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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, d.c. 20549**

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): October 22, 2008**

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**CRYOLIFE, INC.**

(Exact name of registrant as specified in its charter)

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**Florida**  
(State or Other Jurisdiction  
of Incorporation)

**1-13165**  
(Commission File Number)

**59-2417093**  
(IRS Employer  
Identification No.)

**1655 Roberts Boulevard, N.W., Kennesaw, Georgia 30144**  
(Address of principal executive office) (zip code)

**Registrant's telephone number, including area code: (770) 419-3355**

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(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 3.03 Material Modification to Rights of Security Holders.**

The description of the amendments to Article XIV of the Bylaws of CryoLife, Inc. (“CryoLife” or the “Company”) set forth in Item 5.03 below is incorporated by reference into this Item 3.03. Among other things, Article XIV governs the requirements for shareholders to present proposals at meetings of shareholders and to have such proposals included in Company proxy materials. The provision was revised effective October 22, 2008.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Change of Control Agreement with D. Ashley Lee

On October 24, 2008, CryoLife entered into a change of control agreement (the “Agreement”) with D. Ashley Lee, the Company’s Executive Vice President, Chief Operating Officer and Chief Financial Officer. The Agreement provides that the Company will pay to Mr. Lee a severance payment if he is terminated by the Company without cause or terminates his own employment for good reason for a period extending from six months before to two years after a change of control of the Company.

The material terms of the Agreement are as follows:

- The initial term of the Agreement ends September 1, 2011 and renews on September 1, 2011 and every three-year anniversary thereafter, for an additional three-year term, unless the Company gives notice to Mr. Lee at least thirty days prior to the end of the current term that the Agreement shall not be extended.
- The severance payment is an amount equal to two times the aggregate of Mr. Lee’s base salary as of the date of termination and bonus compensation for the year in which the termination of employment occurs (or if the bonus for that year has not yet been awarded, the most recently awarded bonus compensation).
- Change of control means a change in the ownership of the Company, a change in the effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, as further defined within the Agreement.
- The Agreement is not an employment agreement and both parties acknowledge that Mr. Lee’s employment is “at will.”
- Mr. Lee agrees not to solicit any actual or prospective customers of CryoLife with whom he has had contact for a competing business or to solicit employees of CryoLife to leave the Company and join a competing business during the term of the Agreement and for a period of one year following the termination of the Agreement.
- The Company is not required to make the severance payment and Mr. Lee is required to repay any portion of the severance payment already received if he solicits customers or employees of CryoLife during the term of the Agreement and for a period of one year following the termination of the Agreement.

### Amendments to the Bylaws

The description of new Article VI to the Bylaws of CryoLife set forth in Item 5.03 below is incorporated by reference into this Item 5.02. Revisions to Article VI were effective October 22, 2008, and provide executive officers, as well as directors, with expanded rights to indemnification and advancement of expenses.

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

(a) The Board of Directors (the "Board") of CryoLife, upon recommendation of the Nominating and Corporate Governance Committee, amended and restated the Bylaws of the Company as of October 22, 2008. The indemnification provisions contained in the amended and restated Bylaws were also recommended by the Compensation Committee of the Board. In addition to minor clerical revisions, the Board made the following substantive amendments:

#### Registered Office

- Article I was amended to clarify that the Company will maintain a registered office in the state of Florida, as required by applicable law, and that the Company's registered agent may change the registered office when necessary. Previously, the Bylaws did not address the Company's registered office.

#### Shareholder Meetings

- Article II, Section 3 was amended to resolve an ambiguity by clarifying that if no place has been expressly designated as the location for a shareholder meeting, the meeting shall be held at the Company's principal executive offices.
- Article II, Section 4 was amended to allow the Company to distribute notices of meetings to shareholders by any means allowable under Florida law. Previously, the Bylaws required notices to be delivered personally or by first class mail.
- Article II, Section 5, which facially allowed shareholders to take action where holders of 4/5ths of the outstanding shares signed a written consent on the record of the meeting, was removed as no longer applicable under Florida law.
- A new Article II, Section 5 was adopted to clarify the circumstances under which shareholders may waive notice of a meeting, and under which attendance at a meeting constitutes a waiver of notice.
- Article II, Section 6 was amended to expand the list of locations where the Company can maintain the list of shareholders entitled to vote at a given meeting. Previously the list was required to be made available at the Company's principal executive offices. After the revision, the Company may choose to have the list instead maintained at the office of the transfer agent or at any location identified in the notice of the meeting.
- Article II, Section 7 was amended to clarify quorum requirements, the proper procedure for adjournment and the calling of a new meeting if a quorum is not present.

- Article II, Section 8 was amended to remove the restriction on voting trust agreements and to move the provisions governing the setting of record dates to Article VIII.
- Article II, Section 9 was amended to reflect changes in Florida law, which among other things allow for electronic transmission of proxies.
- Article II, Section 10 was added in order to provide general guidelines for the conduct of shareholder meetings.
- Article II, Section 11 was added in order to allow the Board to adopt guidelines and procedures for shareholders and proxy holders not physically present at a shareholder meeting to participate in such meeting and to allow the Board to adopt guidelines and procedures for conducting a shareholder meeting solely by means of remote communication.

#### Board Meetings

- Article III, Section 6 was amended so as to require that notice of any special meetings of the Board be given two (2) days prior to such meeting, instead of three (3), and to clarify that such notice can be communicated by any means permissible by law.
- Article III, Section 8 was added in order to provide general guidelines for the conduct and adjournment of Board meetings, and to provide for the appointment of a Presiding Director. New Section 8 also provides guidelines for remote participation in such meetings and supersedes prior Section 13 regarding telephonic meetings, which has been removed. Previously, the Bylaws did not provide any guidelines for the conduct of Board meetings.
- Article III, Section 10 (formerly Section 9) was amended to address the procedures for filling vacancies on the Board when the vacancy results from expansion of the Board or when an appointment occurs in advance of the vacancy.
- Article V, Section 4 was amended to clarify procedures applicable to calling and holding committee meetings.

#### Officers

- Article IV, Section 1 was amended to provide that the Board shall designate from among the officers it appoints which officers constitute executive officers responsible for policy-making functions.
- Article IV, Section 3 was amended to clarify that as provided by law, the Board can remove any officer, regardless of whether he or she was appointed by the Board, and that an officer can be removed with or without cause.
- Article IV, Section 5 was amended to clarify that the Presiding Director is not an officer of the Company, and that the Board retains flexibility to authorize an officer to prescribe the duties of other officers.

### Indemnification of Directors and Officers

- Article VI was replaced in its entirety. New Article VI more closely tracks current Florida law and clarifies a number of points in light of recent legal developments regarding the interpretation of indemnification bylaws. Previous Article VI provided that the Company was required to indemnify any officer or director (or former officer or director, his personal representatives, devisees or heirs) whenever a majority of the entire Board of Directors determined, in their judgment, that certain criteria set forth in former Section 607.14, Florida Statutes, were met. Under the new provisions, indemnification is available only if the person to be indemnified acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The corporation will have no obligation to provide indemnification until a determination has been made that the appropriate standard of conduct has been met and that indemnification is not prohibited by relevant law.

Other salient features of new Article VI include:

- There is provision for mandatory advancement of expenses incurred by a director or officer in defending a proceeding if specified standards are met (the prior provision did not provide for advancement of expenses)
- Rights continue as to a person who has ceased to be a director or officer
- Rights under this provision are binding contract rights which are binding on the Company with respect to any conduct that takes place while the Bylaw remains in place, even if the Bylaw is later amended
- The Company will not be obligated to indemnify directors and officers for proceedings initiated by them except for certain compulsory counterclaims and suits to recover rights to indemnification or advancement under Article VI
- The Company will have no obligation to indemnify an officer or director for any settlement effected without its consent, nor for any judgment awarded in a proceeding in which the Company was not given an appropriate opportunity to participate.

### Uncertificated Stock

- Article VII was amended to refine the requirements and procedures related to the issuance of uncertificated shares. Among other things, these changes clarify that a holder of uncertificated shares is not entitled to demand a certificate from the Company, and that stock certificates may be in any form approved by the Board of Directors and allowed by law.

### Record Date

- Article VIII was amended to more closely conform to Florida law. After the amendment, the record date for a shareholder meeting or other action generally cannot be more than 70 days prior to the meeting or other action, and it may be set as close to the date of the meeting or other action as the Board may find desirable. Previously, the Bylaws provided that the record date could not be more than 60 days prior to the meeting or other action, and had to be at least 10 days prior to the meeting or other action.

- New Article VIII, Section 2 clarifies that as set forth by relevant law, the record date for determining shareholders entitled to demand a special meeting will be the close of business on the date the first shareholder delivers his or her demand to the corporation.

#### Fiscal Year

- Article X was revised to clarify that the Board has flexibility to revise the fiscal year if it so chooses.

#### Stock in Other Corporations

- A provision has been added to Article XII to provide that unless otherwise directed by the Board of Directors, the Chief Executive Officer shall be responsible for voting any securities in other corporations held by the Company.

#### Amendments to the Bylaws

- Article XIII was amended to more closely conform the language to the requirements of Florida law.

#### Advance Notice of Shareholder Nominations and Proposals

- Article XIV was amended to clarify the advance notice requirements for shareholder proposals relating to nomination for and election of directors and to clearly differentiate the procedures and requirements for such proposals from other business to be transacted at shareholder meetings. Article XIV, as amended, provides that:
  - o shareholders must now disclose certain underlying motives that may give rise to a director nomination, such as any material monetary agreements, arrangements or understandings between a stockholder and his or her nominee.
  - o with respect to shareholder proposals, shareholders must now provide the Company with certain required information related to not only themselves but also with respect to specified affiliates.
  - o nominees for election or reelection as director must now complete a questionnaire with respect to the background and qualification of such person and a written representation and agreement disclosing certain arrangements that may prevent the candidate from acting in the best interests of the Company.
  - o the advance notice provisions of the Bylaws now clarify that they are applicable regardless of whether the shareholder making the proposal intends to utilize Rule 14a-8, promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended, to access the Company's proxy statement.

### Emergency Bylaws

- New Article XVI provides a set of emergency bylaws that will become temporarily effective in the event the Board cannot be assembled due to a catastrophic event. The emergency bylaws will suspend certain of the regularly effective bylaws during the pendency of any such emergency. For example, during an emergency, any officer or director will be able to call a meeting of the board of directors, and notice and quorum requirements are greatly relaxed. The emergency bylaws also allow for the appointment of temporary directors in the event that no directors are available to call or attend a meeting of directors. Any director, officer or employee taking action pursuant to the emergency bylaws will be shielded from liability for any conduct other than willful misconduct.

The amended and restated Bylaws of the Company are attached as Exhibit 3.1 to this Current Report on Form 8-K and are incorporated by reference herein.

### **Item 9.01(d) Exhibits.**

(a) Financial Statements.

Not applicable.

(b) Pro Forma Financial Information.

Not applicable.

(c) Shell Company Transactions.

Not applicable.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	Bylaws of CryoLife, Inc., as amended and restated as of October 22, 2008
10.1	Change of Control Agreement with D. Ashley Lee

**SIGNATURES**

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

CRYOLIFE, INC.

Date: October 28, 2008

By: /s/ D. A. Lee

Name: D. Ashley Lee

Title: Executive Vice President, Chief  
Operating Officer and Chief  
Financial Officer





**BYLAWS  
OF  
CRYOLIFE, INC.**

**ARTICLE I**

Offices

Section 1. Principal and Business Offices. The corporation may have such principal and other business offices, either within or without the State of Florida, as the Board of Directors may from time to time determine or the business of the corporation may require. The corporation's principal office is the office where the corporation's principal executive offices are located.

Section 2. Registered Office. The registered office of the corporation, for so long as required by applicable law, shall be maintained in the State of Florida. The address of the registered office may be changed from time to time by the Board of Directors or the registered agent. The business office of the registered agent of the corporation shall be identical to such registered office.

**ARTICLE II**

Shareholders

Section 1. Annual Meeting. The annual meeting of the shareholders shall be held within the seven (7) month period beginning with the first day of the last month of the fiscal year of the corporation for the purpose of electing Directors and for the transaction of such other business as may properly come before the meeting, the actual day thereof to be set forth in the Notice of Meeting or in the Waiver of Call and Notice of Meeting. If the election of Directors shall not be held at any such annual meeting of the shareholders or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as may be convenient.

Section 2. Special Meetings. Special meetings of the shareholders for any purposes, unless otherwise prescribed by law or by the Articles of Incorporation, may be called by the President or Secretary at the request in writing of the majority of the Board of Directors then in office. Special meetings of the shareholders may also be called by shareholders in the manner provided in the Company's Articles of Incorporation. Business transacted at a special meeting of the shareholders shall be limited to the purposes stated in the notice thereof.

Section 3. Place of Meeting. The Board of Directors may designate any place, whether within or without the State of Florida unless otherwise prescribed by law or by the Articles of Incorporation, as the place of meeting for any annual meeting or for any special meeting of the shareholders. A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place, either within or without the State of Florida unless otherwise prescribed by law or by the Articles of Incorporation, as the place for the holding of such meeting. If no designation is made, the place of meeting shall be the principal office of the corporation.

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Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, by or at the direction of the President or the Secretary, or the officer or persons that called the meeting, to each shareholder of record entitled to vote at such meeting, except that no notice of a meeting need be given to any shareholder if such notice is not required to be given under applicable law. Notices shall be delivered in the manner provided under applicable law. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

Section 5. Waiver of Call and Notice of Meeting. Call and notice of any shareholders' meeting may be waived by any shareholder before or after the date and time set for the meeting. Such waiver must be in writing, signed by the shareholder and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any special or annual meeting need be specified in such waiver. A shareholder's attendance at a meeting (a) waives such shareholder's ability to object to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (b) waives such shareholder's ability to object to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Section 6. Voting Lists. The officer or agent having charge of the stock transfer books for shares of the corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of, and the number and class and series of shares held by, each. The list must be made available for inspection by any shareholder for a period of ten (10) days prior to such meeting (or for such shorter time as exists between the record date and the meeting) at any one of the following locations: (a) the principal office of the corporation; (b) at a place identified in the meeting notice in the city where the meeting will be held; or (c) at the office of the corporation's transfer agent or registrar. The list shall be subject to inspection by any shareholder or his agent or attorney during the whole time of the meeting or any adjournment. The list shall be prima facie evidence as to the identity of the shareholders entitled to examine such list or to vote at any meeting of the shareholders.

Section 7. Quorum and Adjournment.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the Articles of Incorporation or applicable law provides otherwise, a majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum of that voting group for action on that matter. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(b) If a quorum is not present at a meeting, a majority of the shares represented at the meeting, and who would be entitled to vote at a meeting if a quorum were present, may adjourn the meeting from time to time. No new notice need be distributed to shareholders so long as the new date, time and place for the meeting are announced at the meeting before the adjournment is taken, and the date of the adjourned meeting is no more than 120 days following the date fixed for the original meeting; otherwise, a new record date must be fixed and notice distributed in accordance with Section 4 above, except to the extent otherwise provided by court order mandating adjournment to a date more than 120 days after the date fixed for the original meeting. At any adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified or, in the case of a special meeting for which a new notice was distributed, which is described in the notice.

Section 8. Voting of Shares. Except as provided in the Articles of Incorporation or applicable law, and subject to the provisions of Article VIII of these Bylaws regarding the fixing of a record date, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a meeting of shareholders.

Section 9. Proxies. A shareholder, other person entitled to vote on behalf of a shareholder under applicable law, or attorney in fact for a shareholder may vote the shareholder's shares in person or by proxy. A proxy may be appointed to vote or otherwise act for the shareholder by any method authorized by applicable law. Appointment of a proxy is effective when received by the Secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment is valid for up to eleven (11) months unless the appointment expressly provides for a longer period.

Section 10. Conduct of Meeting. The Chairman of the Board of Directors, and in his or her absence, the Presiding Director (if any), and in his or her absence, the President, and in his or her absence, any director chosen by the directors present shall call a shareholders' meeting to order and shall act as presiding officer of the meeting. The Secretary of the corporation shall act as secretary of all meetings of the shareholders, but, in the absence of the Secretary, the presiding officer may appoint any other person to act as secretary of the meeting. The presiding officer of the meeting shall have broad discretion in conducting the meeting and determining the order of business at a shareholders' meeting. The presiding officer's authority to conduct the meeting shall include, but in no way be limited to, recognizing shareholders entitled to speak, calling for the necessary reports, stating questions and putting them to a vote, calling for nominations, and announcing the results of voting. The presiding officer also shall take such actions as are necessary and appropriate to preserve order at the meeting. The rules of parliamentary procedure need not be observed in the conduct of shareholders' meetings.

Section 11. Conduct of Meetings by Remote Communication. The Board of Directors may adopt guidelines and procedures for shareholders and proxy holders not physically present at an annual or special meeting of shareholders to participate in the meeting, be deemed present in person, vote, communicate and read or hear the proceedings of the meeting substantially concurrently with such proceedings, all by means of remote communication. The Board of Directors may adopt procedures and guidelines for the conduct of an annual or special meeting solely by means of remote communication rather than holding the meeting at a designated place.

## ARTICLE III

### Board of Directors

Section 1. General Powers. The business and affairs of the corporation shall be managed by its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of Directors of the corporation shall be not less than one (1) nor more the fifteen (15), the number of the same shall be fixed by the Board of Directors at any regular or special meeting. Each Director shall hold office until the next annual meeting of shareholders and until his successor has been qualified, unless sooner removed by the shareholders at any general or special meeting. None of the Directors need be residents of the State of Florida.

Section 3. Annual Meeting. After each annual meeting of shareholders, the Board of Directors shall hold its annual meeting immediately following such annual meeting of shareholders for the purpose of the election of officers and the transaction of such other business as may come before the meeting. The place of such annual meeting shall be the same as the place of the meeting of shareholders which precedes it, or such other suitable place as may be announced at such meeting of shareholders, and may be held remotely as provided in Section 8 below. The place and time of such meeting may also be fixed by written consent of the Directors.

Section 4. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall be determined from time to time by the Board of Directors.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, if there be one, or the President or any two (2) Directors. The persons authorized to call special meetings of the Board of Directors may fix the place for holding any special meetings of the Board of Directors called by them.

Section 6. Notice. Notice of the date, time and place of any special meeting shall be given at least two (2) days prior thereto. Notice may be communicated by any means permissible under applicable law. Any Director may waive notice of such meeting, either before, at or after such meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except where a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of any business because the meeting is not lawfully called or convened.

Section 7. Quorum and Adjournment. A majority of the Directors shall constitute a quorum, but a smaller number may adjourn, as specified in Section 8(c) below.

Section 8. Conduct of Meetings.

(a) Presiding Officer. The Chairman of the Board shall preside at meetings of the Board of Directors. If the Chairman is an employee of the corporation, the Board of Directors shall elect from among its members a Presiding Director, who shall preside at executive sessions of the Board at which employees of the corporation or any of its subsidiaries shall not be present. The Chairman, and in his or her absence, the Presiding Director, and in his or her absence, any director chosen by the directors present, shall call meetings of the Board of Directors to order and shall act as presiding officer of the meeting.

(b) Minutes. The presiding officer shall appoint a person present to act as secretary of the meeting. Minutes of any regular or special meeting of the Board of Directors shall be prepared and distributed to each director.

(c) Adjournments. A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(d) Participation by Conference Call or Similar Means. The Board of Directors may permit any or all directors to participate in a regular or a special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 9. Manner of Acting. The act of the majority of the Directors present at a meeting at which a quorum is present when the vote is taken shall be the act of the Board of Directors, except as otherwise provided by applicable law.

Section 10. Vacancies. Any vacancy occurring in the Board of Directors, including any vacancy created by reason of an increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office or, where a vacancy has been created by an increase in the number of directors, until the next election of directors by the shareholders. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date, or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Section 11. Compensation. The compensation of non-employee Directors for their services as a Director may be fixed by resolution of the Board of Directors, or by a duly authorized committee of the Board of Directors. Unless otherwise determined by the Board of Directors or such committee, Directors shall be paid their expenses of attendance at each meeting of the Board of Directors or committee thereof. No payment received by a Director for services as a Director shall preclude a Director from serving the corporation in any other capacity.

Section 12. Presumption of Assent. A director of the corporation who is present at a meeting of its Board of Directors or a committee of the Board of Directors at which action on any corporate matter is taken is deemed to have assented to the action taken, unless the director: (a) objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting specified business at the meeting; or (b) votes against or abstains from the action taken.

Section 13. Informal Action by Board. Any action required or permitted to be taken by any provisions of law, of the Articles of Incorporation or of these Bylaws at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if, prior to such action, a written consent thereto is signed by all members of the Board or of such committee, as the case may be, setting forth the actions of the Board or of the committee.

Section 14. Removal. Any director may be removed, with or without cause, by the shareholders at any general or special meeting of the shareholders whenever, in the judgment of the shareholders, the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person removed. This Bylaw shall not be subject to change by the Board of Directors.

## ARTICLE IV

### Officers

Section 1. Number and Qualification. The officers of the corporation shall include a Chairman of the Board, a Chief Executive Officer, a President, a Chief Operating Officer, a Chief Financial Officer and a Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may also elect one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers and such other officers as the Board of Directors shall deem appropriate. The Board of Directors shall designate from among the officers it elects those who shall be the executive officers of the corporation responsible for all policy making functions, under the direction of the Board of Directors. Two (2) or more offices may be held by the same person.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually by the Board of Directors at its first meeting after each annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer may be removed at any time, with or without cause, by the Board of Directors. An officer's removal does not affect the officer's contract rights, if any, with the corporation.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. Duties of Officers. The Chairman of the Board of the corporation shall preside at all meetings of the Board of Directors and of the shareholders which he shall attend, as provided in Articles II and III above. The Chairman or the President shall be the chief executive officer of the corporation, as specified by the Board of Directors. The Secretary, or such other officer as the Board may from time to time designate, shall be responsible for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation. Subject to the foregoing, the officers of the corporation shall have such powers and duties as usually pertain to their respective offices and such additional powers and duties specifically conferred by law, by the Articles of Incorporation, by these Bylaws, or as may be assigned to them from time to time by the Board of Directors or by any officer authorized by the board of directors to prescribe the duties of other officers.

Section 6. Executive Compensation. The salaries and other compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such salary or compensation by reason of the fact that he is also a Director of the corporation.

Section 7. Delegation of Duties. In the absence of or disability of any officer of the corporation or for any other reason deemed sufficient by the Board of Directors, the Board may delegate his powers or duties to any other officer or to any other Director for the time being.

Section 8. Limitation on Executive Compensation. The corporation shall not award bonuses to officers, directors and/or other employees to avoid or satisfy margin calls. Severance, separation and/or similar payments made to the Chief Executive Officer, as well as all other officers at the Vice President level or higher, shall be limited to the equivalent of such officer's total salary for the three calendar years immediately preceding the year in which such payment is determined, including bonuses and guaranteed benefits.

## **ARTICLE V**

### Executive and Other Committees

Section 1. Creation of Committees. The Board of Directors may, by resolution passed by a majority of the whole Board, designate an Executive Committee and one or more other committees, each to consist of one (1) or more of the Directors of the corporation.



Section 2. Executive Committees. The Executive committee, if there shall be one, shall consult with and advise the officers of the corporation in the management of its business and shall have and may exercise, to the extent provided in the resolution of the Board of Directors creating such Executive Committee, such powers of the Board of Directors as can be lawfully delegated by the Board.

Section 3. Other Committees. Such other committees shall have such functions and may exercise the powers of the Board of Directors as can be lawfully delegated and to the extent provided in the resolution or resolutions creating such committee or committees.

Section 4. Meetings of Committees. Regular meetings of the Executive Committee and other committees may be held without notice at such time and at such place as shall from time to time be determined by the Executive Committee or such other committees. Special meetings of the Executive Committee or such other committees may be called by any member thereof upon two (2) days' notice to each of the other members of such committee, or on such shorter notice as may be agreed to in writing by each of the other members of such committee. Notice may be communicated by any means permissible under applicable law, including oral notice where reasonable under the circumstances. Notice may be waived as provided in Section 6 of Article III of these Bylaws (pertaining to notice for Directors' meetings). Attendance at a meeting will constitute waiver of notice and of the right to any objections to the extent provided in Section 6 of Article III. In all other respects, committee meetings shall be conducted in the same manner and in accordance with the same procedural rules applicable to the Board of Directors; provided that, the Board of Directors may adopt a charter for any committee specifying rules for the conduct of meetings and business of the committee and such other matters as the Board may designate, in which case the provisions of such charter shall supersede the provisions of this Section 4.

Section 5. Vacancies on Committees. Vacancies on the Executive Committee or on such other committees may be filled by the Board of Directors then in office at any regular or special meeting.

Section 6. Quorum of Committees. At all meetings of the Executive Committee or such other committees, a majority of the committee's members then in office shall constitute a quorum for the transaction of business.

Section 7. Manner of Acting of Committee. The acts of a majority of the members of the Executive Committee, or such other committees, present at any meeting at which there is a quorum, shall be the act of such committee.

Section 8. Minutes of Committees. The Executive Committee, if there shall be one, and such other committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

Section 9. Compensation. Members of the Executive Committee and such other committees may be paid compensation in accordance with the provisions of Section 11 of Article III (pertaining to compensation of Directors).

## ARTICLE VI

### Indemnification of Director and Officers

#### Section 1. General.

(a) Subject to the principles set forth in Section 1(b) below, the corporation shall be obligated to indemnify any director or officer of the corporation who is or was a party, or is threatened to be made a party, to any Proceeding (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer 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; provided that in no event shall the corporation be obligated to indemnify any director or officer for any liability resulting from, or advance expenses in connection with, any Proceeding involving liability under Section 16(b) of the Securities Exchange Act of 1934. A "Proceeding" includes any threatened, pending or completed action, suit or other type of proceeding, whether civil, criminal, administrative, investigative or otherwise, and whether formal or informal.

(b) Any person for whom indemnification is mandated under Section 1(a) above shall be indemnified against all liabilities, including obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses (including attorneys' fees, paralegals' fees and court costs) actually and reasonably incurred in connection with any such Proceeding, including any appeal thereof; provided that, except as provided in Section 8 below with respect to proceedings to enforce rights to indemnification or advancement of expenses, the corporation shall indemnify any such indemnitee in connection with a Proceeding (or part thereof) initiated by such indemnitee only if such Proceeding (or part thereof) was authorized by the Board of Directors of the corporation, except that no such authorization shall be required in the case of counterclaims which constitute claims of the indemnitee that would be forfeited unless asserted in the Proceeding. Indemnification shall be available only if the person to be indemnified acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any such action, suit or other proceeding by judgment, order, settlement or 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 that such person reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

#### Section 2. Actions By Or In The Right Of The Corporation.

(a) Subject to the principles set forth in paragraphs (b) and (c) of Section 2 below, the corporation shall be obligated to indemnify any director or officer of the corporation who is or was a party, or is threatened to be made a party, to any Proceeding brought by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer 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; provided that in no event shall the corporation be obligated to indemnify any director or officer for any liability resulting from, or advance expenses in connection with, any Proceeding involving liability under Section 16(b) of the Securities Exchange Act of 1934.

(b) Any person for whom indemnification is mandated under Section 2(a) above shall be indemnified against expenses (including attorneys' fees, paralegals' fees and court costs) and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the Proceeding to conclusion, that are actually and reasonably incurred in connection with the defense or settlement of such Proceeding, including any appeal thereof; provided that, except as provided in Section 8 below with respect to proceedings to enforce rights to indemnification or advancement of expenses, the corporation shall indemnify any such indemnitee in connection with a Proceeding (or part thereof) initiated by such indemnitee only if such Proceeding (or part thereof) was authorized by the Board of Directors of the corporation, except that no such authorization shall be required in the case of counterclaims which constitute claims of the indemnitee that would be forfeited unless asserted in the Proceeding. Indemnification shall be available only if the person to be indemnified acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation.

(c) Notwithstanding the foregoing, no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such Proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses as such court shall deem proper.

Section 3. Advancement Of Expenses. Expenses (including reasonable attorneys' fees, paralegals' fees and court costs) incurred by a director or officer in defending a Proceeding referred to in Section 1 or Section 2 of this Article VI shall be paid by the corporation in advance of the final disposition thereof upon receipt by the corporation of:

- (a) a representation by or on behalf of such director or officer that all actions taken by him or her which form the basis of the Proceeding met the applicable standard of conduct set forth in Section 1 or 2 above, as applicable; and
- (b) an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the corporation pursuant to this Article VI.

Section 4. Authorization And Procedural Matters.

(a) Indemnification pursuant to this Article VI shall be deemed "authorized" for purposes of Section 607.0850(8), Florida Statutes, and any successor thereto, upon adoption of this Bylaw, subject to a determination that indemnification is proper as provided in Section 4(b).

(b) Except as otherwise provided by order of a court of competent jurisdiction, the corporation shall not be obligated to indemnify any officer or director under Section 1 or 2 of this Article VI until a determination has been made that: (a) indemnification is proper in the circumstances because the indemnified person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VI; and (b) indemnification is not prohibited by applicable law.

(c) The Board of Directors may establish reasonable procedures for the submission of claims for indemnification and advancement of expenses pursuant to this Article VI, determination of the entitlement of any person thereto, and review of any such determination. This Article VI is adopted pursuant to the authority granted by Section 607.0850(7), Florida Statutes, and accordingly, it is intended that the authorization and determination procedures set forth in Section 607.0850(4) and (5) shall not be mandatory to the Board.

Section 5. Nonexclusivity And Limitations. The indemnification and advancement of expenses provided pursuant to this Article VI shall not be deemed exclusive of any other rights to which a person may be entitled under any law, the corporation's Articles of Incorporation, Bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in any other capacity while holding office with the corporation. The Board of Directors may, at any time, approve indemnification of or advancement of expenses to any other person that the corporation has the power by law to indemnify, including, without limitation, employees and agents of the corporation.

Section 6. Continuation Of Indemnification Right.

(a) Indemnification and advancement of expenses as provided for in this Article VI shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such person.

(b) For purposes of this Article VI, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director or officer of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, is in the same position under this Article VI with respect to the resulting or surviving corporation as such person would have been with respect to such constituent corporation if its separate existence had continued.

Section 7. Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to, or be obligated to, indemnify such person against the liability under Section 1 or Section 2 of this Article VI or under applicable law.

Section 8. Right Of Indemnitee To Bring Suit. If a claim under this Article VI is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification or advancement of expenses hereunder it shall be a defense that the indemnitee has not met any applicable standard set forth in this Article VI or that indemnification or advancement of expenses is impermissible under applicable law. In any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in this Article VI or that indemnification is impermissible under applicable law. Neither the failure of the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in this Article VI, nor an actual determination by the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its shareholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI or otherwise shall be on the corporation.

Section 9. Nature Of Rights. The rights to indemnification and to the advancement of expenses conferred upon indemnitees in this Article VI (i) shall be contract rights based upon good and valuable consideration, pursuant to which an indemnitee may bring suit as if the provisions of this Article VI were set forth in a separate written contract between the indemnitee and the corporation, (ii) are intended to be retroactive with respect to indemnitees who are currently serving as officers and directors on the date this Bylaw is first adopted, and with respect to such persons, these rights shall be available with respect to events occurring prior to the adoption of this Article VI, (iii) shall continue as to an indemnitee who has ceased to be a director or officer of the corporation, and shall inure to the benefit of the indemnitee's heirs, executors and administrators, and (iv) shall be deemed to have fully vested at the time the indemnitee first assumed his or her office with the corporation. No amendment, alteration or repeal of this Article VI shall adversely affect any right of an indemnitee or his or her successors, nor shall any such amendment limit or eliminate any such right with respect to any Proceeding involving an occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal, regardless of whether such Proceeding is brought before or after the indemnitee has ceased to be a director or officer of the corporation.

Section 10. Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article VI shall not in any way be affected or impaired thereby; and (ii) to the fullest extent permitted by law, the provisions of this Article VI (including, without limitation, each such portion of this Article VI containing any such provisions held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 11. Settlement Of Claims. The corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding (or part thereof) effected without the corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award if the corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such proceeding.

Section 12. Subrogation. In the event of payment under this Article VI, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee, who shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including without limitation the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

Section 13. Secondary Obligation. The corporation's indemnification of any person who was or is serving at its request with another corporation, partnership, joint venture, trust or other entity (including serving as a trustee or fiduciary of any employee benefit plan), shall be reduced by any amounts such person may collect as indemnification from such other party.

Section 14. No Duplication Of Payments. The corporation shall not be liable under this Bylaw to make any payment with respect to the liability of a person to the extent such person has otherwise actually received payment.

## ARTICLE VII

### Stock

#### Section 1. Certificates for Shares: Uncertificated Shares.

(a) Shares may but need not be represented by certificates. The Board of Directors may authorize the creation of uncertificated shares either by original issue or in substitution for shares previously represented by certificates, and a particular class and series of shares may be entirely represented by certificates, entirely uncertificated, or represented partly by each. The rights and obligations of shareholders shall be identical whether or not their shares are represented by certificates. No shares for which a certificate is outstanding shall be treated as uncertificated, and until such certificate is surrendered, such shares shall not be transferable on the books of the corporation without due presentation of the certificate.

(b) If shares are represented by certificates, each certificate shall be in such form as the Board of Directors may from time to time prescribe, signed (either manually or in facsimile) by the President or a Vice President. Such certificates may also be signed (either manually or in facsimile) by the Secretary or an Assistant Secretary and sealed with the seal of the corporation or its facsimile. Any certificate must exhibit the holder's name, certify the number of shares owned and state such other matters as may be required by law. The certificates shall be numbered and entered on the books of the corporation as they are issued. Authorization by the Board of the issuance of uncertificated shares will not affect shares already represented by a certificate until the certificate is surrendered to the corporation.

(c) If shares are not represented by certificates, then, within a reasonable time after issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement in such form as the Board of Directors may from time to time prescribe, certifying as to the number of shares owned by the stockholder and as to such other information as would have been required by applicable law to be on certificates for such shares.

(d) If any person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate shall nevertheless be valid.

Section 2. Transfer of Shares. Transfers of shares of the corporation shall be made upon its books by the holder of the shares in person or by his lawfully constituted representative, upon surrender of the certificate of stock for cancellation if such shares are represented by a certificate, or by delivery to the corporation of such evidence of transfer as may be required by the corporation if such shares are not represented by certificates. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes and the corporation shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Florida.

Section 3. Lost Certificate. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming their certificate of stock to be lost or destroyed. When authorizing such issue of new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost 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 in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed. However, in its sole discretion, the Board of Directors may choose not to direct the creation of a new certificate, but instead direct that upon receipt of such affidavit, bond and other acts as it may require as set forth above, the shares represented by the lost or destroyed certificate shall thenceforth be deemed uncertificated shares. Within a reasonable time thereafter, the corporation will send the shareholder a written statement as required by applicable law and described in Section 1(c) above.

## ARTICLE VIII

### Record Date

Section 1. In General. The Board of Directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to notice of a shareholders' meeting, entitled to vote, or take any other action. In no event may a record date fixed by the Board of Directors be a date preceding the date upon which the resolution fixing the record date is adopted or a date more than seventy (70) days before the date of meeting or action requiring a determination of shareholders.

Section 2. Special Meeting. The record date for determining shareholders entitled to demand a special meeting shall be the close of business on the date the first shareholder delivers his or her demand to the corporation.

Section 3. Absence of Board Determination for Shareholders' Meeting. If the Board of Directors does not determine the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting, such record date shall be the close of business on the day before the first notice with respect thereto is delivered to shareholders in accordance with Section 4 of Article II.

Section 4. Adjourned Meeting. A record date for determining shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

## ARTICLE IX

### Dividends

The Board of Directors may from time to time declare, and the corporation may pay, dividends on its outstanding shares of capital stock in the manner and upon the terms and conditions provided by the Articles of Incorporation and by law. Dividends may be paid in cash or property, including shares of stock or other securities of the corporation, subject to the provisions of the Articles of Incorporation and applicable law.

## ARTICLE X

### Fiscal Year

The fiscal year of the corporation shall be the twelve (12) month period selected by the Board of Directors as the taxable year of the corporation for federal income tax purposes, unless the Board of Directors establishes a different fiscal year.



## ARTICLE XI

### Seal

The corporate seal shall bear the name of the corporation, which shall be between two concentric circles, and in the inside of the inner circle shall be the calendar year of incorporation.

## ARTICLE XII

### Stock in Other Corporations

Unless otherwise directed by the Board of Directors, the Chief Executive Officer shall have power to vote and otherwise act on behalf of the corporation, in person or by proxy, at any meeting of shareholders of, or with respect to any action of shareholders of, any other corporation in which this corporation may hold securities and to otherwise exercise any and all rights and powers that the corporation may possess by reason of its ownership of securities in other corporations.

## ARTICLE XIII

### Amendments

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors or the shareholders, provided that the Board of Directors may not amend or repeal any Bylaw or Bylaws if: (a) the Articles of Incorporation or applicable law reserves the power to amend the Bylaws generally or the particular Bylaw or Bylaws in question exclusively to the shareholders; (b) the shareholders, in taking action with respect to the Bylaws generally or a particular Bylaw provision, provide expressly that the board of Directors may not amend or repeal the Bylaws or that Bylaw provision; or (c) the Bylaw or Bylaws in question have been altered, amended or adopted by a vote of the shareholders, until a period of two (2) years shall have expired since such vote of the shareholders. Any Bylaw or amendment to a Bylaw adopted by the Board of Directors may be altered, amended or repealed by vote of the shareholders entitled to vote thereon, or a new Bylaw in lieu thereof may be adopted by the shareholders.

## ARTICLE XIV

### Advance Notice of Shareholder Nominations and Proposals

Section 1 Nominations and Proposal Requirements. Nominations of persons for election to the Board of Directors and proposals of business to be transacted by the shareholders may be made at an annual meeting of shareholders (a) pursuant to the corporation's notice with respect to such meeting, (b) by or at the direction of the Board of Directors, or (c) by any shareholder of record of the corporation who (1) was a shareholder of record at the time of the giving of the notice provided for in the following paragraph, (2) is entitled to vote at the meeting and (3) has complied with the notice procedures set forth in this Article.

For nominations or other business to be properly brought before an annual meeting by a shareholder pursuant to clause (c) of the foregoing paragraph, (1) the shareholder must have given timely notice thereof in writing to the Secretary of the corporation, (2) such business must be a proper matter for shareholder action under the Florida Business Corporation Code, (3) if the shareholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice, as that term is defined in this paragraph, such shareholder or beneficial owner must, (i) in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, (ii) in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such shareholder or beneficial holder to be sufficient to elect the nominee or nominees proposed to be nominated by such shareholder, and must, in either case, have included in the materials accompanying such notice to the corporation, the Solicitation Notice and any proxy statement and form of proxy utilized or to be utilized by such person, and (4) if no Solicitation Notice relating thereto has been timely provided pursuant to this Article, the shareholder or beneficial owner proposing such business or nomination must not have solicited, and must represent that he, she or it will not solicit, a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Article. To be timely, a shareholder's notice and the required accompanying materials shall be delivered to the Secretary at the principal offices of the corporation not less than ninety (90) nor more than one hundred eighty (180) days prior to the first anniversary (the "Anniversary") of the date on which the corporation first mailed its proxy materials for the preceding year's annual meeting of shareholders; provided, however, that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the shareholder to be timely must be so delivered not later than the close of business on the later of (i) the 90th day prior to such annual meeting or (ii) the 10th day following the day on which public announcement of the date of such meeting is first made. Such shareholder's notice shall set forth (a) as to each person whom the shareholder proposes to nominate for election or reelection as a director all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and shall contain such person's written consent to serve as a director if elected; (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made; (c) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nominations or proposal is made (i) the name and address of such shareholder, and of such beneficial owner, as they appear on the corporation's books, (ii) the class and number of shares of the corporation that are owned beneficially and of record by such shareholder and such beneficial owner, and (iii) whether such shareholder or beneficial owner has delivered or intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (the notice described in this sentence, a "Solicitation Notice").

Section 2. Increase in Number of Directors. Notwithstanding anything in the second sentence of the second paragraph of Section 1 of this Article XIV to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the corporation at least fifty-five (55) days prior to the Anniversary, a shareholder's notice required by this Article 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 offices of the corporation not later than the close of business on the 10<sup>th</sup> day following the day on which such public announcement is first made by the corporation.

Section 3. Compliance with Procedures. Only persons nominated in accordance with the procedures set forth in this Article XIV shall be eligible to serve as directors and only such business shall be conducted at an annual meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article. The chairman of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposed business or nomination shall not be presented for shareholder action at the meeting and shall be disregarded.

Section 4. Nominations at Special Meetings. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the corporation's notice of meeting (a) by or at the direction of the Board or (b) by any shareholder of record of the corporation who is a shareholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Article XIV. Nominations by shareholders of persons for election to the Board may be made at such a special meeting of shareholders if the shareholder's notice required by the second paragraph of this Article XIV shall be delivered to the Secretary at the principal offices of the corporation not later than the close of business on the later of 90<sup>th</sup> day prior to such special meeting or the 10<sup>th</sup> day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

Section 5. General. For purposes of this Article, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act. Notwithstanding the foregoing provisions of this Article XIV, a shareholder must also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Article XIV. Nothing in this Article XIV shall be deemed to affect any rights of shareholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

## ARTICLE XV

### Control Share Acquisition

In accordance with Section 607.0902(5) of the Florida Business Corporation Act, section 607.0902 of the Florida Business Corporation Act shall not apply to control-share acquisitions of shares of the capital stock of the corporation.

## Article XVI

### Emergency Bylaws

Section 1. SCOPE OF EMERGENCY BYLAWS. The emergency Bylaws provided in this Article XVI shall be operative during any emergency, notwithstanding any different provision set forth in the preceding articles of these Bylaws or in the Company's Articles of Incorporation. For purposes of the emergency By-law provisions of this Article, an emergency shall exist if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. To the extent not inconsistent with the provisions of this Article, the provisions contained elsewhere in these Bylaws shall remain in effect during such emergency. Upon termination of the emergency, these emergency Bylaws shall cease to be operative.

Section 2. CALL AND NOTICE OF MEETING. During any emergency, a meeting of the Board of Directors may be called by any officer or director of the corporation. Notice of the date, time and place of the meeting shall be given by the person calling the meeting to such of the directors as it may be feasible to reach by any available means of communication. Such notice shall be given as far in advance of the meeting as circumstances permit in the judgment of the person calling the meeting.

Section 3. QUORUM AND VOTING. At any such meeting of the Board of Directors, a quorum shall consist of any one or more directors, and the act of the majority of the directors present at such meeting shall be the act of the corporation. For purpose of this Section, the term "director" shall include any Temporary Director as defined in Section 4, including the President or his successor as specified in Section 4(b).

### Section 4. APPOINTMENT OF TEMPORARY DIRECTORS.

During the course of an emergency, "Temporary Directors" may be appointed as follows:

- (a) If no directors are available to call or attend a meeting of directors during an emergency, the President or his successor shall be deemed a Temporary Director of the corporation, and such President or his successor, as the case may be, shall have the right to appoint additional Temporary Directors to serve with him on the Board of Directors of the corporation during the term of the emergency.
- (b) The director or directors who are able to be assembled at a meeting of directors during an emergency may appoint, if such directors deem it necessary or desirable, one or more Temporary Directors to serve as directors of the corporation during the term of any emergency.

(c) Temporary Directors shall have all of the rights, duties and obligations of directors appointed pursuant to Article III of these Bylaws; *provided, however,* that a Temporary Director may be removed from the Board of Directors at any time by the person or persons responsible for appointing such Temporary Director, or by vote of the majority of the shareholders present at any meeting of the shareholders during an emergency; and *provided further,* that in any event, the Temporary Director shall automatically be deemed to have resigned from the Board of Directors upon the termination of the emergency in connection with which the Temporary Director was appointed.

Section 5. CHANGE OF PRINCIPAL OFFICE. The Board of Directors may, either before or during any such emergency, and effective during such emergency, change the principal office of the corporation or designate several alternative head offices or regional offices, or authorize the officers of the corporation to do so.

Section 6. LIMITATION OF LIABILITY. No officer, director or employee acting in accordance with these emergency bylaws during an emergency shall be liable except for willful misconduct.

Section 7. REPEAL AND CHANGE. These emergency bylaws shall be subject to repeal or change by further action of the Board of Directors or by action of the shareholders, but no such repeal or change shall modify the provisions of Section 7 above with regard to actions taken prior to the time of such repeal or change. Any amendment of these emergency bylaws may make any further or different provision that may be practical or necessary under the circumstances of the emergency.



**CHANGE OF CONTROL AGREEMENT**

This CHANGE OF CONTROL AGREEMENT (this "Agreement") dated as of the 24th day of October, 2008 is by and between CRYOLIFE, INC., a Florida corporation ("CryoLife" or the "Company") and D. Ashley Lee (the "Officer").

WITNESSETH:

WHEREAS, the Board of Directors of the Company upon the recommendation of the Compensation Committee, has determined that it is in the best interests of the Company and its shareholders to enter into this Change of Control Agreement in order to assure that the Company will have the continued dedication of Officer, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined herein) of the Company; and

WHEREAS, Officer has determined that it is in the best interests of Officer to enter into this Agreement;

NOW, THEREFORE, in consideration of the premises, the promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, it is hereby agreed as follows:

**1. CERTAIN DEFINITIONS.**

(a) "Effective Date" means the first date during the Change of Control Period (as defined herein) on which a Change of Control occurs. Notwithstanding anything in this Agreement to the contrary, if the Officer's employment with the Company is terminated by the Company without Cause or by Officer for Good Reason (as such terms are defined herein) within the six (6) month period prior to the date on which the Change of Control occurs and if such Change of Control is consummated (such a termination of employment, an "Anticipatory Termination"), then for all purposes of this Agreement the "Effective Date" means the date immediately prior to the date of such termination of employment.

(b) "Change of Control Period" means the period commencing on the date hereof and ending on September 1, 2011; *provided, however*, that, commencing on September 1, 2011, and each three-year anniversary of such date (such date and each such three-year anniversary thereof, the "Renewal Date") unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate three (3) years from such Renewal Date, unless, at least thirty (30) days prior to the next Renewal Date, the Company shall give notice to the Officer that the Change of Control Period shall not be so extended.

(c) "Affiliated Company" means any company controlled by, controlling or under common control with the Company.

(d) "Change of Control" means a change in the ownership or effective control of, or in the ownership of a substantial portion of the assets of, the Company, as described in paragraphs (i) through (iii) below.

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(i) Change in Ownership of the Company. A change in the ownership of the Company shall occur on the date that any one person, or more than one person acting as a group (within the meaning of paragraph (iv)), other than a group of which Officer is a member, acquires ownership of the Company stock that, together with the Company stock held by such person or group, constitutes more than 50% of the total voting power of the stock of the Company.

(A) If any one person or more than one person acting as a group (within the meaning of paragraph (iv)), other than a group of which Officer is a member, is considered to own more than 50% of the total voting power of the stock of the Company, the acquisition of additional the Company stock by such person or persons shall not be considered to cause a change in the ownership of the Company or to cause a change in the effective control of the Company (within the meaning of paragraph (ii) below).

(B) An increase in the percentage of the Company stock owned by any one person, or persons acting as a group (within the meaning of paragraph (iv)), as a result of a transaction in which the Company acquires its stock in exchange for property, shall be treated as an acquisition of stock for purposes of this paragraph (i).

(C) Except as provided in (B) above, the provisions of this paragraph (i) shall apply only to the transfer or issuance of the Company stock if such stock remains outstanding after such transfer or issuance.

(ii) Change in Effective Control of the Company.

(A) A change in the effective control of the Company shall occur on the date that either of (1) or (2) below occurs:

(1) Any one person, or more than one person acting as a group (within the meaning of paragraph (iv)), other than a group of which Officer is a member, acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of the Company; or

(2) A majority of the members of the the Company Board of Directors are replaced during any 12 month period by Directors whose appointment or election is not endorsed by a majority of the Board of Directors prior to the date of the appointment or election.

(B) A change in effective control of the Company also may occur with respect to any transaction in which either of the Company or the other entity involved in a transaction experiences a Change of Control event described in paragraphs (i) or (iii).

(C) If any one person, or more than one person acting as a group (within the meaning of paragraph (iv)), is considered to effectively control the Company (within the meaning of this paragraph (ii)), the acquisition of additional control of the Company by the same person or persons shall not be considered to cause a change in the effective control of the Company (or to cause a change in the ownership of the Company within the meaning of paragraph (i)).



(iii) Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets shall occur on the date that any one person, or more than one person acting as a group (within the meaning of paragraph (iv)), other than a group of which Officer is a member, acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value (within the meaning of paragraph (iii)(B)) equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions.

(A) A transfer of the Company's assets shall not be treated as a change in the ownership of such assets if the assets are transferred to one or more of the following:

- (1) A shareholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company stock;
- (2) An entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Company;
- (3) A person, or more than one person acting as a group (within the meaning of paragraph (iv)) that owns, directly or indirectly, 50% or more of the total value or voting power of all of the outstanding stock of the Company; or
- (4) An entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a person described in paragraph (iii)(A)(3).

For purposes of this paragraph (iii)(A), and except as otherwise provided, a person's status is determined immediately after the transfer of assets.

(B) For purposes of this paragraph (iii), gross fair market value means the value of all the Company assets, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

(iv) For purposes of this Section 1(d), persons shall be considered to be acting as a group if they are owners of an entity that enters into a merger, consolidation, purchase, or acquisition of assets, or similar business transaction with the Company. If a person, including an entity shareholder, owns stock in the Company and another entity with which the Company enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction, such shareholder shall be considered to be acting as a group with the other shareholders in a corporation only to the extent of the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation. Persons shall not be considered to be acting as a group solely because they purchase or own stock of the Company at the same time, or as a result of the same public offering of the Company's stock.

## 2. EMPLOYMENT.

Officer and the Company acknowledge that the employment of the Officer by the Company is “at will” and Officer shall have no rights under this Agreement unless Officer is terminated by the Company without Cause or by the Officer with Good Reason during the period commencing on the Effective Date and ending on the second anniversary of such date.

## 3. TERMS OF AT WILL EMPLOYMENT.

(a) During the term of his or her employment by the Company, and excluding any periods of vacation and sick leave to which the Officer is entitled, the Officer agrees to devote reasonable attention and time to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Officer by the Board of Directors or the Chief Executive Officer, to use the Officer’s reasonable best efforts to perform faithfully and efficiently such responsibilities.

(b) During the term of this Agreement, the Officer will not, without the prior written consent of the Company, directly or indirectly other than in the performance of the duties hereunder, render services of a business, professional or commercial nature to any other person or firm, whether for compensation or otherwise, except: (i) with respect to any noncompetitive family businesses of the Officer for which the rendering of such services will not have an adverse effect upon Officer’s performance of his duties and obligations hereunder; (ii) that Officer shall be permitted to engage in charitable and community affairs provided that such activities do not interfere with the performance of his duties and responsibilities enumerated herein; and (iii) to give attention to Officer’s investments provided that such activities do not interfere with the performance of his duties and responsibilities enumerated herein.

## 4. TERMINATION OF EMPLOYMENT.

(a) Cause. For purposes of this Agreement, “Cause” shall mean:

- (i) an intentional act of fraud, embezzlement, theft or any other material violation of law that occurs during or in the course of the Officer’s employment with the Company;
- (ii) intentional damage by Officer to the Company’s assets;
- (iii) intentional disclosure by Officer of the Company’s confidential information contrary to the Company policies;
- (iv) material breach of the Officer’s obligations under this Agreement;
- (v) intentional engagement by the Officer in any activity which would constitute a breach of the Officer’s duty of loyalty or of the Officer’s assigned duties;
- (vi) intentional breach by the Officer of any of the Company’s policies and procedures;
- (vii) the willful and continued failure by Officer to perform the Officer’s assigned duties (other than as a result of incapacity due to physical or mental illness); or
- (viii) willful conduct by the Officer that is demonstrably and materially injurious to the Company, monetarily or otherwise.

(b) Good Reason. For purposes of this Agreement, “Good Reason” shall mean the assignment to the Officer, without the Officer’s consent, of any duties materially inconsistent with the Officer’s position (including changes in status, offices, or titles and any change in the Officer’s reporting requirements that would cause Officer to report to an officer who is junior in seniority to the officer to whom Officer reports), authority, duties or responsibilities, determined as of the later of the date of this Agreement or the date of any modification to Officer’s position (including status, offices, titles and reporting requirements, as described above), authority, duties or responsibilities that is agreed to by Officer, or any other action by the Company that results in a material diminution in such position, authority, duties, responsibilities or Officer’s aggregate compensation, excluding for this purpose an isolated, insubstantial and inadvertent action taken in good faith and which is remedied by the Company within thirty (30) days after receipt of notice thereof given by the Officer (each of these an “Event” for purposes of this Section 4(b)). Officer must notify the Company of any Event that constitutes Good Reason within ninety (90) days following Officer’s knowledge of the existence of such Event or such Event shall not constitute Good Reason under this Agreement.

( c ) Notice of Termination. Any termination by the Company for Cause, or by the Officer for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b) of this Agreement. For purposes of this Agreement, a “Notice of Termination” means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Officer’s employment under the provision so indicated and (iii) specifies the termination date (which date shall not be more than thirty (30) days after the giving of such notice; *provided, however*, if Officer is terminating for Good Reason such date shall not be less than thirty (30) nor more than forty-five (45) days after giving of such notice). The failure by the Officer or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Officer or the Company, respectively, hereunder or preclude the Officer or the Company, respectively, from asserting such fact or circumstance in enforcing the Officer’s or the Company’s rights hereunder.

(e) Date of Termination. “Date of Termination” means the date of receipt of the Notice of Termination, or any later date specified therein, as the case may be. The Company and the Officer shall take all steps necessary (including with regard to any post-termination services by the Officer) to ensure that any termination described in this Section 4 constitutes a “separation from service” within the meaning of Section 409A of the Code, and notwithstanding anything contained herein to the contrary, the date on which the separation from service takes place shall be the “Date of Termination.”

(f) Covenants Necessary to the Company’s Business.

(i) Non-Solicitation of Customers. The Officer covenants and agrees that, during the term of this Agreement and for a period of one (1) year following the termination of this Agreement Officer will not, either directly or indirectly, in competition with the Company Business (as defined below), solicit, entice or recruit for a Competing Business (as defined below), attempt to solicit, entice or recruit for a Competing Business, or attempt to divert or appropriate to a Competing Business, any actual or prospective customer of the Company with whom Officer had contact on behalf of the Company. For the purposes of this Agreement, “Company Business” shall mean the business of (A) processing cardiac or vascular tissues, (B) marketing biological glue or protein hydrogel technology products, (C) marketing transport or other solutions for use with human organs to be transplanted and/or (D) marketing hemostatic agents for use in surgeries. “Competing Business” shall mean any person or entity that engages in a commercial business that is the same as or substantially similar to the Company Business, and only that portion of the business that is in competition with the Company Business.

(ii) Non-Solicitation of Employees. Officer covenants and agrees that, during the term of this Agreement for a period of one (1) year following the Date of Termination, Officer will not, either directly or indirectly, solicit, entice, encourage, cause, or recruit any person employed by the Company and with whom Officer had contact during Officer's employment with the Company to leave such person's employment with the Company to join a Competing Business.

(iii) Consideration for Covenants. Officer covenants and agrees that the payment of any Severance Payment (as defined in Section 5(e)) shall be subject to and expressly conditioned upon Officer's compliance with the covenants set forth in subparagraphs (i) and (ii) above. Should Officer fail to comply with these covenants, the Company shall not be required to make the Severance Payment (or any portion of the Severance Payment that remains unpaid), and the Officer shall be required to repay any portion of the Severance Payment that the Officer has already received from the Company.

## 5. OBLIGATIONS OF THE COMPANY UPON TERMINATION.

(a) If, during the two year period commencing on the Effective Date and ending on the second anniversary of the Effective Date, (i) the Company shall terminate the Officer's employment without Cause, or (ii) the Officer shall terminate employment for Good Reason, then the Company shall pay to Officer the Severance Payment (defined below).

(b) Severance Payment. The "Severance Payment" shall be an amount equal to two (2) times the aggregate of Officer's base salary as of the Date of Termination and bonus compensation for the year in which the termination of employment occurs. For purposes of determining Officer's bonus compensation for purposes of this Section 5(b), if the Date of Termination occurs before the awarding of bonuses for the year in which the Date of Termination occurs, the bonus compensation component of the Severance Payment shall be computed based on Officer's most recent awarded bonus. Bonus compensation shall include both the Annual Bonus paid in cash and the value of any non-cash bonuses, such as options or restricted stock. Any such options will be valued pursuant to the Black Scholes valuation method as of the grant date, using the same assumptions used by the Company in computing the FAS 123R charge for the options, and any shares of restricted stock will be valued at the closing price of the the Company Common Stock on The New York Stock Exchange on the date of issuance. The Company's annual option and restricted stock grants shall not be deemed to be bonus compensation unless they are specifically designated as such by the the Company Compensation Committee. For the sake of clarification, all cash paid and any shares issued in payment of all or a portion of the bonus pursuant to the Company's Officer Incentive Plan shall be bonus compensation for purposes of this Agreement for the year in which paid or issued. The Severance Payment shall be payable to Officer as follows:

(i) The Severance Payment, if any is due hereunder, shall be paid to Officer in a lump sum not later than thirty (30) days following Officer's Date of Termination.

(ii) In the event of an Anticipatory Termination, the Severance Payment shall be paid to Officer in a lump sum not later than thirty (30) days following the date of the Change of Control.

Notwithstanding the foregoing, if any amount paid pursuant to this Section 5(b) is deferred compensation with the meaning of Section 409A of the Code and as of the Date of Termination Officer is a Specified Employee, amounts that would otherwise be payable during the six-month period immediately following the Date of Termination shall instead be paid, with interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2) (A) of the Code, on the first business day after the date that is six months following Officer's "separation from service" within the meaning of Section 409A of the Code (the "Delayed Payment Date"). As used in this Agreement, the term "Specified Employee" means a "specified employee" as defined in Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code"). By way of clarification, "specified employee" means a "key employee" (as defined in Section 416(i) of the Code, disregarding Section 416(i)(5) of the Code) of the Company. Officer shall be treated as a key employee if the Officer meets the requirement of Section 416(i)(1)(A)(i), (ii), or (iii) at any time during the twelve (12) month period ending on an "identification date". For purposes of any "Specified Employee" determination hereunder, the "identification date" shall mean the last day of each calendar year.

## **6. FULL SETTLEMENT.**

In no event shall the Officer be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Officer under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Officer obtains other employment. The Company agrees to pay, to the full extent permitted by law, all legal fees and expenses which the Officer may reasonably incur as a result of any contest by the Company or Officer with respect to liability under or the interpretation of the validity or enforceability of, any provision of this Agreement, but only in the event and to the extent that (i) the Officer receives a final, non-appealable judgment in his favor in any such action or receives a final judgment in his favor that has not been appealed by the Company within 30 days of the date of the judgment; or (ii) the parties agree to dismiss any such action upon the Company's payment of the sums allegedly due the Officer or performance of the covenants by the Company allegedly breached by it.

## **7. LIMITATION OR EXPANSION OF BENEFITS.**

(a) In the event it shall be determined that all or any portion of any benefit, payment, acceleration right or distribution by the Company to or for the benefit of the Officer (whether payable or distributable pursuant to the terms of this Agreement or otherwise) is treated as an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code) which is subject to the excise tax imposed by Section 4999 of the Code (such excise tax, the "Excise Tax"), then the Company shall pay to Officer an additional amount of cash (a "Gross-Up Payment") equal to the amount necessary to cause the amount of the aggregate after-tax compensation and benefits received by the Officer hereunder (after payment of the excise tax under Section 4999 of the Code with respect to any excess parachute payment, and any state and federal income and employment taxes with respect to the Gross-Up Payment) to equal the aggregate after-tax compensation and benefits the Officer would have received if the Excise Tax had not been imposed. The Gross Up Payment shall be paid to Officer on the date that is thirty (30) days prior to the date on which the Excise Tax with respect to any excess parachute payment is due. A nationally recognized public accounting firm selected by the Company shall initially determine, at the Company's expense, whether an "excess parachute payment" will be made to Officer, and if so, the amount of the Gross-Up Payment. In the event of a subsequent claim by the Internal Revenue Service that, if successful, would result in Officer's liability for an Excise Tax in excess of the amount covered by any previous Gross-Up Payment, the Officer shall promptly notify the Company in writing of such claim. If the Company elects to contest such claim, it shall so notify the Officer and shall bear and pay directly or indirectly all costs and expenses of contesting the claim (including additional interest and penalties incurred in connection with such action), and shall indemnify and hold Officer harmless, on an after-tax basis, for any excise, income, or employment tax, including interest and penalties with respect thereto, imposed as a result of the Company's payment of costs of the contest. Officer shall cooperate fully with the Company in the defense of any such IRS claim. If, as a result of the Company's action with respect to a claim, Officer receives a refund of any amount paid by the Company with respect to such claim, Officer shall promptly pay such refund to the Company. In the event the IRS claim is finally determined to result in the imposition of additional Excise Tax on Officer, the Company shall make an additional Gross-Up Payment with respect to any such additional Excise Tax.

(b) Anything in this Agreement to the contrary notwithstanding, aggregate severance, separation and/or similar payments made to Officer pursuant to this Agreement and otherwise shall be limited to the equivalent of Officer's salary paid during the three (3) completed fiscal years ended prior to the Date of Termination, including bonuses and guaranteed benefits paid during those years. If necessary, any Gross-Up Payment will be reduced in order to comply with this provision.

**8. CONFIDENTIAL INFORMATION.**

The Officer and the Company are parties to one or more separate agreements respecting confidential information, trade secrets, inventions and non-competition (collectively, the "IP Agreements"). The parties agree that the IP Agreements shall not be superseded or terminated by this Agreement and shall survive any termination of this Agreement; provided, however, that to the extent that there is any conflict or overlap between the provisions of this Agreement and any of the IP Agreements, those provisions that provide the Company with the greatest rights and protections shall control.

**9. SUCCESSORS.**

(a) This Agreement is personal to the Officer and without the prior written consent of the Company shall not be assignable by the Officer otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Officer's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "the Company" shall mean CryoLife as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

**10. COMPLIANCE WITH SECTION 409A.**

(a) This Agreement is intended to comply with, or otherwise be exempt from, Section 409A of the Code and any regulations and Treasury guidance promulgated thereunder.

(b) The Company and Officer agree that they will execute any and all amendments to this Agreement as they mutually agree in good faith may be necessary to ensure compliance with Section 409A of the Code.

(c) The Company makes no representation or warranty as to the tax effect of any of the preceding provisions, and the provisions of this Agreement shall not be construed as a guarantee by the Company of any particular tax effect to Officer under this Agreement. The Company shall not be liable to Officer or any other person for any payment made under this Agreement which is determined to result in the imposition of an excise tax, penalty or interest under Section 409A of the Code, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under Section 409A of the Code.

**11. MISCELLANEOUS.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force and effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery (which shall include delivery via Federal Express or UPS) to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Officer:

D. Ashley Lee  
4365 N. Buckhead Dr., NE  
Atlanta, Georgia 30342

If to the Company:

CryoLife, Inc.  
1655 Roberts Boulevard, N.W,  
Kennesaw, Georgia 30144  
Attention: Chief Executive Officer  
Facsimile: (770) 590-3754

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) If any provision of this Agreement or the application of any provision hereof to any person or circumstance is held invalid, unenforceable or otherwise illegal, the remainder of this Agreement and the application of such provision to any other person or circumstance shall not be affected, and the provision so held to be invalid, unenforceable or otherwise illegal shall be reformed to the extent (and only to the extent) necessary to make it valid, enforceable and legal; provided, however, if the provision so held to be invalid, unenforceable or otherwise illegal cannot be reformed so as to be valid and enforceable, then it shall be severed from, and shall not affect the enforceability of, the remaining provisions of the Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) This Agreement embodies the entire agreement between the parties with respect to the subject matter addressed herein, except as specifically set forth in Section 9 above. From and after the Effective Date, this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

/s/ D.A. Lee

D. Ashley Lee

By: /s/ Steven G. Anderson

Steven G. Anderson  
Chairman, President and CEO

