

**Bylaws
of
BNCCORP, INC.**

As Amended and Restated April 19, 2017

**SECTION 1
Offices**

1.1 *Registered Office.* The registered office of BNCCORP, INC. (the “Corporation”) shall be in the City of Wilmington, County of New Castle, State of Delaware or such other place as the Corporation’s Board of Directors (the “Board”) may deem proper for the conduct of the Corporation’s business.

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

**SECTION 2
Meetings of Stockholders**

2.1 *Annual Meetings.* Annual meetings of stockholders shall be held for the election of directors at such date, time and place either within or without the State of Delaware as shall be designated by the Board and stated in the notice of the meeting.

2.2 *Special Meetings.* Special meetings of stockholders, for any purpose or purposes, may be called by the Chairman, President or by the Board. Except in such cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of stockholders. Special meetings may not be called by any other person.

2.3 *Nature of Business at Meetings of Stockholders.*

(a) Only such business (other than nominations for election to the Board, which must comply with the provisions of Section 2.4) may be transacted at an annual meeting as is either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), the Chairman, the President or any officer authorized by the Board to call a special meeting, (ii) otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee thereof), or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (1) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.3 and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting and (2) who complies with the notice procedures set forth in this Section 2.3.

(b) In addition to any other applicable requirements, for business to be properly brought before an annual meeting 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 be mailed and received at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting; provided, however, that in the event that the annual meeting is called for a date that is not within 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 10th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an annual meeting, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) To be in proper written form, a stockholder's notice to the Secretary must set forth the following information:

(i) as to each matter such stockholder proposes to bring before the annual meeting, a brief description of the business desired to be brought before the annual meeting and the proposed text of any proposal regarding such business (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend these Bylaws, the text of the proposed amendment), and the reasons for conducting such business at the annual meeting, and

(ii) as to the stockholder giving notice and the beneficial owner, if any, on whose behalf the proposal is being made,

(1) the name and address of such person,

(2) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person,

(3) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder,

(4) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and

(5) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such

person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation;

(6) a description of all agreements, arrangements, or understandings (whether written or oral) between or among such person, or any affiliates or associates of such person, and any other person or persons (including their names) in connection with or relating to (xx) the Corporation or (yy) the proposal, including any material interest in, or anticipated benefit from the proposal to such person, or any affiliates or associates of such person,

(7) a representation that the stockholder giving notice intends to appear in person or by proxy at the annual meeting to bring such business before the meeting; and

(8) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by such person with respect to the proposed business to be brought by such person before the annual meeting pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder.

(d) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.3 shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the annual meeting and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for determining the stockholders entitled to receive notice of, and to vote at, the annual meeting.

(e) No business shall be conducted at the annual meeting except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.3; *provided, however*, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.3 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

2.4 *Nomination of Directors.*

(a) 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 right, if any, of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board may be made at any annual meeting, or at any special meeting called for the purpose of electing directors, (i) by or at the direction of the Board (or any duly authorized committee thereof) or (ii) by any stockholder of the Corporation (1) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.4 and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting or special meeting and (2) who complies with the notice procedures set forth in this Section 2.4.

(b) 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.

(i) To be timely, a stockholder's notice to the Secretary must be delivered to or be mailed and received at the principal executive offices of the Corporation:

(1) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting; provided, however, that in the event that the annual meeting is called for a date that is not within 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 10th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and

(2) in the case of a special meeting called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

In no event shall the adjournment or postponement of an annual meeting or a special meeting called for the purpose of electing directors, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(ii) To be in proper written form, a stockholder's notice to the Secretary must set forth the following information:

(1) as to each person whom the stockholder proposes to nominate for election as a director,

(A) the name, age, business address and residence address of such person,

(B) the principal occupation or employment of such person,

(C) such person's answers to a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request),

(D) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person,

(E) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder,

(F) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation,

(G) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation,

(H) such person's written representation and agreement, in the form provided by the Secretary upon written request, that such person (A) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity

other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, and (C) in such person's individual capacity, would be in compliance, if elected as a director of the Corporation, and will comply with, all applicable publicly disclosed confidentiality, corporate governance, conflict of interest, Regulation FD, code of conduct and ethics, and stock ownership and trading policies and guidelines of the Corporation,

(I) such person's written undertaking, if elected as a director of the Corporation, to submit a conditional letter of resignation upon election, the effectiveness of such resignation to be conditioned on a finding by a court of competent jurisdiction that such person, in their capacity as a director of the Corporation, intentionally disclosed confidential information to third parties in breach of such person's confidentiality obligations to the Corporation under applicable law, any applicable agreement or any policies or guidelines of the Corporation, and

(J) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder;

(2) as to the stockholder giving the notice, and the beneficial owner, if any, on whose behalf the nomination is being made,

(A) the name and record address of the stockholder giving the notice and the name and principal place of business of such beneficial owner;

(B) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person,

(C) the name of each nominee holder of shares of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of shares of stock of the Corporation held by each such nominee holder,

(D) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation;

(E) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation;

(F) a description of (xx) all agreements, arrangements, or understandings (whether written or oral) between such person, or any affiliates or associates of such person, and any proposed nominee, or any affiliates or associates of such proposed nominee, (yy) all agreements, arrangements, or understandings (whether written or oral) between such person, or any affiliates or associates of such person, and any other person or persons (including their names) pursuant to which the nomination(s) are being made by such person, or otherwise relating to the Corporation or their ownership of capital stock of the Corporation, and (zz) any material interest of such person, or any affiliates or associates of such person, in such nomination, including any anticipated benefit therefrom to such person, or any affiliates or associates of such person;

(G) a representation that the stockholder giving notice intends to appear in person or by proxy at the annual meeting or special meeting to nominate the persons named in its notice;

(H) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and

(I) such other information as the Corporation may reasonably require, including such information as may be necessary or appropriate in determining the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(c) A stockholder providing notice of any nomination proposed to be made at an annual meeting or special meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the annual meeting or special meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for determining the stockholders entitled to receive notice of such annual meeting or special meeting.

(d) 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 2.4. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

2.5 *Notice of Meeting.* Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and time of the meeting, and the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the written notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, 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 stockholders, any notice to stockholders given by the corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation, or the Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given.

2.6 *Stockholder List.* The Secretary shall prepare and make, at least ten 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 germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, 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. 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.

2.7 *Quorum.* Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, in the manner provided in Section 2.16, until a quorum shall be present or represented.

2.8 *Vote Required.* With respect to any matter considered at any meeting of stockholders, other than the election of directors, the vote of the holders of a majority of the Voting Stock present in person or represented by proxy at the meeting shall decide such matter, unless the matter is one upon which by express provision of law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

2.9 *Voting Rights of Stockholders.* Unless otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of Voting Stock held of record by such holder. If the Certificate of Incorporation provides for more or less than one vote for any share of Voting Stock on any matter, every reference in these Bylaws to a majority or other proportion of Voting Stock shall refer to such majority or other proportion of the votes of such stock.

2.10 *Proxies.*

(a) Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(b) Execution of a proxy may be accomplished by a stockholder or his or her authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, without limitation, by facsimile signature. A stockholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors shall specify the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) A duly executed 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. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary.

2.11 *Unanimous Written Consent.* Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, by the unanimous written consent of all holders of Capital Stock that would be entitled to vote thereon if an annual or special meeting had been called for the taking of such action.

2.12 *Treasury Stock.* Shares of Voting Stock held in the treasury of the Corporation shall not be deemed to be outstanding shares for the purpose of voting or determining the presence of a quorum or the total number of shares entitled to vote on any matter.

2.13 *Organization.* All meetings of stockholders shall be presided over by the Chairman of the Board of Directors, or in his absence the President, or in his absence by a chairman designated by the Board. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of a Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to adjourn a meeting of stockholders without a vote of stockholders and to prescribe such rules, regulations and procedures and to do all such acts and things that are necessary or desirable for the proper conduct of the meeting and not inconsistent with any rules or regulations adopted by the Board pursuant to the provisions of the Certificate of Incorporation, including the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls for each item upon which a vote is to be taken.

2.14 *Meeting by Remote Communication.* If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at an annual or special meeting may, by means of remote communication, participate in the meeting and be deemed present in person and vote at the meeting whether such meeting is to be held at a designated place or solely by means of remote communication; provided, however, that (a) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at such meeting by means of remote communication is a stockholder or proxyholder, (b) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in such meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of such meeting substantially concurrently with such proceedings and (c) if any stockholder or proxyholder votes or takes other action at such meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

2.15 *Inspectors.* Prior to a meeting of stockholders, the Board or the Chairman of the Board shall appoint one or more inspectors to act at the meeting and make a written report thereof. Each inspector shall take and sign an oath faithfully to execute the duties of with strict impartiality and according to the best of his or her ability. The inspectors shall (a) ascertain the number of shares outstanding and the voting power of each, (b) determine the shares represented at a meeting and the validity of the proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made

to any determination by the inspectors, (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots, and (vi) perform such other functions as the presiding officer of the meeting shall determine. The inspectors may appoint or retain other persons or entities to assist them in the performance of their duties.

2.16 *Adjournments.* Any annual or special meeting of stockholders may be adjourned by the presiding officer 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 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 3 **Directors**

3.1 *Powers.* The business and affairs of the Corporation shall be managed under the direction of a Board, except as otherwise provided by law or by the Certificate of Incorporation.

3.2 *Number.* Subject to the restriction that the number of directors shall not be less than the number required by Delaware Law, and subject further to the creation or lapse of directorships upon the occurrence of events specified in the Certificate of Incorporation, the number of directors shall be fixed, from time to time, by a resolution adopted by a majority of the Continuing Directors. Until otherwise fixed by the directors, the number of directors constituting the entire Board shall be nine. The Secretary shall have the power to certify at any time as to the number of directors authorized and as to the class to which each director has been elected or assigned.

3.3 *Classification of Board.* The members of the Board, other than those who may be elected by holders of any one or more series of Preferred Stock voting separately, shall be classified, with respect to the time during which they hold office, into three classes, designated Class I, II and III, as nearly equal in number in possible. The initial directors in Class I shall be elected for a term expiring at the annual meeting of stockholders to be held in 1996, the initial directors in Class II shall be elected for a term expiring at the annual meeting of stockholders to be held in 1997 and the initial directors in Class III shall be elected for a term expiring at the annual meeting of stockholders to be held in 1998. In order to ensure that the three classes of directors provided for in the Certificate of Incorporation remain as nearly equal in number as possible, the Board shall increase the number of directors in one or more classes as may be appropriate whenever the number of directors increases due to newly created directorships or otherwise. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

3.4 *Resignation.* Any director may resign at any time upon written notice to the Board, the President or the Secretary. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

3.5 *Election of Directors.* Unless otherwise provided in the Certificate of Incorporation, at each meeting of the stockholders for the election of directors at which a quorum is present, directors shall be elected by a plurality of the votes cast.

3.6 *Compensation.* Unless otherwise restricted by the Certificate of Incorporation or of these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board. The directors may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board or committee. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 4

Meetings of the Board

4.1 *Meetings.* The Board may hold meetings, both regular and special, either within or without the State of Delaware.

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

4.3 *Special Meetings.* Special meetings of the Board may be called by the Chairman of the Board, the President or the Secretary on two day's notice to each director, either personally or by mail, telephone or any other form of recorded communication. Special meetings shall be called by the Chairman of the Board, the President or Secretary in like manner and on like notice on the written request of 25% of the directors.

4.4 *Quorum.* At all meetings of the Board a majority of the directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by law or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

4.5 *Action at Meeting.* If a quorum is present when any meeting of the Board is convened, the directors may continue to do business, taking action by vote of a majority of a quorum as fixed in Section 4.4, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum or the refusal of any director present to vote.

4.6 *Action by Consent.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

4.7 *Meetings by Telephone.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board or any committee designated by the Board may participate in a meeting of the Board or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting

can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

4.8 *Presiding Officer.* The Chairman of the Board shall preside at all meetings of the Board or, in his absence, a chairman appointed by the Board. The Secretary or in the absence of the Secretary, an Assistant Secretary, shall act as secretary of each meeting, but in the absence of the Secretary and an Assistant Secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting.

SECTION 5

Committees of the Board

5.1 *Designation of Committees.* The Board may, by resolution passed by a majority of the Continuing Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

5.2 *Authority of Committees.* Any such committee shall have those powers of the Board in the management of the business and affairs of the Corporation provided in the resolution of the Board designating such committee, provided that no such committee shall have the power or authority to propose amendments to the Certificate of Incorporation, adopt an agreement of merger or consolidation, recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property or assets, recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, amend these Bylaws, declare a dividend, authorize the issuance of Capital Stock, adopt a certificate of ownership and merger, or adopt, implement or propose to the stockholders that any transaction that constitutes a Business Combination, as defined in the Certificate of Incorporation on the date it became effective.

5.3 *Minutes.* Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

SECTION 6

Officers

6.1 *General.* The officers of the Corporation shall be chosen by the Board at its first meeting after each annual meeting of stockholders and shall be a Chairman of the Board, President, a Secretary and a Treasurer. The Board may also choose one or more Vice Presidents and one or more Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or the Bylaws otherwise provide.

6.2 *Other Officers.* The Board may appoint such other officers as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

6.3 *Compensation.* The salaries of all officers of the Corporation shall be fixed by the Board.

6.4 *Term.* The officers of the Corporation shall hold office until their successors are chosen and qualify. Subject to such obligations of the Corporation as may exist under any contract of employment, any officer elected or appointed by the Board may be removed at any time by the President or by the affirmative vote of a majority of the Continuing Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board.

6.5 *Chairman of the Board.* The Chairman of the Board shall have the general powers, duties and responsibilities of supervision and management inherent in such office as well as such additional powers and duties as the Board may from time to time prescribe. He shall preside at all meetings of the stockholders and the Board.

6.6 *President.* The President shall be the Chief Executive Officer of the Corporation and shall control and direct the management of the business of the Corporation. He shall have general charge of the Corporation's property and supervision over the Corporation's officers, employees and agents. At the request of the Chairman of the Board, or in his absence or during his disability, the President shall perform the duties and exercise the functions of the Chairman of the Board. Except as the Board may otherwise authorize, the President shall execute bonds, mortgages and any other contracts of any nature on behalf of the Corporation.

6.7 *Vice Presidents.* In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall perform such other duties and have such other powers as the Board may from time to time prescribe.

6.8 *Secretary.* The Secretary shall attend all meetings of the Board and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or President, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

6.9 *Assistant Secretary.* The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

6.10 *Treasurer.* The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. He shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, at its regular meetings, or when the Board so requires, an account of all his transactions as treasurer and of the financial condition of the Corporation. If required by the Board, he shall give the Corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

6.11 *Assistant Treasurer.* The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

SECTION 7

Capital Stock

7.1 *Form and Issuance of Capital Stock.* Shares of Capital Stock may be certificated or uncertificated, as provided under applicable law. The certificates, if any, for shares of the Capital Stock shall be in such form, not inconsistent with that required by law and the Certificate of Incorporation, as shall be approved by the Board. The Chairman of the Board, President or a Vice President shall cause to be issued to each stockholder one or more certificates, under the seal of the Corporation or a facsimile thereof, and signed by the Chairman of the Board, President or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer certifying the number of shares (and, if the Capital Stock shall be divided into classes or series, the class and series of such shares) owned by such stockholder in the Corporation; provided, however, that any of or all the signatures on the certificate may be facsimile. Within a reasonable time after the issuance or transfer of any uncertificated shares, the Corporation or its agent shall send to the holder a written statement of the information required to be contained on certificates for certificated shares under applicable law. The stock record books and the blank stock certificate books shall be kept by the Secretary, or at the office of such transfer agent or transfer agents as the Board may from time to time determine. In case any officer, transfer agent or registrar who shall have signed or whose facsimile signature or signatures shall have been placed upon any such certificate or certificates shall have ceased to be such officer, transfer agent or registrar before such certificate is issued by the Corporation, such certificate may nevertheless be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The stock certificates, if any, shall be consecutively numbered and shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and number of shares.

7.2 *Transfer of Capital Stock.* The shares of Capital Stock shall be transferable only on the books of the Corporation by the holders thereof in person or by their duly authorized

attorneys or legal representatives. Upon surrender to the Corporation or a transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate, or evidence of the issuance of uncertificated shares, to the person entitled thereto, cancel the old certificate and record the transaction upon its books, provided that as a condition precedent to the transfer of shares on the records of the Corporation, the Corporation may require representations or other proof of the identity of any prospective stockholder. Upon the receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled, issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the corporation, provided that as a condition precedent to the transfer of shares on the records of the Corporation, the Corporation may require representations or other proof of the identity of any prospective stockholder.

7.3 *Ownership of Shares.* The Corporation shall be entitled to treat the holder of record of any share or shares of Capital Stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by applicable law.

7.4 *Regulations Regarding Certificates.* The Board shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration for shares of Capital Stock or the replacement of certificates in the case of certificated shares of Capital Stock.

7.5 *Lost, Stolen or Destroyed Certificates.* The Board may determine the conditions upon which a new certificate or uncertificated shares in place of any certificate previously issued by the Corporation may be issued in place of a certificate which is alleged to have been lost, stolen or destroyed; and may, in their discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or his legal representative to give bond, with sufficient surety, to indemnify the Corporation and each transfer agent and registrar against any and all losses or claims which may arise by reason of the issue of a new certificate in the place of the one so lost, stolen or destroyed.

SECTION 8 Indemnification

8.1 *Indemnity.*

(a) Except with respect to an action or Claim (other than as authorized in Section 8.2) commenced by an Indemnitee against the Corporation or by an Indemnitee as a derivative action by or in the right of the Corporation that has not been authorized by the Board, the Corporation shall indemnify, defend and hold harmless any Indemnitee against Expenses reasonably incurred or suffered in connection with any Claim against Indemnitee, whether the basis of such Claim is alleged action or inaction in an official capacity as Indemnitee or in any other capacity while serving as an Indemnitee (including appearances as a witness or in connection with giving testimony or evidence), if:

(i) the Indemnitee is successful in his defense of the Claim on the merits or otherwise, or

(ii) the Indemnitee has been found by the Determining Body to have met the Standard of Conduct (as determined in accordance with the procedures set forth in this Section 8.1), provided that no indemnification shall be made in respect of any Claim by or in the right of the Corporation as to which Indemnitee shall have been adjudicated in a final judgment to be liable to the Corporation, unless, and only to the extent that the court in which such Claim was brought shall determine upon application that, despite such adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such Expenses which the court shall deem proper.

(b) For purposes of this Section 8, the “Standard of Conduct” is met when conduct by an Indemnitee with respect to which a Claim is asserted was conduct performed in good faith which he reasonably believed to be in, or not opposed to, the best interest of the Corporation, and, in the case of a Claim which is a criminal action or proceeding, conduct that the Indemnitee had no reasonable cause to believe was unlawful. The termination of any Claim by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not meet the Standard of Conduct.

(c) Promptly upon becoming aware of the existence of any Claim as to which Indemnitee may be indemnified hereunder, Indemnitee shall notify the Chief Executive Officer of the Corporation, but the failure to promptly notify the Chief Executive Officer shall not relieve the Corporation from any obligation under this Section 8. Upon receipt of such request, the Chief Executive Officer shall promptly advise the members of the Board of the request and that the establishment of a Determining Body with respect to Indemnitee’s request for indemnification as to the Claim will be presented at the next regularly scheduled meeting of the Board. If a meeting of the Board is not regularly scheduled within 120 calendar days of the date the Chief Executive Officer receives notice of the Claim, the Chief Executive Officer shall cause a special meeting of the Board to be called within such period in accordance with the provisions of the Bylaws. After the Determining Body has been established, the Determining Body shall inform the Indemnitee of the constitution of the Determining Body and Indemnitee shall provide the Determining Body with all facts relevant to the Claim known to such Indemnitee, and deliver to the Determining Body all documents relevant to the Claim in Indemnitee’s possession. Before the 60th day after its receipt from the Indemnitee of such information (the “Determination Date”), together with such additional information as the Determining Body may reasonably request of Indemnitee prior to such date (the receipt of which shall not begin a new 60-day period) the Determining Body shall determine whether or not Indemnitee has met the Standard of Conduct and shall advise Indemnitee of its determination. If Indemnitee shall have supplied the Determining Body with all relevant information, including all additional information reasonably requested by the Determining Body, any failure of the Determining Body to make a determination by or on the Determination Date as to whether the Standard of Conduct was met shall be deemed to be a determination that the Standard of Conduct was met by Indemnitee.

(d) If at any time during the 60-day period ending on the Determination Date, Indemnatee becomes aware of any relevant facts not theretofore provided by him to the Determining Body, Indemnatee shall inform the Determining Body of such facts, unless the Determining Body has obtained such facts from another source. The provision of such facts to the Determining Body shall not begin a new 60 day period.

(e) The Determining Body shall have no power to revoke a determination that Indemnatee met the Standard of Conduct unless Indemnatee (i) submits to the Determining Body at any time during the 60 days prior to the Determination Date fraudulent information, (ii) fails to comply with the provisions of Section 8.1(d), or (iii) intentionally fails to submit information or documents relevant to the Claim reasonably requested by the Determining Body prior to the Determination Date.

(f) In the case of any Claim not involving any threatened or pending criminal proceeding:

(i) if prior to the Determination Date the Determining Body has affirmatively made a determination that Indemnatee met the Standard of Conduct (not including a determination deemed to have been made by inaction), the Corporation may, in its sole discretion, after notice to Indemnatee, assume all responsibility for the defense of the Claim with counsel satisfactory to Indemnatee (who shall not, except with the written consent of Indemnatee, be counsel to the Corporation), and, in any event, the Corporation and the Indemnatee each shall keep the other informed as to the progress of the defense of the Claim, including prompt disclosure of any proposals for settlement; provided that if the Corporation is a party to the Claim and Indemnatee reasonably determines that there is any conflict between the positions of the Corporation and Indemnatee, with respect to the Claim or otherwise, then Indemnatee shall be entitled to conduct his defense with counsel of his choice at the Corporation's expense in accordance with the terms and conditions of this Section 8; and provided further that Indemnatee shall in any event be entitled at his expense to employ counsel chosen by him to participate in the defense of the Claim; and

(ii) The Corporation shall not be obligated to indemnify Indemnatee for any amount paid in a settlement that the Corporation has not approved. The Corporation shall fairly consider any proposals by Indemnatee for settlement of the Claim. If the Corporation proposes a settlement of the Claim and such settlement is acceptable to the person asserting the Claim, or the Corporation believes a settlement proposed by the person asserting the Claim should be accepted, it shall inform Indemnatee of the terms of such proposed settlement and shall fix a reasonable date by which Indemnatee shall respond. If Indemnatee agrees to such terms, he shall execute such documents as shall be necessary to make final the settlement. If Indemnatee does not agree with such terms, Indemnatee may proceed with the defense of the Claim in any manner he chooses, provided that if Indemnatee is not successful on the merits or otherwise, the Corporation's obligation to indemnify such Indemnatee as to any Expenses incurred following his disagreement shall be limited to the lesser of (A) the total Expenses incurred by Indemnatee following his decision not to agree to such

proposed settlement or (B) the amount that the Corporation would have paid pursuant to the terms of the proposed settlement.

(g) In the case of any Claim involving a proposed, threatened or pending criminal proceeding, Indemnitee shall be entitled to conduct the defense of the Claim with counsel of his choice and to make all decisions with respect thereto; provided, that the Corporation shall not be obliged to indemnify Indemnitee for any amount paid in settlement of such a Claim unless the Corporation has approved such settlement.

(h) After notifying the Corporation of the existence of a Claim in accordance with Section 8.1(c), Indemnitee may from time to time request the Corporation to pay the Expenses (other than judgments, fines, penalties or amounts paid in settlement) that he incurs in pursuing a defense of the Claim prior to the time that the Determining Body determines whether the Standard of Conduct has been met. The Disbursing Officer shall pay to Indemnitee the amount requested (regardless of Indemnitee's apparent ability to repay such amount) upon receipt of an undertaking by or on behalf of Indemnitee to repay such amount along with any other amounts advanced or paid after the Determination Date in accordance with the provisions of this Section 8.1, if (i) the Determining Body determines prior to the Determination Date that Indemnitee did not meet the Standard of Conduct or (ii) Indemnitee is prohibited from being indemnified by the Corporation by virtue of the provisions of Delaware Law.

(i) After it has been determined that the Standard of Conduct has been met, for so long as and to the extent that the Corporation is required to indemnify Indemnitee under this Section 8, the provisions of Section 8.1(h) shall continue to apply with respect to Expenses incurred after such time except that (i) no undertaking shall be required of Indemnitee and (ii) the Disbursing Officer shall pay to Indemnitee the amount of any fines, penalties or judgments against him that have become final and for which he is entitled to indemnification hereunder, and any amount of indemnification ordered to be paid to him by a court.

(j) Any determination by the Corporation with respect to settlement of a Claim shall be made by the Determining Body.

(k) All determinations and judgments made by the Determining Body hereunder shall be made in good faith.

(l) The Corporation and Indemnitee shall keep confidential to the extent permitted by law and their fiduciary obligations all facts and determinations provided pursuant to or arising out of the operation of this Section 8 and the Corporation and Indemnitee shall instruct its or his agents and employees to do likewise.

8.2 *Enforcement.*

(a) The rights provided by this Section 8 shall be enforceable by Indemnitee in any court of competent jurisdiction.

(b) If Indemnitee seeks a judicial adjudication of his rights under this Section 8 Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified

by the Corporation against, any and all Expenses actually and reasonably incurred by him in connection with such proceeding but only if he prevails therein. If it shall be determined that Indemnatee is entitled to receive part but not all of the relief sought, then the Indemnatee shall be entitled to be reimbursed for all Expenses incurred by him in connection with such judicial adjudication if the amount to which he is determined to be entitled exceeds 50% of the amount of his claim. Otherwise, the Expenses incurred by Indemnatee in connection with such judicial adjudication shall be appropriately prorated.

(c) In any judicial proceeding described in this Section 8.2, the Corporation shall bear the burden of proving that Indemnatee is not entitled to the relief sought, even if the Determining Body prior to the Determination Date determined that Indemnatee failed to meet the Standard of Conduct. If prior to the Determination Date the Determining Body failed to make a determination that Indemnatee did not meet the Standard of Conduct, it shall not be a defense to such suit that Indemnatee did not meet the Standard of Conduct.

8.3 *Reformation.* If any provision of this Section 8 is determined by a court having jurisdiction over the matter to violate or conflict with applicable law, the court shall be empowered to modify or reform such provision so that, as modified or reformed, such provision provides the maximum indemnification permitted by Delaware Law, and such provision, as so modified or reformed, and the balance of this Section 8 shall be applied in accordance with their terms. Without limiting the generality of the foregoing, if any portion of this Section 8 shall be invalidated on any ground, the Corporation shall nevertheless indemnify an Indemnatee to the full extent permitted by any applicable portion of this Section 8 that shall not have been invalidated and to the full extent permitted by law with respect to that portion that has been invalidated.

8.4 *Successors and Assigns.* This Section 8 shall be binding upon the Corporation, its successors and assigns, and shall inure to the benefit of the Indemnatee's heirs, administrators, executors, personal representatives and assigns and to the benefit of the Corporation, its successors and assigns.

8.5 *Amendments.* No amendment to or modification of this Section 8 or any portion hereof shall limit any Indemnatee's entitlement to indemnification in accordance with the provisions hereof with respect to any acts or omissions of Indemnatee which occur or accrue prior to such amendment or modification.

8.6 *Contribution.* If the indemnity provided for in this Section 8 is for any reason unavailable or insufficient to hold harmless an Indemnatee with respect to any Expenses, the Corporation shall make a contribution to the Indemnatee for such liabilities to which the Indemnatee may be subject in such proportion as is appropriate to reflect the intent of this Section 8.

8.7 *Reliance.* Each person who is serving as an Indemnatee shall be deemed to be doing so in reliance upon the indemnification provided for in this Section 8. The rights of an Indemnatee hereunder shall be contract rights and shall vest in the Indemnatee upon the occurrence of the event, or the first event in a chain of events, giving rise to such Claim; provided that the adoption of the Bylaws shall not affect any right or obligation of the Corporation or of any Indemnatee which existed prior to such adoption.

8.8 *Nonexclusivity.*

(a) The rights conferred herein on any person shall (i) be severable, (ii) not be exclusive of any other rights which such person may have or hereafter acquire under any statute, certificate of incorporation, contract or other agreement, authorization of stockholders or disinterested directors or otherwise, and (iii) continue as to an Indemnitee who has ceased to serve on behalf of the Corporation in respect of all claims arising out of action (or inaction) occurring prior to such time.

(b) It is the intent of the Corporation to indemnify and hold harmless Indemnitee to the fullest extent permitted by Delaware Law, as such law exists or may be amended after the date the Bylaws are adopted, but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than Delaware Law permitted prior to the amendment, notwithstanding any provision in Section 8 to the contrary.

8.9 *Insurance.* The Corporation may procure or maintain insurance or other similar arrangement on behalf of any Indemnitee or any person who is or was an employee or agent of the Corporation, or is serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against or incurred by him in his capacity as such, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of Delaware Law. Without limiting the power of the Corporation to procure or maintain any other kind of insurance or similar arrangement, the Corporation may create a trust fund or other form of self-insurance arrangement for the benefit of any Indemnitee or such other person to the fullest extent authorized by Delaware Law.

SECTION 9 General Provisions

9.1 *Fixing Record Date.* 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, or to express unanimous consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect to any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix in advance a record date which shall not be more than 60 nor less than ten days before the date of such meeting, nor more than 60 days prior to any other action. Except as otherwise provided in the Bylaws, 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 may fix a new record date for the adjourned meeting.

9.2 *Dividends.* Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. 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 directors from time to time, in their absolute discretion, think 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 directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

9.3 *Checks.* All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

9.4 *Fiscal Year.* The fiscal year of the Corporation shall be fixed by resolution of the Board.

9.5 *Seal.* The corporate seal shall have inscribed thereon the name of the Corporation and shall be in such form as may be approved from time to time by the incorporator, or, after the appointment of directors, the Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

9.6 *Exclusive Forum.* Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action or proceeding asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the corporation to the corporation or the corporation's stockholders, (iii) any action or proceeding asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the certificate of incorporation or the by-laws of the corporation or (iv) any action or proceeding asserting a claim governed by the internal affairs doctrine, in all cases subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. In the event that the Court of Chancery lacks jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware.

SECTION 10

Definitions

The following terms, for all purposes of the Bylaws, shall have the following meaning:

“Affiliate” or “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations promulgated under the Securities Exchange Act of 1934, as amended (the term “registrant” in such Rule 12b-2 meaning in this case the Corporation); provided, however, that in no event shall the Corporation, any of its Subsidiaries, any employee benefit plan or any of the other persons or entities exempted from the definition of Interested Stockholder as provided in the Certificate of Incorporation be deemed to be an Affiliate or Associate of any Interested Stockholder.

A person shall be deemed to be the “Beneficial Owner” of any shares of Capital Stock (regardless whether owned of record):

- (1) Which that person or any of its Affiliates or Associates, directly or indirectly, owns beneficially;

(2) Which such person or any of its Affiliates or Associates has (A) the right to acquire (whether exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding; or

(3) Which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of voting capital stock of the Corporation or any Subsidiaries.

“Capital Stock” means any Common Stock, Preferred Stock or other shares of capital stock of the Corporation.

“Certificate of Incorporation” shall mean the certificate of incorporation of the Corporation, as it may be amended from time to time.

“Claim” shall mean any threatened, pending or completed claim, action, suit or proceeding, including appeals, whether civil, criminal, administrative or investigative and whether made judicially or extra-judicially, including any action by or in the right of the Corporation, or any separate issue or matter therein, as the context requires.

“Common Stock” shall mean the common stock of the Corporation, as provided for in the Certificate of Incorporation.

“Continuing Director” shall have the meaning ascribed to it in the Certificate of Incorporation.

“Delaware Law” shall mean the General Corporation Law of the State of Delaware.

“Determining Body” shall mean (i) those members of the Board who do not have a direct or indirect interest the Claim for which indemnification is being sought (“Impartial Directors”), if there are at least two Impartial Directors, (ii) a committee of at least two Impartial Directors appointed by the Board or a duly authorized committee thereof (regardless of whether the directors voting on such appointment are Impartial Directors) and composed of Impartial Directors or (iii) if there are fewer than two Impartial Directors or if the Board or a duly authorized committee thereof so directs (regardless whether the members thereof are Impartial Directors), independent legal counsel, which may be the regular outside counsel of the Corporation, as determined by the Impartial Directors or, if no such directors exist, the full Board.

“Disbursing Officer” shall mean the Chief Financial Officer of the Corporation or, if the Chief Financial Officer has a direct or indirect interest in the Claim for which indemnification is being sought, any officer who does not have such an interest and who is designated by the Chief Executive Officer to be the Disbursing Officer with respect to indemnification requests related to the Claim, which designation shall be made promptly after receipt of the initial request for indemnification with respect to such Claim.

“Expenses” shall mean any expenses or costs, including, without limitation, attorney’s fees, judgments, punitive or exemplary damages, fines, excise taxes or amounts paid in settlement.

“Indemnitee” shall mean any person who is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or fiduciary of another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, employee benefit plans of the Corporation).

“Preferred Stock” shall mean the preferred stock of the Corporation, as provided for in the Certificate of Incorporation.

“Subsidiary” means any corporation, partnership or other entity of which the Corporation, directly or indirectly, owns voting stock or similar interests having a majority of the votes entitled to be cast.

“Voting Stock” means the outstanding shares of Capital Stock entitled to vote generally in an election of directors.

SECTION 11

Amendments

The Corporation’s Bylaws may be altered, amended, or repealed or new Bylaws may be adopted by:

- (a) the stockholders, but only upon the affirmative vote of holders of not less than 80% of the Voting Stock, voting together as a single class; or
- (b) the Board, but only upon the affirmative vote of both (i) a majority of the directors then in office and (ii) a majority of the Continuing Directors, voting as a separate group.