

TENET HEALTHCARE CORP
Form S-3ASR
July 17, 2009
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As filed with the Securities and Exchange Commission on July 17, 2009

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

Form S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

TENET HEALTHCARE CORPORATION

(Exact name of Registrant as specified in its charter)

Nevada
(State of Incorporation)

95-2557091
(I.R.S. Employer Identification Number)

13737 Noel Road

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Dallas, Texas 75240

(469) 893-2200

(Address and telephone number of Registrant's principal executive offices)

Agent for Service:

Gary Ruff

SVP, General Counsel and Secretary

Tenet Healthcare Corporation

13737 Noel Road

Dallas, Texas 75240

Tel: (469) 893-2200

Copies to:

Steven B. Stokdyk, Esq.

Latham & Watkins LLP

355 South Grand Avenue

Los Angeles, California 90071

Tel: (213) 485-1234

Approximate date of commencement of proposed sale to the public:

From time to time after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined in Rule 12b-2 of the Securities Exchange Act of 1934, as amended).

Large accelerated filer	x	Accelerated filer	..
Non-accelerated filer	..	Smaller reporting company	..

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.05 per share(1)	(2)	(2)	(2)	(3)
Preferred Stock, par value \$0.15 per share(1)	(2)	(2)	(2)	(3)
Debt Securities	(2)	(2)	(2)	(3)
Warrants	(2)	(2)	(2)	(3)
Purchase Contracts	(2)	(2)	(2)	(3)
Units	(2)	(2)	(2)	(3)

- (1) Includes rights to acquire common stock or preferred stock of the Registrant under any shareholder rights plan then in effect, if applicable, under the terms of any such plan.
- (2) An unspecified amount or aggregate initial offering price of securities of each class is being registered as may be offered from time to time at unspecified prices. Separate consideration may or may not be received for securities that are issuable upon exercise, conversion or exchange of other securities.
- (3) Deferred in reliance on Rules 456(b) and 457(r) under the Securities Act.

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PROSPECTUS

Tenet Healthcare Corporation

COMMON STOCK

PREFERRED STOCK

DEBT SECURITIES

WARRANTS

PURCHASE CONTRACTS

UNITS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission using an automatic shelf registration process. This means:

we may offer and sell common stock, preferred stock, debt securities, warrants, purchase contracts or units in any combination from time to time in one offering or multiple offerings (and the preferred stock, debt securities, warrants, purchase contracts and units may be convertible into or exercisable or exchangeable for common stock, preferred stock or other securities);

we will provide a prospectus supplement each time we offer and issue securities using this prospectus; and

the applicable prospectus supplement will provide specific information about the terms of the securities offered under it and also may add, update or change information contained in this prospectus.

You should read this prospectus and the applicable prospectus supplement carefully before you invest.

Investing in our securities involves risks. We refer you to **Risk Factors on page 1 of this prospectus and any similar section contained in the applicable prospectus supplement for a discussion of the factors you should consider before deciding to purchase our securities.**

The securities offered by this prospectus may be offered directly, through agents designated from time to time by us, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of the securities offered by this prospectus, their names, and any applicable purchase price, fee, commission or discount arrangement between or among us and them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. None of the securities offered by this prospectus may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of those securities.

Our common stock trades on the New York Stock Exchange under the symbol **THC**.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is July 17, 2009

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ABOUT THIS PROSPECTUS

This prospectus is part of an automatic shelf registration statement that we filed with the U.S. Securities and Exchange Commission, or the SEC, as a well-known seasoned issuer (as defined in Rule 405 under the Securities Act of 1933, as amended). By using a shelf registration statement, we may sell any amount and combination of the securities described in this prospectus in any combination from time to time in one offering or multiple offerings. Each time we sell securities, we will provide a prospectus supplement to this prospectus that contains specific information about the terms of the offering and the securities being offered. Each prospectus supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read both this prospectus and the accompanying prospectus supplement, as well as any free writing prospectus or pricing supplement prepared by us or on our behalf, together with the documents we have incorporated by reference in this prospectus described under the heading "Incorporation by Reference" and the additional information described under the heading "Where You Can Find More Information."

You should rely only on the information contained or incorporated by reference in this prospectus, in the accompanying prospectus supplement or in any free writing prospectus or pricing supplement we file with the SEC, in addition to the information contained in the documents we refer to under the heading "Incorporation by Reference." We have not authorized any person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained or incorporated by reference in this prospectus, the accompanying prospectus supplement or any free writing prospectus prepared by us or on our behalf is accurate as of any date other than the respective date on its cover page. Our business, financial condition, results of operations, liquidity and prospects may have subsequently changed.

References in this prospectus to Tenet, we, us and our are to Tenet Healthcare Corporation, a Nevada corporation, and its consolidated subsidiaries unless the context otherwise requires.

THE COMPANY

Tenet Healthcare Corporation is an investor-owned health care services company whose subsidiaries and affiliates principally operate general hospitals and related health care facilities. All of Tenet's operations are conducted through its subsidiaries. Additional information about the company can be found on our website at www.tenethealth.com. Information on our website is not incorporated by reference into this prospectus or our other securities filings and is not a part of this prospectus.

We were incorporated in the state of Nevada in 1975. Our principal executive offices are located at 13737 Noel Road, Dallas, Texas 75240, and our telephone number at that address is (469) 893-2200.

RISK FACTORS

Investment in any securities offered pursuant to this prospectus involves risks and uncertainties. You should carefully consider the risk factors incorporated herein by reference to our most recent Annual Report on Form 10-K and our subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, along with the other information contained in this prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement, before acquiring any such securities. If one or more of the events discussed in these risk factors were to occur, our business, financial condition, results of operations or liquidity, as well as the value of an investment in our securities, could be materially adversely affected.

FORWARD-LOOKING STATEMENTS

This prospectus, the applicable prospectus supplement and the documents incorporated by reference herein and therein contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. All statements, other than statements of historical or present facts, that address activities, events, outcomes, business strategies and other matters that we plan, expect, intend, assume, believe, budget, predict, forecast, project, estimate or anticipate (and other similar expressions) will, should or may occur in

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the future are forward-looking statements. These forward-looking statements represent management's current belief, based on currently available information, as to the outcome and timing of future events. They involve known and unknown risks, uncertainties and other factors many of which we are unable to predict or control that may cause our actual results, performance or achievements, or health care industry results, to be materially different from those expressed or implied by forward-looking statements. When considering forward-looking statements, a reader should keep in mind the risk factors and other cautionary statements included or incorporated by reference in this prospectus and the applicable prospectus supplement. These risks and uncertainties are discussed in detail in Item 1A Risk Factors, Item 1 Business, and Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K and elsewhere in other reports we file with the SEC, which are incorporated by reference herein. You may obtain copies of these documents as described under

Where You Can Find More Information below. Should one or more risks and uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements. We specifically disclaim all responsibility to publicly update any information contained in a forward-looking statement or any forward-looking statement in its entirety and, therefore, disclaim any resulting liability for potentially related damages. All forward-looking statements attributable to us are expressly qualified in their entirety by this cautionary statement.

RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED DIVIDENDS

The following table sets forth our ratios of earnings to fixed charges and preferred dividends for each of the periods indicated.

	Years Ended December 31,					Three Months Ended March 31,	
	2004	2005	2006	2007	2008	2008	2009
	(Dollars in Millions)						
Income (loss) from continuing operations, before income taxes	\$ (1,487)	\$ (377)	\$ (1,106)	\$ (112)	\$ 43	\$ (22)	\$ 199
Less:							
Equity in earnings of affiliates	12	10	6	20	13	3	1
Add:							
Cash dividends received	5	4	4	3	3	1	
Interest portion of rent expense	42	40	41	42	44	11	12
Interest expense	333	403	408	419	418	104	110
Amortization of capitalized interest	7	7	8	7	8	2	2
Earnings (loss), as adjusted	\$ (1,112)	\$ 67	\$ (651)	\$ 339	\$ 503	\$ 93	\$ 322
Fixed charges							
Interest expense	333	403	408	419	418	104	110
Capitalized interest	11	12	15	11	10	4	2
Interest portion of rent expense	42	40	41	42	44	11	12
Total fixed charges	\$ 386	\$ 455	\$ 464	\$ 472	\$ 472	\$ 119	\$ 124
Ratio of earnings to fixed charges(1)					1.1x		2.6x
Ratio of earnings to combined fixed charges and preferred dividends(2)					1.1x		2.6x
Deficiency(3)	\$ 1,498	\$ 388	\$ 1,115	\$ 133	\$	\$ 26	\$

(1) As defined by Item 503(d) of Regulation S-K.

(2) For the periods reflected in the table above, we had no preferred securities outstanding and thus paid no preferred dividends.

(3) Deficiency represents the amount by which earnings were insufficient to cover fixed charges.

USE OF PROCEEDS

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We intend to use the net proceeds from the sale of the securities as set forth in the applicable prospectus supplement. We may invest funds not required immediately for such purposes in cash and cash equivalents or short-term investments.

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DESCRIPTION OF SECURITIES

We may issue from time to time, in one or more offerings and in any combination, the following securities:

common stock;

preferred stock;

debt securities;

warrants;

purchase contracts to purchase common stock or preferred stock; and

units.

A general description of each of our common stock and preferred stock is provided below. A description of the specific terms of any preferred stock, debt securities, warrants, purchase contracts and units that may be offered under this prospectus will be set forth in the applicable prospectus supplement relating to those securities. The terms of the offering of the securities, the initial offering price and the net proceeds to us will also be contained in the applicable prospectus supplement and other offering materials, if any, relating to such offer. Such prospectus supplement may also add, update or change information contained in this prospectus.

DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock is only a summary. This summary does not purport to be complete and is subject to and qualified in its entirety by reference to our Amended and Restated Articles of Incorporation and Restated Bylaws, each of which is an exhibit to the registration statement of which this prospectus is a part.

Common Stock

We are authorized to issue up to 1,050,000,000 shares of common stock, \$0.05 par value, under our Amended and Restated Articles of Incorporation.

Article II of our Restated Bylaws provides that holders of common stock are entitled to one vote per share on all matters on which the holders of common stock are entitled to vote. Holders of common stock are not entitled to cumulative voting rights. Article VIII of our Amended and Restated Articles of Incorporation provides that the affirmative vote of a majority of the holders of all outstanding shares, voting together and not by class, shall be required to approve any merger or consolidation or the sale of substantially all of our assets.

Outstanding shares of common stock are not subject to redemption and are nonassessable. From time to time, the Board of Directors may declare, and Tenet may pay, dividends or other distributions on outstanding shares from funds legally available therefor, subject to any contractual restriction to which Tenet is then subject. In the event of a liquidation, dissolution or winding-up of our company, holders of common stock are entitled to share equally and ratably in the assets of our company, if any, remaining after the payment of all debts and liabilities of our company and the liquidation preference of any outstanding preferred stock. The holders of common stock do not have any conversion or subscription rights, and their preemptive rights are limited as provided under Nevada law. The rights, preferences and privileges of holders of common stock are subject to any series of preferred stock that we may issue in the future.

Our common stock trades on the New York Stock Exchange under the symbol **THC**. Our transfer agent and registrar is The Bank of New York Mellon.

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Preferred Stock

We are authorized to issue up to 2,500,000 shares of preferred stock, \$0.15 par value, under our Amended and Restated Articles of Incorporation.

Preferred stock may be issued and reissued from time to time in one or more series. The Board of Directors is authorized to fix or alter the dividend rights, dividend rate, conversion rights, voting rights and terms of redemption (including, without limitation, sinking fund provisions and the redemption price or prices), the liquidation preferences, and any other rights, preferences, privileges, attributes or other matters with respect to any wholly unissued series of preferred stock, including the authority (a) to determine the number of shares constituting any such series and the designation thereof, and (b) to increase the number of shares of any series at any time. In the event outstanding shares of any series of preferred stock are reacquired or are not issued, such shares may be designated or redesignated and altered, and issued or reissued by the Board of Directors. The Board of Directors also has such other authority with respect to shares of preferred stock that may be reserved to the Board of Directors by law.

PLAN OF DISTRIBUTION

We may sell the securities from time to time:

to or through one or more underwriters or dealers;

through agents;

directly to one or more purchasers; or

through a combination of any of these methods of sale.

We will identify the specific plan of distribution, including any underwriters, dealers, agents or direct purchasers and any compensation they will receive from us, in the applicable prospectus supplement.

We may engage in at the market offerings into an existing trading market in accordance with Rule 415(a)(4) under the Securities Act. In addition, we may enter into derivative transactions or forward sale agreements on the securities with third parties. In such event, we may pledge the securities underlying such transactions to the counterparties under such agreements to secure our or their delivery obligations. The counterparties or third parties may also borrow securities from us or third parties and sell such securities in a public offering. This prospectus may be delivered in conjunction with such sales. Upon settlement of such transactions, we may deliver the securities to the counterparties that, in turn, the counterparties may deliver to us or third parties to close out the open borrowings of the securities. The counterparty in such transactions will be an underwriter and will be identified in the applicable prospectus supplement.

We may have agreements with any underwriters, dealers, agents and remarketing firms to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments they may be required to make.

VALIDITY OF THE SECURITIES

Certain legal matters with respect to the securities offered by this prospectus will be passed upon for us by Latham & Watkins LLP, Los Angeles, California, and, with respect to matters of Nevada law, by Woodburn and Wedge, Reno, Nevada.

In connection with particular offerings of the securities in the future, certain legal matters with respect to those securities may be passed upon for us by Latham & Watkins LLP, our General Counsel, or such other counsel as may be specified in a prospectus supplement.

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EXPERTS

The consolidated financial statements of Tenet Healthcare Corporation and subsidiaries as of and for the years ended December 31, 2008 and 2007 and the effectiveness of internal control over financial reporting as of December 31, 2008, incorporated by reference herein, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports (which reports (1) express an unqualified opinion on the consolidated financial statements and financial statement schedule and includes explanatory paragraphs relating to Tenet's adoption of the provisions of Financial Accounting Standards Board Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109, effective January 1, 2007, and Tenet's retrospective adjustment for the adoption of Financial Accounting Standards Board Statement No. 160, Noncontrolling Interests in Consolidated Financial Statements an amendment of ARB No. 51 and (2) express an unqualified opinion on the effectiveness of internal control over financial reporting), which are incorporated herein by reference, upon the authority of said firm as an expert in accounting and auditing.

The consolidated statements of operations, other comprehensive income (loss), changes in equity and cash flows of Tenet Healthcare Corporation and subsidiaries for the year ended December 31, 2006 have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, upon the authority of said firm as experts in accounting and auditing. Such report refers to a change in Tenet's method of accounting for noncontrolling interests in 2009 retrospective to all years presented due to the adoption of Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements an amendment of ARB No. 51*.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. The documents we file electronically with the SEC, including the exhibits and schedules thereto, are available to you at the SEC's web site at <http://www.sec.gov>. The documents we file with the SEC may also be read and copied at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330.

We have filed a registration statement on Form S-3 with the SEC relating to the securities covered by this prospectus. This prospectus is a part of the registration statement and does not contain all of the information in the registration statement. Whenever a reference is made in this prospectus to any of our contracts or other documents, please be aware that such reference is not necessarily complete and you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room mentioned above, as well as through the SEC's website.

INCORPORATION BY REFERENCE

The SEC's rules allow us to incorporate by reference certain information in this prospectus, which means that we can disclose important information to you by referring you to other documents filed separately with the SEC. The information incorporated by reference is an important part of this prospectus. Information that we file later with the SEC will automatically update and supersede previously filed information and the information contained in this prospectus. Any statement contained in or incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or a document subsequently incorporated by reference into this prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this prospectus, except as so modified or superseded.

We incorporate by reference the documents listed below:

our Annual Report on Form 10-K for the year ended December 31, 2008 (except for Item 6, Item 7 and Item 8 of Part II thereof, which have been reclassified as set forth in our Current Report on Form 8-K filed with the SEC on May 13, 2009);

our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009;

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our Current Reports on Form 8-K filed with the SEC in 2009 on January 22 (dated January 21, 2009 and relating to Items 8.01 and 9.01, which report was subsequently updated by the Current Report on Form 8-K filed with the SEC on May 13, 2009, as described above), January 23, February 10, March 5, March 13, April 23, May 13, May 14, May 21 and June 16; and

all documents filed by us with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules) on or after the date of this prospectus and until we sell all of the securities covered by the registration statement of which this prospectus is a part.

You may request a free copy of any of the documents incorporated by reference in this prospectus by writing to us or telephoning us at the address and telephone number set forth below:

Tenet Healthcare Corporation

13737 Noel Road

Dallas, Texas 75240

(469) 893-2200

Attention: Corporate Secretary

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The following table sets forth the costs and expenses payable by the Registrant in connection with the sale of the securities being registered hereby:

SEC registration fee	\$ (1)
Fees and expenses of the trustee	(2)
Printing expenses	(2)
Legal fees and expenses	(2)
Accounting fees and expenses	(2)
Rating agency fees	(2)
Miscellaneous	(2)
 TOTAL	 \$ (2)

- (1) Deferred in reliance on Rule 456(b) and Rule 457(r).
(2) Cannot be estimated at this time.

Item 15. Indemnification of Directors and Officers

Under Section 78.7502(1) of the Nevada Revised Statutes, a Nevada corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (except an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if such person: (i) is not liable for a breach of fiduciary duties that involved intentional misconduct, fraud or a knowing violation of law; or (ii) acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 78.7502(2) of the Nevada Revised Statutes further provides that a Nevada corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred in connection with the defense or settlement of the action or suit if such person: (i) is not liable for a breach of fiduciary duties that involved intentional misconduct, fraud or a knowing violation of law; or (ii) acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

To the extent that a director, officer, employee or agent of a Nevada corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) and (2) of Section 78.7502, as described above, or in defense of any claim, issue or matter therein, the corporation shall indemnify him or her against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense.

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The Registrant's Amended and Restated Articles of Incorporation provide that no director or officer of the Registrant shall be personally liable to the corporation or its shareholders for damages for breach of fiduciary duty as a director or officer, except for liability (i) for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law, or (ii) for the payment of dividends in violation of the Section 300 of Chapter 78 of the Nevada Revised Statutes. The Amended and Restated Articles of Incorporation further provide that the liability of directors and officers of the Registrant shall be limited to the fullest extent authorized by Nevada law, as amended.

The Registrant's Restated Bylaws, as well as individual indemnification agreements the Registrant has entered into with directors of the corporation:

provide for mandatory indemnification, to the fullest extent permitted by law, of any present or former director or officer of the Registrant or any of its affiliates or subsidiaries who has served as such a director or officer on or after the effective date of the Restated Bylaws (each, an indemnitee) for all expenses, liabilities, losses or other specified amounts resulting from a legal proceeding arising from any occurrence that takes place after the adoption of the Restated Bylaws and that relates to the fact that such indemnitee is or was a director or officer of the Registrant or any of its affiliates or subsidiaries or at the request of the Registrant served in one of several specified capacities with respect to another entity;

provide that the Registrant is not required to indemnify an indemnitee in connection with any legal proceeding initiated by the indemnitee except under certain specified circumstances;

require the advancement of expenses to an indemnitee upon receipt of an undertaking by the indemnitee to repay if it is ultimately determined that the indemnitee is not entitled to be indemnified by the Registrant;

provide that (1) when making a determination of whether an indemnitee is entitled to indemnification under the Restated Bylaws, there is a p