

(III) IN THE CASE OF ANY CRIMINAL PROCEEDING, ~~THE DIRECTOR~~ HAD NO REASONABLE CAUSE TO BELIEVE THAT THE CONDUCT WAS UNLAWFUL.

(2) (1) INDEMNIFICATION MAY BE AGAINST JUDGMENTS, PENALTIES, FINES, SETTLEMENTS, AND REASONABLE EXPENSES ACTUALLY INCURRED BY THE DIRECTOR IN CONNECTION WITH THE PROCEEDING.

(II) HOWEVER, IF THE PROCEEDING WAS ONE BY OR IN THE RIGHT OF THE CORPORATION, INDEMNIFICATION MAY BE MADE ONLY AGAINST REASONABLE EXPENSES AND MAY NOT BE MADE IN RESPECT OF ANY PROCEEDING IN WHICH THE DIRECTOR SHALL HAVE BEEN ADJUDGED TO BE LIABLE TO THE CORPORATION.

(3) THE TERMINATION OF ANY PROCEEDING BY JUDGMENT, ORDER, SETTLEMENT, CONVICTION, OR UPON A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT, ~~MAY NOT, OF ITSELF, BE DETERMINATIVE~~ CREATES A REBUTTABLE PRESUMPTION THAT THE DIRECTOR DID NOT MEET THE REQUISITE STANDARD OF CONDUCT SET FORTH IN THIS SUBSECTION.

(C) A DIRECTOR MAY NOT BE INDEMNIFIED UNDER SUBSECTION (B) OF THIS SECTION IN RESPECT OF ANY PROCEEDING CHARGING IMPROPER PERSONAL BENEFIT TO THE DIRECTOR, WHETHER OR NOT INVOLVING ACTION IN THE DIRECTOR'S OFFICIAL CAPACITY, IN WHICH THE DIRECTOR WAS ADJUDGED TO BE LIABLE ON THE BASIS THAT PERSONAL BENEFIT WAS IMPROPERLY RECEIVED.

(D) UNLESS LIMITED BY THE CHARTER:

(1) A DIRECTOR WHO HAS BEEN WHOLLY SUCCESSFUL, ON THE MERITS OR OTHERWISE, IN THE DEFENSE OF ANY PROCEEDING REFERRED TO IN SUBSECTION (B) OF THIS SECTION SHALL BE INDEMNIFIED AGAINST REASONABLE EXPENSES INCURRED BY THE DIRECTOR IN CONNECTION WITH THE PROCEEDING.

(2) A COURT OF APPROPRIATE JURISDICTION, UPON APPLICATION OF A DIRECTOR AND SUCH NOTICE AS THE COURT SHALL REQUIRE, MAY ORDER INDEMNIFICATION IN THE FOLLOWING CIRCUMSTANCES:

(I) IF IT DETERMINES A DIRECTOR IS ENTITLED TO REIMBURSEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL ORDER INDEMNIFICATION, IN WHICH CASE THE DIRECTOR SHALL BE ENTITLED TO RECOVER THE EXPENSES OF SECURING SUCH REIMBURSEMENT; OR

(II) IF IT DETERMINES THAT THE DIRECTOR IS FAIRLY AND REASONABLY ENTITLED TO INDEMNIFICATION IN VIEW OF ALL THE RELEVANT CIRCUMSTANCES, WHETHER OR NOT THE DIRECTOR HAS MET THE STANDARDS OF CONDUCT SET FORTH IN SUBSECTION (B) OF THIS SECTION OR HAS BEEN ADJUDGED LIABLE UNDER THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (C) OF THIS SECTION, THE COURT MAY ORDER SUCH INDEMNIFICATION AS THE COURT SHALL DEEM PROPER. HOWEVER, INDEMNIFICATION WITH RESPECT TO ANY