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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **May 17, 2016**

**SEMGROUP CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**1-34736**

(Commission File Number)

**20-3533152**

(IRS Employer Identification No.)

**Two Warren Place  
6120 S. Yale Avenue, Suite 700  
Tulsa, OK 74136-4216**

(Address of Principal Executive Offices) (Zip Code)

**(918) 524-8100**

(Registrant's Telephone Number, Including Area Code)

**Not Applicable**

(Former Name or Former Address, if Changed Since Last Report)

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

(e)

On May 17, 2016, SemGroup Corporation (the "Company") held its 2016 Annual Meeting of Stockholders (the "2016 Annual Meeting"). At the Annual Meeting, stockholders approved the SemGroup Corporation Equity Incentive Plan, as amended and restated (the "Restated Equity Incentive Plan"). The primary purpose for amending the plan was to increase the total number of shares of Class A Common Stock of the Company available for issuance under the previous plan from 2,781,635 shares to 3,581,635 shares, an increase of 800,000 shares. The plan was also amended to: (a) provide a double trigger change-of-control vesting provision in the plan so that outstanding awards will not generally vest upon the occurrence of a change of control and will vest only upon a qualifying termination of employment within 24 months of a change of control; (b) change the annual limit on awards to any non-employee director from 500,000 shares to a grant date fair value limit of \$500,000; (c) provide for an annual limit of \$5,000,000 on the amount of any cash awards to an individual participant; (d) provide for additional operational and financial performance measures for purposes of awards designed to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended; (e) extend the term of the plan to May 17, 2026; and (f) make certain other immaterial or clarification changes to the plan. The Restated Equity Incentive Plan authorizes the grant of the following types of awards: (i) nonqualified stock options; (ii) incentive stock options; (iii) stock appreciation rights; (iv) restricted stock; and (v) other stock-based awards, including restricted stock units, performance-based compensation awards, and cash awards.

A more detailed description of the Restated Equity Incentive Plan is contained in the Company's Proxy Statement for its Annual Meeting filed with the U.S. Securities and Exchange Commission on April 13, 2016 (the "2016 Proxy Statement"). The Restated Equity Incentive Plan is filed as Exhibit 10 to this Current Report on Form 8-K and is incorporated by reference as though fully set forth herein.

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

On May 17, 2016, the Board of Directors of the Company approved amendments to the Company's Amended and Restated Bylaws, which became effective immediately, to insert a new Article XXII, which provides that, unless the Company consents in writing to the selection of an alternative forum, the sole and exclusive forum for certain legal actions involving the Company will be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware). In addition, the amendments provide that any person bringing any action the subject matter of which is within the scope of the prior sentence in a court other than those specified, will be deemed to have consented to the personal jurisdiction of the courts specified in connection with any action brought to enforce the forum selection clause. Certain immaterial technical and conforming amendments were also made to the Amended and Restated Bylaws.

The Amended and Restated Bylaws are filed as Exhibit 3 to this Current Report on Form 8-K and incorporated by reference as though fully set forth herein.

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

A total of 44,131,882 shares of the Company's Class A common stock were entitled to vote as of March 30, 2016, the record date for the 2016 Annual Meeting. There were 39,509,448 shares present, in person or by proxy, at the 2016 Annual Meeting (or 89.53% of the outstanding shares), at which the stockholders were asked to vote on four proposals. Set forth below are the matters acted upon by the stockholders at the 2016 Annual Meeting, and the final voting results of each such proposal.

Proposal 1 — Election of Directors

The stockholders voted to elect seven directors to serve for a one-year term expiring at the annual meeting of stockholders in 2017 and until their successors are duly elected and qualified. The results of the vote were as follows:

Broker

	<u>For</u>	<u>Withheld</u>	<u>Non-Votes</u>
Ronald A. Ballschmiede	38,052,095	105,894	1,351,459
Sarah M. Barpoulis	38,058,123	99,866	1,351,459
John F. Chlebowski	38,044,938	113,051	1,351,459
Carlin G. Conner	38,040,944	117,045	1,351,459
Karl F. Kurz	38,053,369	104,620	1,351,459
James H. Lytal	37,984,045	173,944	1,351,459
Thomas R. McDaniel	37,037,595	1,120,394	1,351,459

Proposal 2 — Advisory Vote on  
Executive Compensation

The stockholders voted to approve, on an advisory and non-binding basis, named executive officer compensation. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
37,615,002	538,014	4,973	1,351,459

Proposal 3 — Ratification of Appointment of  
Independent Registered Public Accounting Firm

The stockholders voted to ratify the appointment of BDO USA, LLP as the Company's independent registered public accounting firm for 2016. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
39,463,828	37,435	8,185	-0-

Proposal 4 — Approval of Amended and Restated  
Equity Incentive Plan

The stockholders voted to approve the Restated Equity Incentive Plan to increase the number of shares of the Company's Class A Common Stock available for issuance under the plan by 800,000 shares and make certain other changes to the terms of the plan as described in the 2016 Proxy Statement. The results of the vote were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
37,836,201	316,715	5,073	1,351,459

**Item 9.01. Financial Statement and Exhibits.**

(d) The following exhibits are filed or furnished herewith:

- 3 Amended and Restated Bylaws, dated as of May 17, 2016, of SemGroup Corporation.
- 10 SemGroup Corporation Equity Incentive Plan, as amended and restated (incorporated by reference to Annex A of the 2016 Proxy Statement).

**SIGNATURES**

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

SEMGROUP CORPORATION

Date: May 19, 2016

By: /s/ William H. Gault  
William H. Gault  
Secretary

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3	Amended and Restated Bylaws, dated as of May 17, 2016, of SemGroup Corporation.
10	SemGroup Corporation Equity Incentive Plan, as amended and restated (incorporated by reference to Annex A of the 2016 Proxy Statement).

AMENDED AND RESTATED BYLAWS OF SEMGROUP CORPORATION  
(a Delaware corporation)

(hereinafter called the “ *Corporation* ”)

(as Amended and Restated Effective May 17, 2016)

ARTICLE I

Offices

SECTION 1. Registered Office. The registered office of the Corporation shall be at 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware, 19801, or at such other location within the State of Delaware as determined by the Board of Directors of the Corporation (the “ *Board of Directors* ”). The Corporation’s registered agent in Delaware shall be The Corporation Trust Company, subject to change by the Board of Directors which by resolution may appoint, or change, the Corporation’s registered agent in Delaware in the manner and to the extent permitted by law.

SECTION 2. Other Offices. The Corporation may also have an office or offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

SECTION 3. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

ARTICLE II

Meetings of Stockholders

SECTION 1. Place of Meetings. Meetings of the stockholders for the election of directors of the Corporation (each, a “ *Director* ”) or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

SECTION 2. Annual Meeting. An annual meeting of stockholders of the Corporation (the “ *Annual Meeting of Stockholders* ”) for the election of Directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.

SECTION 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation of the Corporation (the “ *Certificate of Incorporation* ”), special meetings of stockholders of the Corporation (each, a “ *Special Meeting of Stockholders* ”), for any

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purpose or purposes, may be called by either the Chairman of the Board, if one has been elected, or the Chief Executive Officer, and shall be called by either such officer or the Secretary at the

request in writing of a majority of the Board of Directors, but such special meetings may not be called by any other person or persons. Such request shall state the purpose or purposes of the proposed meeting. Only such business shall be conducted at a Special Meeting as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting.

SECTION 4. Notice of Meetings; Adjournments. (a) Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, written notice of all meetings of the stockholders, stating the place (if any), date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the place within the city or other municipality or community at which the list of stockholders may be examined and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in case of a Special Meeting of Stockholders, the purpose or purposes for which the meeting is called, shall be mailed or delivered to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting not less than ten (10) nor more than sixty (60) days prior to the date of the meeting (except to the extent that such notice is waived or is not required by the General Corporation Law of the State of Delaware (the "DGCL") or these Bylaws). Such notice shall be given in accordance with, and shall be deemed effective as set forth in, Section 222 (or any successor section) of the DGCL. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, and directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to such stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL. A written waiver of any notice, signed by a stockholder, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except when the person attends for the express purpose of objecting at the beginning of the meeting because the meeting is not lawfully called or convened.

(b) Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

SECTION 5. Stockholder Lists. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose necessary to the meeting, either (i) at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held during ordinary business hours of such place or (ii) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 6. Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the issued and outstanding shares of common stock of the Corporation entitled to vote at the meeting, present in person or by proxy; provided, however, that, in no event shall a quorum consist of less than such number of votes as may be required under the DGCL. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, shall be decided by the vote of the holders of a majority of the shares entitled to vote thereat present in person or by proxy. If there is no such quorum, the

holders of a majority of such shares so present or represented may adjourn the meeting from time to time, subject to Section 4(b) of this Article II, until a quorum shall have been obtained. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

SECTION 7. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or if none or in the Chairman of the Board's absence, the Vice Chairman of the Board, or if none or in the Vice Chairman of the Board's absence, the Chief Executive Officer, or, if none of the foregoing is present, by a chairman designated by the Board of Directors, or in the absence of such designation, by a chairman chosen at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the officer of the Corporation presiding at the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 8. Nature of Business at Meetings of Stockholders. No business may be transacted at an Annual Meeting of Stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the Annual Meeting of Stockholders by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the Annual Meeting of Stockholders by any stockholder of the Corporation who is a stockholder of record on the date of the giving of the notice provided for in Section 9 and on the record date for the determination of stockholders entitled to vote at such Annual Meeting of Stockholders and who complies with the notice procedures set forth in Section 9 or, in the case of nominations for the election of Directors, who complies with the notice procedures set forth in Section 4 of Article III.

SECTION 9. Advance Notice of Stockholder Proposals. In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting of Stockholders by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. Only such persons who are nominated in accordance with the procedures set forth in Section 4 of Article III shall be eligible to be elected at an Annual Meeting of Stockholders or Special Meeting of Stockholders of the Corporation to serve as Directors, except as may be otherwise provided in the Certificate of Incorporation with respect to the Initial Board of Directors.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation no later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred twentieth (120th) day, prior to the anniversary date of the immediately preceding Annual Meeting of Stockholders; provided, however, that in the event that the Annual Meeting of Stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such public disclosure of the date of the Annual Meeting of Stockholders was made. In no event shall the public disclosure of an adjournment or postponement of an Annual Meeting of Stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth: (a) as to each matter such stockholder proposes to bring before the Annual Meeting of Stockholders, a brief description of the business desired to be brought before the Annual Meeting of Stockholders, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws or the Certificate of Incorporation, the language of the proposed amendment), the reasons for conducting such business at the Annual Meeting of Stockholders and any material interest in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")), if any, on whose behalf the proposal is made; (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and record address of such stockholder, and the name and address of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for the Annual Meeting of Stockholders of the class or series and number of shares of capital stock of the Corporation owned beneficially and/or of record by the stockholder and such beneficial owner as of the record date for the Annual Meeting of Stockholders, and (iii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the Annual Meeting of Stockholders to bring such business before the meeting; (c) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the proposal is made, as to such beneficial owner (i) the class or series and number of shares of capital stock of

the Corporation that are beneficially owned by such stockholder or beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for the Annual Meeting of Stockholders of the class or series and number of shares or capital stock of the Corporation beneficially owned by such stockholder or beneficial owner as of the record date for the Annual Meeting of Stockholders, (ii) a description of any agreement, arrangement or understanding (including any derivative or short positions, profits interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into in connection with the proposal of such business between or among such stockholder or beneficial owner and any other person or persons (including their names), including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Schedule 13D of the Exchange Act (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder or beneficial owner) and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding (including any derivative or short positions, profits interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) in effect as of the record date for the meeting, (iii) a description of any agreement, arrangement or understanding (including any derivative or short positions, profits interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit from changes in the share price of any class of the Corporation's capital stock, or increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for the Annual Meeting of Stockholders of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (iv) a representation as to whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the business, and/or otherwise to solicit proxies or votes from stockholders in support of such business and (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the approval or adoption of the business pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

The foregoing notice requirements shall apply to all proposals made by stockholders other than those proposals made in compliance with Rule 14a-8 under the Exchange Act that have been included in a proxy statement prepared by the Corporation to solicit proxies for such Annual Meeting of Stockholders. A stockholder seeking to include a proposal in the Corporation's proxy statement pursuant to Rule 14a-8 must comply with Rule 14a-8 and any other applicable Exchange Act requirements.

No business shall be conducted at the Annual Meeting of Stockholders except business brought before the Annual Meeting of Stockholders in accordance with the procedures set forth in this Section 9 or, in the case of nominations for the election of Directors, in accordance with the procedures set forth in Section 4 of Article III; provided, however, that, once business has been properly brought before the Annual Meeting of Stockholders in accordance with such procedures, nothing in this Section 9 shall be deemed to preclude discussion by any stockholder of any such business. If the Chairman of the Board determines that business was not properly brought before the Annual Meeting of Stockholders in accordance with the foregoing procedures, the Chairman of the Annual Meeting of Stockholders shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9, unless otherwise required by law, if the stockholder does not provide the information required under clauses (b)(ii) and (c)(i)-(iii) of this Section 9 to the Corporation within five (5) business days following the record date for the Annual Meeting of Stockholders or if the stockholder does not appear in person or through a legally qualified representative at the Annual Meeting of Stockholders to present proposed business, such business shall not be transacted, notwithstanding that stockholders may have already submitted proxies to the Corporation in respect of such business in accordance with Section 8.

**SECTION 10. Voting; Proxies; Required Vote.** (a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period, and a proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power), and, unless the Certificate of Incorporation provides otherwise, shall have one (1) vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. At every meeting of stockholders duly called and held

at which a quorum is present (i) in all matters other than the election of Directors, a majority of the votes that could be cast at the meeting upon a given question and (ii) in the case of the election of Directors, a plurality of the votes that could be cast at the meeting upon the election, by the holders who are present in person or by proxy, shall be necessary, in addition to any vote or other action that may be expressly required by law, the Certificate of Incorporation, these Bylaws or the rules or regulations of any stock exchange applicable to the Corporation, to decide the question or election. Except as otherwise provided by statute, and unless demanded by a stockholder present in person or by proxy at any meeting, and entitled to vote thereat, the vote on any question need not be by ballot.

(b) Any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having a majority of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

SECTION 11. Inspectors. (a) The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

(b) In the event of the delivery, in the manner provided by these Bylaws, to the Corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the Corporation that the consents delivered to the Corporation in accordance with these Bylaws represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

### ARTICLE III

#### Board of Directors

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

SECTION 2. Qualification; Number; Term. (a) The Board of Directors shall consist of not less than three (3) nor more than eleven (11) members, the exact number of Directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The use of the phrase "entire Board" herein refers to the total number of Directors which the Corporation would have if there were no vacancies in previously authorized directorships.

(b) Subject to the laws of the DGCL, the Initial Board of Directors (as defined in the Certificate of Incorporation) shall hold office until the first Annual Meeting of Stockholders following the one-year anniversary of the effective date of the Joint Plan

of Reorganization (as defined in the Certification of Incorporation) and until their successors are elected and qualified or until their earlier resignation or removal (the “ *Initial Term* ”).

(c) Directors who are elected at an Annual Meeting of Stockholders, and Directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next Annual Meeting of Stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

SECTION 3. Nomination. Only persons who are nominated in accordance with the following procedures shall be eligible for election as Directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the Initial Board of Directors. Nominations of persons for election to the Board of Directors may be made at any Annual Meeting of Stockholders, or at any Special Meeting of Stockholders called for the purpose of electing Directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) provided that the Board of Directors has determined that Directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice required by Section 4 of this Article III is delivered to the Secretary of the Corporation, who is entitled to vote at such meeting and who complies with the notice procedures set forth in Section 4 of this Article III.

SECTION 4. Stockholder Notice of Nomination. In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder’s notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an Annual Meeting of Stockholders, no later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the anniversary date of the immediately preceding Annual Meeting of Stockholders; provided, however, that in the event that the Annual Meeting of Stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such public disclosure of the date of the Annual Meeting of Stockholders was made; and (b) in the case of a Special Meeting of Stockholders called for the purpose of electing Directors, not later than the close of business on the tenth (10th) day following the day on which public disclosure of the date of the Special Meeting of Stockholders was made. Notwithstanding anything in the previous sentence to the contrary, in the event that the number of Directors to be elected to the Board of Directors of the Corporation is increased effective at the Annual Meeting of Stockholders and there is no public disclosure by the Corporation naming the nominees for the additional directorships at least 100 days prior to the first anniversary date of the immediately preceding Annual Meeting of Stockholders, a stockholder’s notice required by this Section 4 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth (10<sup>th</sup>) day following the day on which such public disclosure is first made by the Corporation. In no event shall the public disclosure of an adjournment or postponement of an Annual or Special Meeting of Stockholders commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above.

To be in proper written form, a stockholder’s notice to the Secretary must set forth: (a) as to each person whom the stockholder proposes to nominate for election as a Director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by the person, (iv) any other information relating to the person that would be required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, (v) such person’s written consent to being named in the proxy statement as a nominee and to serving as a Director if elected; and (vi) such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a Director of the Corporation, including, but not limited to, requiring the proposed nominee to respond to a questionnaire providing information about the candidate’s background and qualifications, to represent that he or she has no agreements with any third party as to voting or compensation in connection with his or her service as a Director, and to agree to abide by applicable confidentiality, governance, conflicts, stock ownership and trading policies of the Corporation; (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made (i) the name and record address of such stockholder and the name and address of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of the class or series and

number of shares of capital stock of the Corporation owned beneficially and/or of record by the stockholder and such beneficial owner as of the record date for the meeting, and (iii) a representation that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the persons named in its notice; (c) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made, as to such beneficial owner (i) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and/or of record by such stockholder or beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of the class or series and number of shares or capital stock of the Corporation beneficially owned by such stockholder or beneficial owner as of the record date for the meeting, (ii) a description of any agreement, arrangement or understanding (including any derivative or short positions, profits interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) with respect to the nomination between or among such stockholder or beneficial owner and any other person or persons (including their names), including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Schedule 13D of the Exchange Act (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder or beneficial owner) and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (iii) a description of any agreement, arrangement or understanding (including any derivative or short positions, profits interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit from changes in the share price of any class of the Corporation's capital stock, or increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding (including any derivative or short positions, profits interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) in effect as of the record date for the meeting, (iv) a representation as to whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee, and/or otherwise to solicit proxies or votes from stockholders in support of such nomination, and (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the approval of the nomination pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

No person shall be eligible for election as a Director of the Corporation unless nominated in accordance with the procedures set forth in this Section 4. If the Chairman of the Board determines that a nomination was not made in accordance with the foregoing procedures, the chairman of the meeting shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder does not provide the information required under clauses (b)(ii) and (c)(i)-(iii) of this Section 4 to the Corporation within five (5) business days following the record date for the meeting or if the stockholder does not appear in person or by proxy at the meeting to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

Except as otherwise provided by law, the officer of the Corporation presiding over the Annual Meeting of Stockholders shall have the power and duty:

(A) to determine whether a nomination proposed to be brought before the Annual Meeting of Stockholders was made in accordance with the procedures set forth in this Section 4 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee in compliance with such stockholder's representation as required by this Section 4); and

(B) if any proposed nomination was not made in compliance with this Section 4, to declare that such nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting of Stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 4, to be considered a qualified representative of the stockholder, a person must be a

duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

For purposes of this Section 4 and Section 9 of Article II, “public disclosure” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the U.S. Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

Notwithstanding the foregoing provisions of this Section 4, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 4; provided however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations to be considered pursuant to this Section 4, and compliance with Section 4 shall be the exclusive means for a stockholder to make nominations. Nothing in this Section 4 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or of the holders of any series of preferred stock, if any, to elect Directors pursuant to any applicable provisions of the Certificate of Incorporation.

SECTION 5. Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board shall constitute a quorum or, if there are fewer Directors then in office than, solely for the purpose of electing one or more Directors to fill any vacancies in accordance with Section 15 of this Article III, the number of Directors required to constitute such a quorum, a majority of the members of the Board of Directors then in office shall constitute a quorum. A majority of the Directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. Except in cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, the vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 6. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 7. Annual Meeting. Following the Annual Meeting of Stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may be held without notice immediately after the Annual Meeting of Stockholders at the same place at which such stockholders’ meeting is held.

SECTION 8. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 9. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Chief Executive Officer or by a majority of the Directors then in office.

SECTION 10. Notice of Special Meetings. Written notice of the time and place of each special meeting of the Board of Directors shall be given to each Director at least twenty-four (24) hours before the start of the meeting, or if sent by first class mail, at least five (5) days before the start of the meeting. A written waiver of notice signed by the Director entitled to notice, or electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors need be specified in any written waiver of notice. Notice of any adjourned meeting of the Board of Directors shall not be required to be given, except where required by law or under the Certificate of Incorporation or these Bylaws.

SECTION 11. Meetings by Means of Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 11 shall constitute presence in person at such meeting.

SECTION 12. Organization. At all meetings of the Board of Directors, the Chairman of the Board, if any, or in the Chairman of the Board's absence or inability to act, the Vice Chairman of the Board, or in the Vice Chairman of the Board's absence or inability to act, a chairman chosen by the Directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the officer of the Corporation presiding at such meeting may appoint any person to act as secretary.

SECTION 13. Resignation. Any Director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation.

SECTION 14. Removal. Subject to Section 15 below, any or all of the Directors may be removed, with or without cause, by the holders of a majority of the shares of capital stock outstanding and entitled to vote for the election of Directors.

SECTION 15. Vacancies. Unless otherwise provided in these Bylaws, the Certificate of Incorporation or by law, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of Directors or otherwise, may be filled only by the majority vote of the remaining Directors, although such majority is less than quorum, or at a special meeting of the stockholders, by the holders of shares entitled to vote for the election of Directors, and each Director so elected shall hold office until the expiration of the term of office of the Director whom he or she has replaced or until his or her successor is elected and qualified. Notwithstanding anything to the contrary set forth in these Bylaws, only the Board of Directors shall be entitled to fill any vacancy(ies) on the Board of Directors, and the Board of Directors shall not be permitted to delegate the authority to fill any vacancy(ies) on the Board of Directors to a committee of the Board of Directors, in each case, until after the first Annual Meeting of Stockholders following the one-year anniversary of the effective date of the Joint Plan of Reorganization (as defined in the Certificate of Incorporation).

SECTION 16. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the Directors consent thereto in writing (including by facsimile or portable document format (pdf)) and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

SECTION 17. Compensation. Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director. Members of special or standing committees may be allowed like compensation for attending Committee meetings.

## ARTICLE IV

### Committees

SECTION 1. How Constituted, Powers, Name. The Board of Directors may, by resolution or resolutions, designate one or more Committees, each Committee to consist of one or more of the Directors of the Corporation, which, to the extent permitted by law and provided in said resolution or resolutions or in these Bylaws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such Committee or Committees shall have such name or names as may be stated in these Bylaws or as may be determined from time to time by resolution adopted by the Board of Directors. The term "Committee" as used in this Article IV means any committee constituted pursuant to the Certificate of Incorporation and these Bylaws. The Board of Directors shall, by resolution, designate or create any Committee required by the rules of any securities exchange on which shares of the capital stock of the Corporation are listed.

SECTION 2. Term of Office and Vacancies. Each member of a Committee shall continue in office until (a) the next meeting of the Board of Directors following the next Annual Meeting of Stockholders held by the Board of Directors next succeeding his or her election and until a Director to succeed him or her shall have been elected and shall have qualified, or (b) his or her death, or (c) he or she shall have resigned or shall have been removed in the manner hereinafter provided, or (d) such Committee is discontinued or terminated by the Board of Directors. Any vacancy in a Committee shall be filled by the Board of Directors at any regular or special meeting thereof.

SECTION 3. Resignation. Any member of a Committee may resign from membership on that Committee by giving notice in writing or by electronic transmission to the Chairman of the Board of Directors, to the Chief Executive Officer, or to the Secretary of the Corporation. Such resignation shall take effect at the time of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 4. Removal. Any member of a Committee may be removed with or without cause at any time by the affirmative vote of the Board of Directors given at any regular meeting or at any special meeting thereof.

SECTION 5. Procedures, Quorum and Manner of Acting. Each Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a Committee shall constitute a quorum for the transaction of business by that Committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the Committee present shall be the act of the Committee. Each Committee shall keep minutes of proceedings, and actions taken by a Committee shall be reported to the Board of Directors.

SECTION 6. Action by Written Consent. Any action required or permitted to be taken at any meeting of any Committee of the Board of Directors may be taken without a meeting if all the members of the Committee consent thereto in writing (including by facsimile or portable document format (pdf)) and the writing or writings are filed with the minutes of proceedings of the Committee.

SECTION 7. Term; Termination. In the event any person shall cease to be a Director of the Corporation, such person shall simultaneously therewith cease to be a member of any Committee appointed by the Board of Directors.

## ARTICLE V

### Officers

SECTION 1. Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a Chief Executive Officer, a President, a Chief Financial Officer and a Secretary, and may include, by election or appointment, one or more Vice Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the Chief Executive Officer. Any two or more offices may be held by the same person. Only the Board of Directors may fill any vacancy occurring in any office of the Corporation. Notwithstanding the foregoing sentence, the Chief Executive Officer may appoint, or fill a vacancy created by the death, resignation or removal of, such Assistant Treasurers and such Assistant Secretaries as the Chief Executive Officer may from time to time deem proper.

SECTION 2. Term of Office and Remuneration. Each officer shall hold office for such term as may be prescribed by the Board of Directors and until such person's respective successor has been chosen and qualified or until such person's earlier death, disqualification, resignation or removal, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board.

SECTION 4. Chairman of the Board. The Chairman of the Board shall be a Director and shall preside at all meetings of the Board of Directors and of the stockholders. The Chairman of the Board shall, subject to the overall supervision of the Board of Directors, perform all duties incident to the office of the Chairman of the Board, and such other duties as may be assigned to him or her from time to time by the Board of Directors. In case of the absence or disability of the Chairman, the Board of Directors may designate the Vice Chairman, Chief Executive Officer, a Senior Vice President, Vice President or other person to act in place of the Chairman of the Board during his or her absence or disability, and when so acting such Vice Chairman, Chief Executive Officer, Senior Vice President, Vice President or other person shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board, except as may otherwise be provided in the resolution of the Board of Directors making such designation.

SECTION 5. The Vice Chairman of the Board. The Vice Chairman of the Board shall be a Director and shall perform all duties incident to the office of the Vice Chairman of the Board and such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chairman of the Board. In the absence of the Chairman of the Board, he or she shall preside at all meetings of the Board of Directors and of the stockholders.

SECTION 6. President and Chief Executive Officer. The President and Chief Executive Officer shall be the chief executive officer of the Corporation, and shall have such duties as customarily pertain to that office. The President and Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers; may appoint and remove assistant officers and other agents and employees, other than officers referred to in Section 1 of this Article V; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.

SECTION 7. Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties the Chief Executive Officer or as the Board of Directors may from time to time determine.

SECTION 8. Vice President. A Vice President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 9. Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 10. Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 11. Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

## ARTICLE VI

### Limitation of Liability

SECTION 1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit, arbitration, alternative dispute mechanism, inquiry, administrative or legislative hearing, investigation or any other actual, threatened or completed proceeding, including any and all appeals, whether civil, criminal, administrative or investigative (hereinafter a “*proceeding*”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or is or was serving at the request of the Corporation as a Director (including elected or appointed positions that are equivalent to Director) of another corporation, partnership, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a Director (or equivalent) or in any other capacity while serving as a Director (or equivalent), against all expense, liability and loss

(including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such claimant in connection therewith. Notwithstanding the preceding sentence, the Corporation shall indemnify any such claimant in connection with a proceeding (or part thereof) initiated by such claimant only if the commencement of such proceeding (or part thereof) by such claimant was authorized or ratified by the Board of Directors.

SECTION 2. Advancement of Expenses. Each Director shall, to the fullest extent not prohibited by law, have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any proceeding in advance of its final disposition. However, if the DGCL requires, an advancement of expenses incurred by a claimant in his or her capacity as a Director shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such claimant, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such claimant is not entitled to be indemnified for such expenses.

SECTION 3. Indemnification of Officers, Employees and Agents of the Corporation. In addition to those claimants entitled to indemnification under Section 1 of this Article VI, the Corporation may, to the extent authorized by the Board of Directors, grant rights to indemnification and the advancement of expenses (including attorneys’ fees) to any officer, employee or agent of the Corporation.

SECTION 4. Right of Claimant to Bring Suit. If a claim for indemnification or payment of expenses is not paid in full by the Corporation within sixty (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 thirty (30) days, the claimant 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 claimant shall also be entitled to be paid the expense of prosecuting or defending such suit. In any such action, the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

SECTION 5. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or Directors, provisions of the Certificate of Incorporation or these Bylaws, or otherwise.

SECTION 6. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another company, partnership, joint venture, trust, non-profit entity or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

SECTION 7. Nature of Rights. The rights conferred upon claimants in this Article VI shall be contract rights. Such rights shall vest at the time a claimant becomes a Director and shall continue as to a claimant who has ceased to be a Director and shall inure to the benefit of the claimant's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI, any other provision of these Bylaws or the Certificate of Incorporation that adversely affects any right of any claimant or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

SECTION 8. Settlement of Claims. The Corporation shall not be liable to indemnify any claimant under this Article VI for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, 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 action.

SECTION 9. 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 claimant, who shall do everything that may be necessary to secure such rights, including the execution of documents necessary to enable the Corporation to effectively bring suit to enforce such rights.

SECTION 10. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any person who was or is serving at its request as a director of another company, partnership, joint venture, trust, non-profit entity or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, non-profit entity or other enterprise.

## ARTICLE VII

### Books and Records

SECTION 1. Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in these Bylaws and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation or may be given by electronic submission in the manner provided in Section 232 of the DGCL.

SECTION 3. Fixing Date for Determination of Stockholders of Record. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided,

however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall request the Board of Directors to fix a record date, which request shall be in proper form and delivered to the Secretary at the principal executive offices of the Corporation. To be in proper form, such request must be in writing and shall state the purpose or purposes of the action or actions proposed to be taken by written consent. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to

its registered office in Delaware, its principal place of business or to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the

Board of Directors adopts the resolution taking such prior action. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated written consent received in accordance with this Section, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation in the manner prescribed in this Section. Notwithstanding anything in these bylaws to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Section 3(b). If the board of directors shall determine that any request to fix a record date or to take stockholder action by written consent was not properly made in accordance with this Section 3(b), or the stockholder or stockholders seeking to take such action do not otherwise comply with this Section 3(b), then the board of directors shall not be required to fix a record date and any such purported action by written consent shall be

null and void to the fullest extent permitted by applicable law. In addition to the requirements of this Section 3(b) with respect to stockholders seeking to take an action by written consent, each such stockholder shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to such action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

## ARTICLE VIII

### Certificates Representing Stock

SECTION 1. Certificates; Signatures. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman of the Board or Vice Chairman of the Board, or the Chief Executive Officer or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the

Corporation.

SECTION 2. Transfers of Stock. Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by the holder thereof, or by his or her attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation, or a transfer agent of the Corporation, if any, and on surrender of the certificate or certificates for such shares properly endorsed. A person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof as regards to the Corporation, provided that whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact if known to the Secretary or to said transfer agent, shall be so expressed in the entry of transfer.

SECTION 3. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of any lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

SECTION 4. Power of the Board of Directors. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

## ARTICLE IX

### Dividends

Subject always to the provisions of law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X

### Waiver of Notice

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

## ARTICLE XI

### Bank Accounts, Checks and Drafts, Contracts, Etc.

SECTION 1. Bank Accounts. The Board of Directors or any Committee constituted pursuant to Article IV with power for the purpose, may from time to time authorize the opening and keeping with such banks, trust companies or other depositaries as it may designate of general and special bank accounts, may make such special rules and regulations with respect thereto, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

SECTION 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, employees or agents of the Corporation as shall from time to time be determined by resolution of the Board of Directors or by any Committee constituted pursuant to Article IV with power for the purpose. Such authority may be general or confined to specific instances and the granting of such authority may be expressly delegated by the Board of Directors, or by any Committee constituted pursuant to Article IV

with power for the purpose, to one or more officers of the Corporation.

SECTION 3. Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. The power to grant such authority also may be expressly delegated by the Board of Directors, or by any Committee constituted pursuant to Article IV of these Bylaws with power for the purpose, to one or more officers of the Corporation.

## ARTICLE XII

### Forum for Adjudication of Disputes

SECTION 1. Forum. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, the sole and exclusive forum for any stockholder (including any beneficial owner) to bring internal corporate claims (as defined below) shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware). For purposes of this Article XII, "internal corporate claims" means claims, including claims in the right of the Corporation, (a) that are based upon a violation of a duty by a current or former Director, officer, employee or stockholder in such capacity, or (b) as to which the DGCL confers jurisdiction upon the Court of Chancery.

SECTION 2. Personal Jurisdiction. If any action the subject matter of which is within the scope of this Article XII is filed in a court other than a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) (a "Foreign Action") by any stockholder (including any beneficial owner), such stockholder shall be deemed to have consented to (a) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 1 of this Article XII, and (b) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

## ARTICLE XIII

### Miscellaneous

SECTION 1. Amendments. These Bylaws may be amended, added to, rescinded or repealed, and any new bylaws made at any meeting of the Board of Directors or of the stockholders, provided notice of the proposed change was given in the notice of the meeting and, in the case of a meeting of the Board of Directors, in a notice given no less than twenty-four (24) hours prior to the meeting; provided, however, that, in case of amendments by stockholders, notwithstanding any other provision of these Bylaws or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of stock required by law, the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of a majority of the voting power of the then outstanding voting stock shall be required to alter, amend or repeal any provision of these Bylaws.

SECTION 2. Severability. If any provision or provisions of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever: (a) then, to the fullest extent possible, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of these Bylaws (including, without limitation, each portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such portion of any paragraph of these Bylaws containing any such provision 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 3. Electronic Transmission. When used in these Bylaws, the terms "written" and "in writing" shall include any "electronic transmission," as defined in Section 232(c) of the DGCL, including without limitation any telegram, cablegram, facsimile transmission and communication by electronic mail.

SECTION 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation and the year of

its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal.

SECTION 5. Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of a Director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.