of higher margin business in the Northeast region. Also, as explained earlier, the operating expenses for the first six months of 2002 included the additional \$1.5 million of operating expenses related to the destruction of the World Trade Center and the higher insurance expense which could not be fully absorbed through increased pricing in the first quarter of 2002.

Sales for ABM Engineering Services increased 2.3% from the first half of 2001 to the first half of 2002 due to an increased customer base in all regions and, in the second quarter of 2002, the resolution of disputed additional work performed for the Port Authority of New York. This was partially offset by the loss of work at the World Trade Center. Operating profits increased 3.8% from 2001 to 2002 due to the increased business.

Ampco System Parking sales decreased by 8.6% and its operating profits decreased 30.9% during the first half of 2002 compared to the first half of 2001. The decrease in sales was primarily due to the loss of an airport contract, the conversion of lease contracts to management fee contracts, and the effects of the terrorist attacks of September 11 on sales at airport and hotel facilities. The decrease in operating profits resulted from the decline in sales and increased insurance costs, which could not be fully absorbed through increased pricing.

American Commercial Security Services sales increased 37.1% due to the acquisitions of Sundown Security in June 2001, Triumph Security in January 2002, and Foulke Security in February 2002, as well as winning several large accounts including Microsoft. Tag sales, sales in addition to the contractual fees, were also higher due to heightened security after the September 11 terrorist attack. Operating profits increased 103.6% due to improvement in gross margin as a result of tight control over labor cost.

Amtech Lighting Services reported a 2.3% increase in sales during the first six months of 2002 compared to the same six months of 2001. Operating profits decreased 8.9% due to the loss of the World Trade Center account and lower margins on acquired business, primarily in the Southeast.

Sales for Amtech Elevator Services decreased by 8.5% in the first half of 2002 compared to 2001 primarily due to the decline in modernization contracts in Chicago and Philadelphia and the loss of two large service contracts in San Francisco and Orange County. The Division reported a 48.6% decrease in operating profits for the first six months of 2002 as compared to the corresponding six months of 2001. This reduction in operating

[Table of Contents](#)

profits can be attributed primarily to the lost jobs, lower margins on modernization projects primarily in the Division's Chicago office, and higher operating expenses, including data processing and insurance.

Sales for Other Divisions were down 36.2% and operating profits decreased 71.1% during the first half of 2002 compared to the same period last year. The decline in operating profits was primarily due to a \$500,000 write-down of work-in-progress and reduced project work in the Mechanical Division in the second quarter of 2002 and the pretax gain of \$718,000 from the sale of Easterday Janitorial Supply in the second quarter of 2001.

Recent Accounting Pronouncements

In June 2001, FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations", which addresses the financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and associated retirement costs. SFAS No. 143 requires that the fair value of a liability for an asset retirement obligation be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. SFAS No. 143 is effective for fiscal years beginning after June 15, 2002. The adoption of SFAS No. 143 is not anticipated to have a material effect on the Company's results of operations or financial condition.

In August 2001, FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". SFAS No. 144 supercedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and Long-Lived Assets to be Disposed of", and elements of APB 30, "Reporting the Results of Operations—Reporting the Effects on Disposal of a Segment of a Business and Extraordinary, Unusual or Infrequently Occurring Events and Transactions". SFAS No. 144 establishes a single-accounting model for long-lived assets to be disposed of while maintaining many of the provisions relating to impairment testing and valuation. SFAS No. 144 is effective for fiscal years beginning after December 31, 2001. The adoption of SFAS No. 144 is not anticipated to have a material effect on the Company's results of operations or financial condition.

Critical Accounting Policies and Estimates

The preparation of consolidated financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, sales and expenses. On an ongoing basis, the Company evaluates its estimates, including

Table of Contents

those related to self-insurance reserves, allowance for uncollectible accounts, deferred income tax asset, contingencies and litigation expense. The Company bases its estimates on historical experience, independent valuations, and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The Company believes the following critical accounting policies affect its more significant judgments and estimates used in the preparation of its consolidated financial statements.

Self-Insurance Reserves: Certain insurable risks such as general liability, property damage and workers' compensation are self-insured by the Company. However, the Company has umbrella insurance coverage for certain risk exposures subject to specified limits. Accruals for claims under the Company's self-insurance program are recorded on a claim-incurred basis. The Company uses independent actuaries to annually evaluate and estimate the range of the Company's claim costs and liabilities. The Company accrues an amount that is within the actuarial range of exposure. Using the annual actuarial report, management develops annual insurance costs for each division, expressed as a rate per \$100 of exposure (labor and revenue) to estimate insurance costs on a quarterly basis. Additionally, management monitors new claims and claim development to assess the adequacy of the insurance reserves. The estimated future charge is designed to capture the recent experience and trends. If the number of claims incurred were to increase, or the severity of the claims were to increase, the Company may be required to record an additional expense for self-insurance liabilities.

Allowance for Uncollectible Accounts: The Company's accounts receivable arise from services provided to its customers and are generally due and payable on terms varying from the receipt of invoice to net thirty days. The Company estimates an allowance for accounts it does not consider collectible. Changes in the financial condition of the customer or adverse development in negotiations or legal proceedings to obtain payment could result in the actual loss exceeding the estimated allowance.

Deferred Tax Asset Valuation: Deferred income taxes reflect the impact of temporary differences between the amount of assets and liabilities recognized for financial reporting purposes and such amounts recognized for tax purposes. If management determines it is more likely than not that the net deferred tax asset will be realized, no valuation allowance is recorded. At April 30, 2002,

[Table of Contents](#)

the deferred tax asset was \$61.7 million and no valuation allowance was recorded. Should future income be less than anticipated, the deferred tax asset may not be recoverable.

Contingencies and Litigation: The Company and certain of its subsidiaries have been named defendants in certain litigation arising in the ordinary course of business including certain environmental matters. When a loss is probable and estimable the Company records the estimated loss. The actual loss may be greater than estimated or litigation where the outcome was not considered probable may result in a loss.

Environmental Matters

The nature of the Company's operations, primarily services, would not ordinarily involve it in environmental contamination. However, the Company's operations are subject to various federal, state and/or local laws regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, such as discharge into soil, water and air, and the generation, handling, storage, transportation and disposal of waste and hazardous substances. These laws generally have the effect of increasing costs and potential liabilities associated with the conduct of the Company's operations, although historically they have not had a material adverse effect on the Company's financial position, cash flows, or its results of operations.

The Company is currently involved in four proceedings relating to environmental matters: one involving alleged potential soil and groundwater contamination at a Company facility in Florida; one involving alleged potential soil contamination at a former Company facility in Arizona; one involving alleged potential soil and groundwater contamination at a former dry-cleaning facility leased by the Company in Nevada; and one involving alleged potential soil contamination at a former parking facility leased by the Company in the State of Washington. While it is difficult to predict the ultimate outcome of these matters, based on information currently available, management believes that none of these matters, individually or in the aggregate, are reasonably likely to have a material adverse effect on the Company's financial position, cash flows, or its results of operations. One of the four proceedings is under negotiation and a reserve of \$250,000 has been set aside for claims liability. The liability related to the other three claims is neither probable nor estimable hence no accruals have been made related to these matters.

Safe Harbor Statement

Cautionary Safe Harbor Disclosure for Forward Looking Statements under the Private Securities Litigation Reform Act of 1995: Because of the factors set forth below, as well as other variables affecting the Company's operating results, past financial performance should not be considered a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods. The statements contained herein which are not historical facts are forward-looking statements that are subject to meaningful risks and uncertainties, including but not limited to: (1) significant decreases in commercial real estate occupancy, resulting in reduced demand and prices for building maintenance and other facility services in the Company's major markets, (2) loss or bankruptcy of one or more of the Company's major customers, which could adversely affect the Company's ability to collect its accounts receivable or recover its deferred costs, (3) major collective bargaining issues that may cause loss of revenues or cost increases that non-union companies can use to their advantage in gaining market share, (4) significant shortfalls in adding additional customers in existing and new territories and markets, (5) a protracted slowdown in the Company's acquisition activities, (6) legislation or other governmental action that severely impacts one or more of the Company's lines of business, such as price controls that could restrict price increases, or the unrecovered cost of any universal employer-paid health insurance, as well as government investigations that adversely affect the Company, (7) reduction or revocation of the Company's line of credit, which would increase interest expense or the cost of capital, (8) cancellation or nonrenewal of the Company's primary insurance policies, as many customers contract out services based on the contractor's ability to provide adequate insurance coverage and limits, (9) catastrophic uninsured or underinsured claims against the Company, the inability of the Company's insurance carriers to pay otherwise insured claims, or inadequacy in the Company's reserve for self-insured claims, (10) inability to employ entry level personnel due to labor shortages, (11) resignation, termination, death or disability of one or more of the Company's key executives, which could adversely affect customer retention and day-to-day management of the Company, and (12) other material factors that are disclosed from time to time in the Company's public filings with the United States Securities and Exchange Commission, such as reports on Forms 8-K, 10-K and 10-Q.

Item 3. Qualitative and Quantitative Disclosures about Market Risk

The Company does not issue or invest in financial instruments or their derivatives for trading or speculative purposes. The operations of the Company are conducted primarily in the United States, and, as such, are not subject to material foreign currency exchange rate risk. The Company has an insignificant amount of outstanding debt and related interest expense hence market risk in interest rate exposure in the United States is currently not material.

PART II. OTHER INFORMATION**Item 4. Submission of Matters to a Vote of Stockholders**

a) The Annual Meeting of Stockholders was held on March 12, 2002.

b) The following directors were elected by a vote of stockholders: Maryellen C. Herringer, Charles T. Horngren, and Martinn H. Mandles. They will serve for a term ending in the year 2005.

The following directors remained in office: Linda L. Chavez, Luke S. Helms, Henry L. Kotkins, Jr., Theodore T. Rosenberg, Henrik C. Slipsager, William W. Steele, and William E. Walsh.

c) The following matters were voted upon at the meeting:

(1) Proposal 1 — Election of Directors.

Nominee	For	Against or Withheld	Abstentions	Broker Non-votes
Maryellen C. Herringer	19,813,610	1,424,509	0	0
Charles T. Horngren	19,796,313	1,441,806	0	0
Martinn H. Mandles	20,154,596	1,083,523	0	0

(2) Proposal 2 — Approval of the Company's 2002 Price-Vested Performance Stock Option Plan.

For	Against or Withheld	Abstentions	Broker Non-votes
9,558,309	7,442,710	626,504	3,610,596

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

Exhibit 3.2 - Bylaws as amended March 12, 2002

Exhibit 10.69 - 2002 Price-Vested Performance Stock Option Plan

(b) Reports on Form 8-K: No reports on Form 8-K were filed during the quarter ended April 30, 2002.

SIGNATURES

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

June 14, 2002	ABM Industries Incorporated /s/ George B. Sundby <hr/> Senior Vice President and Chief Financial Officer Principal Financial Officer
June 14, 2002	/s/ Maria Placida Y. de la Pena <hr/> Vice President and Controller Chief Accounting Officer

ABM INDUSTRIES INCORPORATED

BYLAWS

As Amended March 12, 2002

ARTICLE I
OFFICES

Section 1.1. Registered Office. The registered office shall be located in the City of Wilmington, County of New Castle, State of Delaware.

Section 1.2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.1. Place of Meeting. All meetings of stockholders shall be held at the principal executive office of the Corporation or at any other place, either within or without the State of Delaware, as may be designated by the Board of Directors.

Section 2.2. Annual Meeting. The annual meeting of stockholders shall be held on such date and at such time as the Board of Directors may designate.

At each annual meeting the stockholders shall elect directors to succeed those whose terms expire in that year and to serve until their successors are elected, and shall transact such other business as may properly be brought before the meeting.

Section 2.3. Notice of Annual Meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. Such notice shall be given either personally or by mail or other means of written communication, addressed or delivered to each stockholder entitled to vote at such meeting at the address of such stockholder appearing on the books of the Corporation or given by him to the Corporation for the purpose of such notice. If no such address appears or is given, notice shall be given either personally or by mail or other means of written communication addressed to the stockholder at the place where the principal executive office of the Corporation is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.

Section 2.4. Business at Annual Meetings. At an annual meeting of stockholders, only such business shall be conducted as shall have been brought before the meeting (i) pursuant to the Corporation's

notice of the meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Bylaw, who shall be entitled to vote at such meeting and who shall have complied with the notice procedures set forth in this Bylaw.

For business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.4(a) of this Bylaw, notice in writing must be delivered or mailed, postage prepaid, to the Secretary of the Corporation and received at the principal executive offices of the Corporation not less than 60 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the meeting is advanced by more than 30 days or delayed by more than 60 days from such meeting's anniversary date, notice by the stockholder must be received not later than the close of business on the later of the 60th day prior to such date of mailing of proxy materials or the 10th day following the day on which public announcement of the date of the annual meeting is first made. Such stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business to be brought before the annual meeting and the reasons for conducting such business at such meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made; (iii) the class and number of shares of the Corporation's stock which are beneficially owned by the stockholder, and by the beneficial owner, if any, on whose behalf the proposal is made; and (iv) any material interest of the stockholder, and of the beneficial owner, if any, on whose behalf the proposal is made, in such business. Business. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Bylaw. The chairman of the meeting may, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with the provisions of this Bylaw; and if the chairman should so determine, the chairman shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.5. List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of the stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 2.6. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called at any time by the Board of Directors, or by a committee of the Board of Directors which has been duly designated by the Board of Directors and whose power and authority, as provided in a resolution of the Board of Directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons.

Section 2.7. Notice of Special Meetings. Written notice of a special meeting of stockholders stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 2.8. Business at Special Meetings. The business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.9. Adjourned Meetings and Notice Thereof. Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but in the absence of a quorum, no other business may be transacted at such meeting, except as provided in Section 2.10 of these bylaws.

When a stockholders' meeting is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken; except that if the adjournment is for more than thirty days or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

Section 2.10. Quorum. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or

represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation.

Section 2.11. Majority Vote. If a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power, present in person or represented by proxy, shall decide any question brought before such meeting, unless a different vote is required on that question by express provision of statute or of the certificate of incorporation, in which case such express provision shall govern and control.

The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, in any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum, unless a different vote is required as set forth above.

Section 2.12. Voting. Except as otherwise provided in the certificate of incorporation and subject to Section 8.4 of these bylaws, each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock having voting power held by such stockholder, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Vote may be viva voce or by ballot; provided, however, that elections for directors must be by ballot.

Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office but, if the stockholder fails to specify the number of shares such stockholder is voting affirmatively, it shall be conclusively presumed that the stockholder's approving vote is with respect to all shares said stockholder is entitled to vote.

Section 2.13. Stockholder Action. Any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; provided, that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law or these bylaws to be included in the notice but not so included if such objection is expressly made at the meeting.

Section 2.14. Presiding Officer. The chairman of the Board of Directors, if there be such officer, shall, if present, call the meetings of

the stockholders to order and shall act as the presiding officer thereof.

Section 2.15. Secretary. The secretary of the Corporation, if present, shall act as secretary of all meetings of the stockholders. In the absence of the secretary, an assistant secretary if present shall act as secretary of the meetings of the stockholders. In the absence of the secretary or any assistant secretary, the presiding officer may appoint a person to act as secretary of such meeting.

Section 2.16. Confidential Voting.

(a) Proxies and ballots that identify the votes of specific stockholders shall be kept in absolute confidence by the tabulators and the inspectors of election unless (i) there is an opposing solicitation with respect to the election or removal of Directors, (ii) disclosure is required by applicable law, (iii) a stockholder expressly requests or otherwise authorizes disclosure of the vote(s) cast by that stockholder, or (iv) the Corporation concludes in good faith that a bona fide dispute exists as to the authenticity of one or more proxies, ballots or votes, or as to the accuracy of any tabulation of such proxies, ballots or votes. Otherwise, no person, group or entity (including but not limited to any past, present or prospective director, officer, employee, agent or stockholder of the Corporation) shall be shown, told or given any information about the vote(s) cast by any specific stockholder.

(b) Comments written on proxies, consents or ballots shall be transcribed and provided to the secretary of the Corporation with the name and address of the stockholder. The vote of the stockholder shall not be disclosed at the time any such comment is provided to the secretary except where such vote is included in the comment or disclosure is necessary, in the opinion of the inspector, for an understanding of the comment.

(c) The tabulators and inspectors of election and any authorized agents or other persons engaged in the receipt, count and tabulation of proxies and ballots shall be advised of this Bylaw and instructed to comply herewith.

(d) The inspectors of election shall certify, to the best of their knowledge based on due inquiry, that proxies and ballots have been kept in confidence as required by this Section 2.16.

(e) Nothing in this Bylaw shall prohibit the inspector from making available to the Corporation, during the period prior to any annual or special meeting, information as to which stockholders have not voted and periodic status reports on the aggregate vote.

ARTICLE III

DIRECTORS

Section 3.1. Number of Directors, Election and Term of Office. The number of directors which shall constitute the whole board shall be ten. The Board of Directors shall be classified, with respect to the

time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board of Directors, one class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1986, another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1987, and another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1988, with the members of each class to hold office until their successors are elected and qualified. At each annual meeting of stockholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

The term "entire board" as used in these bylaws means the total number of directors which the Corporation would have if there were no vacancies.

Section 3.2. Vacancies. A vacancy in the Board of Directors shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors be increased, or if the stockholders fail at any annual or special meeting of stockholders to elect the full authorized number of directors to be voted for at that meeting.

Unless otherwise provided in the certificate of incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next election of the class for which he was chosen and until his successor is fully elected and qualified, unless sooner displaced. If at any time the Corporation should have no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the entire board (as constituted immediately prior to any such increase), the Court of the Chancery may upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships or to replace the directors chosen by the directors then in office.

Section 3.3. Powers. The business and affairs of the Corporation shall be managed by its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 3.4. Compensation of Directors. The Board of Directors

shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.5. Resignation. Any director may resign effective upon giving written notice to the chief executive officer, the secretary, or the Board of Directors of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 3.6. Nominations of Directors. Only persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible for election as directors. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders (i) by the Board of Directors or a committee appointed by the Board of Directors authorized to make such nominations or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Bylaw, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Bylaw. Nominations by stockholders shall be made pursuant to notice in writing, delivered or mailed, postage prepaid, to the Secretary of the Corporation and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 60 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders, provided, however, that in the event that the date of the meeting is advanced by more than 30 days or delayed by more than 60 days from such anniversary date, notice by the stockholder must be received not later than the close of business on the later of the 60th day prior to such date of mailing of proxy materials or the 10th day following the day on which public announcement of the date of the meeting is first made; or (ii) in the case of a special meeting at which directors are to be elected, not later than the close of business on the later of the 60th day prior to such special meeting or the 10th day following the day on which public announcement of the date of the meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made. Such stockholder's notice shall set forth (i) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (ii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a description of all arrangements or

understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (iv) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated by the Board of Directors; and (v) the written consent of such nominee to serve as a director of the Corporation if elected. At the request of the Board of Directors, or any committee appointed by the Board of Directors authorized to make such nominations, any person nominated by the Board of Directors, or such committee, for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination that pertains to the nominee. Notwithstanding anything in this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public statement naming all the nominees for Director or specifying the size of the increased Board of Directors made by the Corporation at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in these Bylaws. The chairman of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed in this Bylaw; and if the chairman should so determine, the chairman shall so declare to the meeting, and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act, and the rules and regulations thereunder with respect to the matters set forth in this Bylaw.

ARTICLE IV MEETINGS OF THE BOARD OF DIRECTORS

Section 4.1. Place of Meeting. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 4.2. Organization Meeting. Immediately after each annual meeting of stockholders, the Board of Directors shall hold a regular meeting for the purpose of organization, electing officers

and transacting other business. No notice of such meeting need be given. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

Section 4.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and at such place as shall from time to time be determined by the Board of Directors; provided, however, that if the date so designated falls upon a legal holiday, then the meeting shall be held at the same time and place on the next succeeding day which is not a legal holiday. Such regular meetings may be held without notice.

Section 4.4. Special Meetings. Special meetings of the Board of Directors may be called by the chairman of the board of directors, chairman of the executive committee of the Board of Directors, the chief executive officer or the president or on the written request of the directors constituting a majority of the entire board.

Section 4.5. Notice of Special Meetings. Notice of the time and place of special meetings of the Board of Director shall be delivered personally to each director, or sent to each director by mail, telephone, or telegraph. In case such notice is sent by mail or telegraphed it shall be deposited in the United States mail or delivered to the telegraph company in the place in which the principal office of the Corporation is located at least 48 hours prior to the time of the holding of the meeting. In case such notice is delivered personally or by telephone, it shall be so delivered at least 24 hours prior to the time of the holding of the meeting. Such notice shall not be necessary if appropriate waivers, consents and/or approvals are filed in accordance with Section 4.6 of these bylaws.

Section 4.6. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 4.7. Quorum. At all meetings of the board, the

presence of one-third of the entire board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meetings at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting without notice other than announcement at the meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 4.8. Adjournment. Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the vote of a majority of the directors present. Notice of the time and place of the adjourned meeting need not be given to absent directors if said time and place are fixed at the meeting adjourned.

Section 4.9. Action Without Meeting. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

Section 4.10. Conference Communication. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors or any committee designated by the board may participate in a meeting of the Board of Directors or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another. Participation in a meeting pursuant to this action shall constitute presence in person at such meeting.

ARTICLE V

COMMITTEES OF DIRECTORS

Section 5.1. Committees of Directors. The Board of Directors may, by resolution passed by a majority of the entire board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a

member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolutions of the Board of Directors, shall have and may exercise all the power and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the bylaws of the Corporation and, unless the resolution or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. 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.

Section 5.2. Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 5.3. Audit Committee. There shall be an Audit Committee comprised of at least three members of the Board. The members will be appointed by and serve at the pleasure of the board. Each member of the Audit committee will be "independent" as defined by and to the extent required by the rules of the New York Stock Exchange. Each member of the Audit Committee will be "financially literate" as interpreted by the board, in its business judgement, or must become "financially literate" within a reasonable period of time after his or her appointment to the Audit Committee. At least one member of the Audit Committee must have "accounting or related financial management expertise", as interpreted by the board in its business judgement.

The Audit Committee as a group will meet individually with the Company's outside auditors, Chief Executive Officer and Chief Financial Officer upon completion of the annual audit, and at such other times as it deems appropriate, to review the outside auditors' examination and management report.

The Audit Committee shall oversee the corporate financial reporting process and the internal and external audits of the

Corporation. The Audit Committee will undertake those specific duties, responsibilities and processes listed below and such other duties as the Board of Directors from time to time prescribe. The Audit Committee will ensure that there is effective communication among the Board, management and outside auditors.

The responsibilities of the Audit Committee include:

1. Recommending outside auditors for approval by the Board and, if necessary, the termination of the outside auditors presently engaged;
2. Approving the fees for the audit and related services at least annually;
3. Reviewing the quarterly and annual financial statements, and discussing the audited annual financial statements with both the Company's outside auditors and the Company's management, prior to any public filing of those reports;
4. Discussing with the Company's outside auditors the quality of accounting principles applied in the Company's financial statements and the other matters required by SAS 61 and amendments or supplements thereto, such as management judgments and accounting estimates that affect financial statements, significant new accounting policies and disagreements with management;
5. Ensuring the receipt of, and reviewing, a formal written statement from the Company's outside auditors delineating all relationships between the outside auditor and the Company, consistent with Independence Standards Board Standard 1;
6. Reviewing and actively discussing with the Company's outside auditors the auditor's independence, including any disclosed relationship or service that may impact the objectivity and independence of the outside auditor;
7. Recommending that the Board take appropriate action to ensure the independence of the outside auditor;
8. Overseeing the Company's compliance with SEC requirements for disclosure of auditor's services and Audit Committee members and activities;
9. Reviewing the Company's system of internal accounting controls;
10. Making inquiries into matters within the scope of its functions and retaining outside counsel if it deems appropriate in connection with such inquiries;
11. Ensuring that the Company provides annual written affirmation to the NYSE regarding: (i) any Board determination regarding the independence of the Audit

Committee members, (ii) the financial literacy of the Audit Committee members, (iii) the determination that at least one member has the requisite accounting or financial expertise; and (iv) the annual review of this Charter;

12. Ensure that the outside auditors understand both: (i) their ultimate accountability to the Board and to the Audit Committee, as representatives of the Company's stockholders, and (ii) the Board's and the Audit Committee's ultimate authority and responsibility to select, evaluate and, where appropriate in the exercise of their business judgment, replace the Company's outside auditors, or nominate the outside auditor to be proposed for stockholder approval in any proxy statement.
13. review and reassess the adequacy of its committee charter at least once a year.

Section 5.4 Executive Committee. There shall be an Executive Committee of the Board of Directors that shall include a minimum of any three directors appointed from time to time by the Board.

Any outside director or directors may attend any meeting of the Executive Committee as participants; however, a quorum shall be determined without regard to the attendance of such outside director or directors. If more than one outside director attends a meeting of the Executive Committee, only the director with the longest service on the Board of Directors shall have a vote on matters coming before the Executive Committee.

The functions of the Executive Committee shall be to exercise all power and authority of the Board in the management of the business and affairs of the Corporation, except for: (a) any functions delegated to other committees of the Board. (b) amending the Articles or Certificate of Incorporation, (c) adopting an agreement of merger or consolidation, (d) recommending to the stockholders the sale, lease or exchange of substantially all of the Corporation's property and assets, (e) recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, (f) amending the Bylaws of the Corporation, (g) declaring a dividend, or (h) authorizing the issuance of stock in the Corporation.

Section 5.5. Executive Officer Compensation & Stock Option Committee. There shall be an Executive Officer Compensation & Stock Option Committee of the Board of Directors that shall include a minimum of any three independent directors appointed from time to time by the Board. The functions of the Executive Officer Compensation & Stock Option Committee shall be to: (a) review and recommend to the Board the compensation and other contractual terms and conditions for employment of the Corporation's executive officers, (b) review and recommend to the Board the compensation and

other contractual terms and conditions for employment of any and all former executive officers of the company who resume service to the Company as independent contractors or non-officer employees, (c) review the compensation and other contractual terms and conditions for employment of other corporate or subsidiary officers whose annual cash compensation exceeds \$250,000, (d) to administer the Corporation's stock option plans and authorize grants thereunder, and (e) to administer the Corporation's employee stock purchase plan.

Section 5.6 Nominating, Governance & Succession Committee. There shall be a Nominating, Governance & Succession Committee of the Board of Directors that shall include a minimum of any three independent directors appointed from time to time by the board. The functions of the Nominating, Governance & Succession Committee shall be to: (a) make recommendations to the board as to the optimal number of directors on the Board, (b) review and recommend criteria for the reelection of incumbent directors, (c) have jurisdiction over the compensation of directors, (d) review and recommend executive officer succession, and (e) be responsible for all matters of corporate governance.

ARTICLE VI

OFFICERS

Section 6.1 Officers. The officers of the Corporation shall be a chief executive officer, a chief administrative officer, a president, a chairman of the Board, one or more executive vice presidents, one or more senior vice presidents, one or more vice presidents, a secretary, a controller, and a treasurer, each of whom shall be an executive officer of the Corporation appointed by the Board of Directors. The Corporation may also have one or more assistant vice presidents, one or more assistant secretaries, one or more assistant controllers, and one or more assistant treasurers, each of whom shall be an assistant officer of the Corporation appointed by the Executive Committee of the Board of Directors. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 6.2 Election. The Board of Directors at its first meeting after each annual meeting of stockholders shall elect all principal officers for the ensuing year and shall designate a chief executive officer and a chief financial officer. At its first meeting after each annual meeting of stockholders, the Executive Committee shall elect all assistant officers.

Section 6.3 Other Officers. The Board of Directors may appoint such other officers and agents as it shall deem necessary and they shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to

time by the Board of Directors.

Section 6.4 Term. Subject to an applicable written employment agreement, if any, between the Corporation and any principal officer elected or appointed by the Board of Directors or any assistant officer appointed by the Executive Committee of the Board of Directors, said officer may be removed at any time, either with or without cause, by the affirmative vote of a majority of the Board of Directors or of the Executive Committee of the Board of Directors, respectively. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or by the Executive Committee of the Board of Directors pursuant to the requirements of Section 6.1 of this Article VI. Compensation and other terms and conditions of employment of any principal officer shall be subject to approval of the Officer Compensation and Stock Option Committee and the Board of Directors. Compensation and other terms and conditions of employment of assistant officers shall be subject to approval of the Executive Committee of the Board of Directors.

Section 6.5 The Chairman of the Board of Directors. The chairman of the Board of Directors shall be responsible to the Board of Directors, shall prepare communications to the Board, and with input from the Executive Committee, shall prepare agenda for meetings of the Board of Directors. The Chairman of the Board of Directors shall be a member of the Executive Committee and shall preside over all meetings of the Board of Directors and of the stockholders. At the request of the President and Chief Executive Officer, the Chairman shall assist him in communications with stockholders, the press and the investment community. The chairman shall exercise and perform such other powers and duties as may, from time to time, be assigned to him by the Board of Directors or prescribed by these bylaws.

Section 6.6 The President. The president shall have general and active management over the business and affairs of the corporation, subject, however, to the powers and authority of the chief executive officer and to the control of the Board of Directors. In the absence or disability of the chief executive officer, the president shall perform the duties of the chief executive officer, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the chief executive officer.

Section 6.7 The Chief Administrative Officer. In the absence or disability of the chief executive officer and the president, the chief administrative officer or any other officer of the corporation designated by the Board of Directors, shall perform the duties of the chief executive officer, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the chief executive officer. The chief administrative officer shall have such powers and

perform such other duties as from time to time may be prescribed by the chief executive officer.

Section 6.8 The Senior Vice Presidents. In the absence of the chairman of the board or any executive vice presidents, the senior vice presidents, in order of their rank as fixed by the board of directors, or, if not ranked, the senior vice president designated by the Board of Directors shall perform the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon the president. The senior vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Executive Committee of the Board of Directors.

Section 6.9 The Vice Presidents. The vice presidents shall have such powers and perform such duties as may from time to time be prescribed by the Executive Committee of the Board of Directors.

Section 6.10 The Secretary. The secretary shall keep, or cause to be kept, a book of minutes in written form of the proceedings of the Board of Directors, committees of the board, and stockholders. Such minutes shall include all waivers of notice, consents to the holding of meeting, or approvals of the minutes of meetings executed pursuant to these bylaws or statute. The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number and class of shares held by each.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required by these bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these bylaws.

Section 6.11 The Assistant Secretary. The assistant secretary shall have all the powers and perform all the duties of the secretary in the absence or inability of the secretary to act.

Section 6.12 The Controller. The Controller of the Corporation shall be the general manager of the accounting, tax and internal audit functions of the Corporation and its subsidiaries, subject to the control of the chief financial officer. The controller shall have such other powers and perform such other duties as from time to time may be prescribed by the chief financial officer.

Section 6.13 The Treasurer. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all monies and other valuables in the name and to the credit of the Company. The treasurer shall also have

such other powers and perform such other duties as may be prescribed by the Executive Committee of the Board of Directors.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 7.1. Actions, Suits or Proceedings Other Than by or in the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges, expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he 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 his conduct was unlawful; provided however, that the foregoing indemnity shall not be applicable as to any person who is or was or agreed to become an employee or agent of the Corporation (other than employees or agents who are or were also officers or directors of the Corporation), or is or was serving or agreed to serve at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise (other than employees or agents who are or were also officers or directors of any such other corporation, partnership, joint venture, trust or enterprise), unless and until such indemnity is specifically approved by the Board of Directors. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he 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 his conduct was unlawful.

Section 7.2. Actions or Suits by or in the Right of the

Corporation. The Corporation shall 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 he is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection with the defense or settlement of such action or suit and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation 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 to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such costs, charges and expenses which the Court of Chancery or such other court shall deem proper; provided, however, that the foregoing indemnity shall not be applicable as to any person who is or was or agreed to become an employee or agent of the Corporation (other than employees or agents who are or were also officers or directors of the Corporation), or is or was serving or agreed to serve at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise other than employees or agents who are or were also officers or directors of any such other corporation, partnership, joint venture, trust or enterprise), unless and until such indemnity is specifically approved by the Board of Directors.

Section 7.3. Indemnification for Costs, Charges and Expenses of Successful Party. Notwithstanding the other provisions of this Article, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any action, suit or proceeding referred to in Sections 7.1 and 7.2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against all costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7.4. Determination of Right to Indemnification. Any indemnification under Sections 7.1 and 7.2 of this Article (unless ordered by a court) shall be paid by the Corporation unless a determination is made (1) by the Board of Directors by a majority vote of the quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders, that indemnification of the director, officer, employee or agent is not proper in the circumstances because he has not met the applicable standard of conduct set forth in Sections 7.1 and 7.2 of this Article.

Section 7.5. Advance of Costs, Charges and Expenses. Costs, charges and expenses (including attorneys' fees incurred by a person referred to in Sections 7.1 and 7.2 of this Article in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding; providing, however, that the payment of such costs, charges and expenses incurred by a director or officer in his capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer) in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by or on behalf of the director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation as authorized in this Article. Such costs, charges and expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate. The Board of Directors may, in the manner set forth above, and upon approval of such director, officer, employee or agent of the Corporation, authorize the Corporation's counsel to represent such person, in any action, suit or proceeding, whether or not the Corporation is a party to such action suit or proceeding.

Section 7.6. Procedure for Indemnification. Any indemnification under Sections 7.1., 7.2 or 7.3, or advance of costs, charges and expenses under Section 7.5 of this Article, shall be made promptly, and in any event within 30 days, upon the written request of the director, officer, employee or agent. The right to indemnification or advances as granted by this Article shall be enforceable by the director, officer, employee or agent in any court of competent jurisdiction, if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within 30 days. Such persons, costs and expenses incurred in connection with

successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of costs, charges and expenses under Section 7.5 of this Article where the required undertaking, if any, has been received by the Corporation) that the claimant has not met the standard of conduct set forth in Sections 7.1 or 7.2 of this Article, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel, and its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 7.1 or 7.2 of this Article, nor the fact that there has been an actual determination by the Corporation (including its Board of Directors, its independent legal counsel, and its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 7.7. Other Rights; Continuation of Right to Indemnification. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any law (common or statutory), agreement, vote of stockholders or disinterested director or otherwise, both as to action in his official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification under this Article shall be deemed to be a contract between the Corporation and each director, officer, employee or agent of the Corporation who serves or served in such capacity at any time while this Article is in effect. Any repeal or modification of this Article or any repeal or modification of relevant provisions of the Delaware General Corporation Law or any other applicable laws shall not in any way diminish any rights to indemnification of such director, officer, employee or agent or the obligations of the Corporation arising hereunder.

Section 7.8. Insurance. The Corporation shall purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation

as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him or on his behalf in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article, provided that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the entire Board of Directors.

Section 7.9. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director, officer, employee and agent of the Corporation as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the full extent permitted by applicable law.

ARTICLE VIII STOCKHOLDERS

Section 8.1. Certificates of Stock. Every holder of shares in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the chairman, the president or a vice president and the secretary or an assistant secretary of the Corporation, or the treasurer or an assistant treasurer, certifying the number of shares owned by him in the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 8.2. Lost Certificates. The Board of Directors may direct a new certificate or certificates of stock to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates the Corporation may, in its discretion, and as a condition precedent to

the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond (or other adequate security) in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 8.3. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 8.4. Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, unless the Board of Directors fixes a new record date for the adjourned meeting, but the board shall fix a new record date if the meeting is adjourned for more than forty-five days from the date set for the original meeting.

Section 8.5. No Record Date. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business at the day next preceding the day on which notice is given, or, if notice is waived, at the end of business of the day next preceding the day on which the meeting is held. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 8.6. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person

registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 9.2. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the name of the state of its incorporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE X
AMENDMENTS

Section 10.1. Amendments. Subject to the provisions of the Certificate of Incorporation, these bylaws may be altered, amended or repealed at any regular meeting of the stockholders (or at any special meeting thereof duly called for that purpose) by a vote of not less than 70% of the outstanding stock entitled to vote at such meeting; provided that in the notice of such special meeting notice of such purpose shall be given. Subject to the laws of the State of Delaware, the certificate of incorporation and these bylaws, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present amend these bylaws, or enact such other bylaws as in their judgment may be advisable for the regulation of the conduct of the affairs of the Corporation.

ABM INDUSTRIES INCORPORATED
2002 PRICE-VESTED PERFORMANCE STOCK OPTION PLAN

1. PURPOSE; DEFINITIONS.

ABM Industries Incorporated, hereby establishes the ABM Industries Incorporated 2002 Price-Vested Performance Stock Option Plan (the "Plan"), effective as of December 11, 2001. The purpose of the Plan is to give ABM Industries Incorporated and its Affiliates a long-term stock option plan to help in recruiting, retaining motivating and rewarding senior executives, and to provide the Company and its Affiliates with the ability to provide incentives more directly linked to the profitability of the Company's businesses and increases in stockholder value.

For purposes of the Plan, the following terms are defined as set forth below:

a. "Affiliate" or "Affiliates" means any and all subsidiary corporations or other entities controlled by the Company and designated by the Committee from time to time as such.

b. "Board" or "the Board" means the board of directors ("Directors") of the Company.

c. "Cause" means:

(1) misconduct or any other willful or knowing violation of any Company policy or employment agreement,

(2) unsatisfactory performance such that the Company notifies the Optionee of the Company's intention not to renew the Optionee's employment agreement with the Company,

(3) a material breach by the Optionee of his or her duties as an employee which is committed in bad faith or without reasonable belief that such breach is in the best interests of the Company and its affiliated companies (other than a breach arising from the failure of the Optionee to work as a result of incapacity due to physical or mental illness) and which is not remedied in a reasonable period of time after receipt of written notice from the Company specifying such breach, or

(4) the conviction of the Optionee of a felony that has been affirmed on appeal or as to which the period in which an appeal can be taken has lapsed.

d. "Change in Control" and "Change in Control Price" have the meanings set forth in Sections 6b and 6c of the Plan, respectively.

e. "Code" or "the Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

f. "Commission" or "the Commission" means the Securities and Exchange Commission or any successor agency.

g. "Committee" or "the Committee" means the committee referred to in Section 2 of the Plan.

h. "Company" or "the Company" means ABM Industries Incorporated, a Delaware corporation.

i. "Disability" means the inability of the Optionee to perform his or her duties as an employee on an active fulltime basis as a result of incapacity due to mental or physical illness which continues for more than ninety (90) days after the commencement of such incapacity, such incapacity to be determined by a physician selected by the Company or its insurers and acceptable to the Optionee or the Optionee's legal representative (such agreement as to acceptability not to be withheld unreasonably).

j. "Eligible Person" has the meaning set forth in Section 4 of the Plan.

k. "Exchange Act" or "the Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any comparable successor provisions.

l. "Fair Market Value" means, as of any given date, the average of the highest and lowest reported trades of the Stock on the New York Stock Exchange Composite Tape for such date, or if there were no trades on such date, the average of the nearest trading day after such date. If there is no regular public trading market for such Stock, the Fair Market Value of the Stock shall be determined by the Committee in good faith.

m. "Non-Employee Director" shall mean a member of the Board who qualifies as a Non-Employee Director as defined in Rule 16b-3, and also qualifies as an "outside director" for the purposes of Section 162(m) of the Code and the regulations promulgated thereunder.

n. "Optionee" shall mean any Eligible Person who has been granted Stock Options under the Plan.

o. "Plan" or "the Plan" means the ABM Industries Incorporated 2002 Price-Vested Performance Stock Option Plan, as set forth herein and as hereinafter amended from time to time.

p. "Retirement" means retirement from active full-time employment with the Company or any of its Affiliates at or after age sixty-four (64).

q. "Rule 16b-3" means Rule 16b-3, as promulgated by the Commission under Section 16(b) of the Exchange Act, as amended from time to time.

r. "Stock" means common stock, par value \$0.01 per share, of the Company.

s. "Stock Option" or "Option" means an option granted under Section 5 of the Plan.

t. "Termination of Employment" means the termination of an Optionee's employment with the Company or any of its Affiliates, excluding any such termination where there is a simultaneous reemployment by the Company or any of its Affiliates. An Optionee shall be deemed to have terminated employment if he or she ceases to perform services for the Company or any of its Affiliates on an active full-time basis, notwithstanding the fact that such Optionee continues to

receive compensation or benefits pursuant to an employment contract or other agreement or arrangement with the Company or any of its Affiliates. A non-medical leave of absence shall, unless such leave of absence is otherwise approved by the Committee, be deemed a Termination of Employment. An Optionee employed by an Affiliate of the Company shall also be deemed to incur a Termination of Employment if that Affiliate ceases to be an Affiliate of the Company, as the case may be, and that Optionee does not immediately thereafter become an employee of the Company or any other Affiliate of the Company.

In addition, certain other terms have definitions given to them as they are used herein.

2. ADMINISTRATION.

The Plan shall be administered by the Executive Officer Compensation & Stock Option Committee of the Board or such other committee of the Board, composed solely of not less than two Non-Employee Directors, each of whom shall be appointed by and serve at the pleasure of the Board. If at any time no such committee(s) shall be in office, the functions of the Committee specified in the Plan shall be exercised by the Board.

The Committee shall have all discretionary authority to administer the Plan and to grant Stock Options pursuant to the terms of the Plan to senior executives of the Company and any of its Affiliates.

Among other things, the Committee shall have the discretionary authority, subject to the terms of the Plan:

- a. to select the Eligible Persons to whom Stock Options may from time to time be granted;
- b. to determine the number of shares of Stock to be covered by each Stock Option granted hereunder; and
- c. to determine the terms and conditions of any Stock Option granted hereunder including, but not limited to, the option price (subject to Section 5a of the Plan) and any vesting condition, restriction or limitation based on such factors as the Committee shall determine.

The Committee shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall, from time to time, deem advisable, to interpret the terms and provisions of the Plan and any Stock Option issued under the Plan (and any agreement relating thereto) and to otherwise supervise the administration of the Plan.

The Committee may act only by a majority of its members then in office, except that the members thereof may authorize any one or more of their number or any officer of the Company to execute and deliver documents on behalf of the Committee.

Any determination made by the Committee or pursuant to delegated authority pursuant to the provisions of the Plan with respect to any Stock Option shall be made in the sole discretion of the Committee or such delegate at the time of the grant of the Stock Option or, unless in contravention of any express term of the Plan, at any time thereafter. All decisions made by the Committee or any appropriately delegated officer pursuant to the provisions of the Plan shall be

final and binding on all persons, including the Company and plan participants, and shall be given the maximum deference permitted by law.

3. STOCK SUBJECT TO PLAN.

Subject to adjustment as provided herein, the total number of shares of Stock available for grant under the Plan shall be two million (2,000,000). No individual shall be eligible to receive Stock Options to purchase more than 100,000 shares of Stock under the Plan. Shares subject to a Stock Option under the Plan may be authorized and unissued shares or may be treasury shares.

If any Stock Option terminates without being exercised, shares subject to such Stock Option shall be available for further grants under the Plan.

In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split, or extraordinary distribution with respect to the Stock or other change in corporate structure affecting the Stock, the Committee or the Board may make such substitution or adjustments in the number, kind and option price of shares authorized or outstanding as Stock Options, and/or such other equitable substitution or adjustments as its may determine to be appropriate in its sole discretion; provided, however, that the number of shares subject to any Stock Option shall always be a whole number.

4. ELIGIBILITY.

Senior executives who are actively employed on a full-time basis by the Company or any of its Affiliates, and who are responsible for or contribute to the management, growth and profitability of the business of the Company or any of Affiliates, are eligible to be granted Stock Options under the Plan ("Eligible Persons").

5. STOCK OPTIONS.

Any Stock Option granted under the Plan shall be in the form attached hereto as Annex "A", which is incorporated herein and made a part of the Plan, with such changes as the Committee may from time to time approve which are consistent with the Plan. None of the Stock Options granted under the Plan shall be "incentive stock options" within the meaning of Section 422 of the Code.

The grant of a Stock Option shall occur on the date the Committee selects a Senior Executive of the Company or any of its Affiliates to receive any grant of a Stock Option, determines the number of shares of Stock to be subject to such Stock Option to be granted to such Senior Executive, and specifies the terms and provisions of said Stock Option. Such selection shall be evidenced in the records of the Company whether in the minutes of the meetings of the Committee or by their consent in writing. The Company shall notify an Optionee of any grant of a Stock Option, and a written option agreement or agreements shall be duly executed and delivered by the Company to the Optionee.

Stock Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Committee shall deem desirable:

a. Option Price. The option price per share of Stock purchasable under a Stock Option shall be the Fair Market Value per share of Stock on the grant date.

b. Option Term. The term of each Stock Option shall be ten (10) years from its date of grant, unless earlier terminated.

c. Exercisability. Except as otherwise provided herein, each Stock Option shall be exercisable during its term only if such Stock Option has vested, and only after the first (1st) anniversary of its date of grant.

d. Vesting. Each Stock Option shall have assigned to it by the Committee a vesting price (the "Vesting Price") which will be used to provide for accelerated vesting so that such Stock Option will vest immediately if, on or before the close of business on the fourth (4th) anniversary of its date of grant, the Fair Market Value of the Common Stock shall have been equal to or greater than the Vesting Price with respect to such Stock Option for ten (10) trading days in any period of thirty (30) consecutive trading days. Any Stock Option that has not vested on or before the close of business on the fourth (4th) anniversary of its date of grant shall vest at the close of business on the business day immediately preceding the eighth (8th) anniversary of its date of grant, if such Option has not previously terminated.

e. Method of Exercise. Subject to the provisions of this Section 5 of the Plan, Stock Options may be exercised, in whole or in part, by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Stock Option to be purchased.

The option price of Stock to be purchased upon exercise of any Option shall be paid in full:

(1) in cash (by certified or bank check or such other instrument as the Company may accept),

(2) in the discretion of the Committee, in the form of unrestricted Stock already owned by the Optionee for six (6) months or more and based on the Fair Market Value of the Stock on the date the Stock Option is exercised,

(3) in any other form approved in the discretion of the Committee, or

(4) by any combination thereof.

In the discretion of the Committee, payment for any shares subject to a Stock Option may also be made by delivering a properly executed exercise notice to the Company, together with a copy of irrevocable instructions to a broker to deliver promptly to the Company the amount of sale or loan proceeds to pay the purchase price, and, if requested, the amount of any federal, state, local or foreign withholding taxes. To facilitate the foregoing, the Company may enter into agreements for coordinated procedures with one or more brokerage firms.

No shares of Stock shall be issued until full payment therefor has been made. The Optionee shall have all of the rights of a stockholder of the Company holding the Stock that is subject to such Stock Option (including, if applicable, the right to vote the share and the right to

receive dividends), only when the Optionee has given written notice of exercise, has paid in full for such shares and, if requested, has given the representation described in Section 9a of the Plan.

f. Non-transferability of Stock Options. No Stock Option shall be transferable by the Optionee other than:

(1) pursuant to a beneficiary designation satisfactory to the Committee, or

(2) by will or by the laws of descent and distribution.

All Stock Options shall be exercisable, during the Optionee's lifetime, only by the Optionee or by the guardian or legal representative of the Optionee, it being understood that the terms "holder" and "Optionee" include the guardian and legal representative of the Optionee named in the option agreement and any person to whom an option is transferred by will or the laws of descent and distribution or pursuant to a qualified domestic relations order. The Committee may establish such procedures as it deems appropriate for an Optionee to designate a beneficiary to whom any amounts payable in the event of the Optionee's death are to be paid or by whom any rights of the Optionee, after the Optionee's death, may be exercised.

g. Termination by Death, Disability, Retirement or by the Company Without Cause. If the Optionee's employment terminates by reason of death, Disability or Retirement, or if such employment is terminated by the Company without Cause, in each case prior to the vesting of a Stock Option held by the Optionee, the following provisions shall apply:

(1) if termination occurs by death or Disability, or by the Company without Cause, such Stock Options shall be exercisable only within ninety (90) days of such termination, and only if such Stock Options are then vested;

(2) if termination occurs by Retirement or other "voluntary quit," such Stock Options shall terminate immediately; and

h. Termination by the Company for Cause. If the Optionee's employment is terminated by the Company for Cause prior to the vesting of a Stock Option, such Stock Options shall terminate immediately.

i. Termination After Vesting. If the Optionee's employment is terminated for any reason after a Stock Option has vested, such Stock Options shall be exercisable only within ninety (90) days of such termination,

j. Change in Control Cash Out. Notwithstanding any other provision of the Plan, upon the occurrence of a Change of Control all outstanding Stock Options shall immediately vest and become fully exercisable, and during the ninety (90) day period from and after such Change in Control (the "Exercise Period"), the Optionee shall have the right, in lieu of the payment of the exercise price for the shares of Stock being purchased under the Stock Option and by giving notice to the Company, to elect (within the Exercise Period) to surrender all or part of the Stock Option to the Company and to receive cash, within ninety (90) days of such notice, in an amount equal to the amount by which the Change in Control Price per share of Stock on the date of such election shall exceed the exercise price per share of Stock under the Stock Option (the "Spread"), multiplied by

the number of shares of Stock granted under the Stock Option as to which the right granted under this Section 5j of the Plan shall have been exercised.

6. CHANGE IN CONTROL PROVISIONS.

a. Impact of Event. Notwithstanding any other provision of the Plan to the contrary, in the event of a Change in Control, any Stock Options outstanding as of the date such Change in Control is determined to have occurred, and not then vested and exercisable, shall become vested and exercisable to the full extent of the original grant, provided that such accelerated vesting shall occur only if the Optionee is an active full-time employee of the Company or any of its Affiliates as of such date.

b. Definition of Change in Control. For purposes of the Plan, a "Change in Control" shall mean the happening of any of the following events:

(i) the acquisition (other than by the Company or by an employee benefit plan or related trust sponsored or maintained by the Company), directly or indirectly, in one or more transactions, by any person or by any group of persons, within the meaning of Section 13(d) or 14(d) of the Exchange Act of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of twenty-five percent or more of either the outstanding shares of common stock or the combined voting power of the Company's outstanding voting securities entitled to vote generally, if the acquisition was not previously approved by the existing directors;

(ii) the acquisition (other than by the Company or by an employee benefit plan or related trust sponsored or maintained by the Company), directly or indirectly, in one or more transactions, by any such person or by any group of persons of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of fifty percent or more of either the outstanding shares of common stock or the combined voting power of the Company's outstanding voting securities entitled to vote generally, whether or not the acquisition was approved by the existing directors, other than an acquisition that complies with clause (x) and (y) of paragraph (iii);

(iii) consummation of a reorganization, merger or consolidation of the Company or the sale or other disposition of all or substantially all of the Company's assets unless, immediately following such event, (x) all or substantially all of the stockholders of the Company immediately prior to such event own, directly or indirectly, seventy-five percent or more of the then outstanding voting securities entitled to vote generally of the resulting corporation (including without limitation, a corporation which as a result of such event owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership of the Company's outstanding voting securities entitled to vote generally immediately prior to such event and (y) the securities of the surviving or resulting corporation received or retained by the stockholders of the Company is publicly traded;

(iv) approval by the stockholders of the complete liquidation or dissolution of the Company; or

(v) a greater than one-third change in the composition of the Board of Directors within 24 months if not approved by a majority of the pre-existing directors.

c. Change in Control Price. For purposes of the Plan, "Change in Control Price" means the higher of:

(1) the highest reported sales price, regular way, of a share of Stock in any transaction reported on the New York Stock Exchange Composite Tape or other national securities exchange on which such shares are listed or on Nasdaq, as applicable, during the ninety (90) day period prior to and including the date of a Change in Control, and or

(2) if the Change in Control is the result of a tender or exchange offer or a Business Combination, the highest price per share of Stock paid in such tender or exchange offer or Business Combination; provided, however, that in the case of a Stock Option which:

(a) is held by an Optionee who is an officer of the Company and is subject to Section 16(b) of the Exchange Act, and

(b) was granted within two hundred and forty (240) days of the Change in Control, then the Change in Control Price for such Stock Option shall be the Fair Market Value of the Stock on the date such Stock Option is exercised or canceled. To the extent that the consideration paid in any such transaction described above consists all or in part of securities or other non-cash consideration, the value of such securities or other non-cash consideration shall be determined in the sole discretion of the Board.

7. TERM, AMENDMENT AND TERMINATION.

The Plan will terminate on December 11, 2011. Stock Options outstanding as of December 11, 2011 shall not be affected or impaired by the termination of the Plan.

The Committee shall have authority to amend the Plan without the approval of the Company's stockholders to take into account changes in law and tax and accounting rules, including Rule 16b-3 and Section 162(m) of the Code; provided that no amendment shall be made without the Optionee's consent which would impair the rights of an Optionee under a Stock Option theretofore granted.

8. UNFUNDED STATUS OF PLAN.

It is presently intended that the Plan constitute an "unfunded" plan for incentive and deferred compensation. The Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Stock or make payments; provided, however, that, unless the Committee otherwise determines, the existence of such trusts or other arrangements is consistent with the "unfunded" status of the Plan.

9. GENERAL PROVISIONS.

a. The Committee may require each person purchasing shares pursuant to a Stock Option to represent to and agree with the Company in writing that such person is acquiring the shares without a view to the distribution thereof. The certificates for such shares may include any legend which the Committee deems appropriate to reflect any restrictions on transfer.

Notwithstanding any other provision of the Plan or agreements made pursuant thereto, the Company shall not be required to issue or deliver any certificate or certificates for shares of Stock under the Plan prior to fulfillment of all of the following conditions:

(1) the listing or approval for listing

(2) any registration or other qualification

(3) the obtaining of any other consent, approval, or permit from any state or federal governmental agency which the Committee shall, in its absolute discretion after receiving the advice of counsel, determine to be necessary or advisable.

b. Nothing contained in the Plan shall prevent the Company or any of its Affiliates from adopting other or additional compensation arrangements for any Optionee.

c. The adoption of the Plan shall not confer upon any Optionee any right to continued employment, nor shall it interfere in any way with the right of the Company or any of its Affiliates to terminate the employment of any Optionee with or without cause at any time whatsoever absent a written employment contract to the contrary.

d. No later than the date as of which an amount first becomes includable in the gross income of the Optionee for federal income tax purposes with respect to any Stock Option under the Plan, and prior to the delivery of any shares of Stock to any Optionee, the Optionee shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, state, local or foreign taxes of any kind required by law to be withheld by the Company with respect to such amount. In the discretion of the Committee, withholding obligations may be settled with Stock in an amount having a Fair Market Value not exceeding the minimum withholding tax payable by the Optionee with respect to the income recognized, including Stock that is subject to the Stock Option that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company and any of its Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Optionee. The Committee shall establish such procedures as it deems appropriate, including the making of irrevocable elections, for the settlement of withholding obligations with Stock.

e. In the case of a grant of a Stock Option to any employee of a Company Affiliate, the Company, may, if the Committee so directs, issue or transfer the shares of Stock covered by the Stock Option to the Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer the shares of Stock to that Optionee in accordance with the terms of the Stock Option specified by the Committee pursuant to the provisions of the Plan.

f. The Plan and all Stock Options made and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of California, without reference to principles of conflict of law.

10. EFFECTIVE DATE OF PLAN.

Subject to approval by the stockholders of the Company, the Plan shall be effective on December 11, 2001.