

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): April 20, 2023

The Joint Corp.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-36724
(Commission file number)

90-0544160
(IRS employer identification number)

16767 N. Perimeter Drive, Suite 110
Scottsdale, AZ 85260
(Address of principal executive offices)

Registrant's telephone number, including area code:
(480) 245-5960

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions:

- 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 Par Value Per Share	JYNT	The NASDAQ Capital Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

On April 20, 2023, the Board of Directors of The Joint Corp. (the "Company") approved certain amendments to, and the amendment and restatement of, the Company's bylaws (the "Third Amended and Restated Bylaws"), which became effective the same day.

The amendments update the Company's bylaws in light of recent changes to the Delaware General Corporation Law (the "DGCL") and to the rules of the Securities and Exchange Commission (the "SEC") regarding universal proxy cards. Additionally, the amendments also incorporate non-substantive clarifying and/or conforming changes.

Business at Annual Meetings of Stockholders (Section 2.2). This section addresses, among other things, the procedures for advance notice by stockholders to properly bring proposed nominations or other proposed business before the annual meeting of stockholders. This section was updated to incorporate non-substantive clarifying language with respect to such procedures. In addition:

- Section 2.2(a) was updated to specify that stockholder-proposed director nominations must comply with any additional requirements, as applicable, of Rule 14a-19 of the Securities and Exchange Act (the "Exchange Act").
- Section 2.2(b) was updated (i) to address the notice deadline in the event that an annual meeting of stockholders in any year is advanced or delayed by more than 30 days from the anniversary date of the previous year's annual meeting; (ii) to clarify that the announcement of an adjournment or postponement of an annual meeting does not begin a new time period (or extend any time period) for the giving of a stockholder's notice; and (iii) to include a definition of "public announcement" in connection with the announcement of an annual meeting date that is advanced or delayed by more than 30 days from the anniversary date of the previous year's annual meeting or the announcement of the adjournment or postponement of an annual meeting date.
- Section 2.2(c) was updated to specify that the notice of a stockholder-proposed director nomination or business proposal must (i) indicate whether the proposing stockholder intends to appear in person (or through an agent) at the annual meeting and (ii) include the information relating to the proposing stockholder that would be required to be disclosed in a proxy statement with respect to the solicitation of proxies for, as applicable, the director nomination and/or business proposal pursuant to Section 14 of the Exchange Act.

Proxy Access for Director Nominations (Section 2.3). This section addresses, among other things, the procedures for stockholders to include director nominations in the Company's proxy statement for the annual meeting of stockholders. This section was updated to incorporate non-substantive clarifying language with respect to such procedures. In addition:

- Section 2.3(b) was updated (i) to address notice requirements in the event that an annual meeting of stockholders in any year is advanced or delayed by more than 30 days from the anniversary date of the previous year's annual meeting; and (ii) to include a definition of "public announcement" in connection with the announcement of an annual meeting date that is advanced or delayed by more than 30 days from the anniversary date of the previous year's annual meeting or the announcement of the adjournment or postponement of an annual meeting date.

- Section 2.3(m) was updated to clarify that Section 2.3 provides the exclusive method for a stockholder to include nominees for election to the board of directors in the Corporation's proxy materials, except for nominations made in accordance with Rule 14a-19 of the Exchange Act.

Voting List (Section 2.10). This section was updated in order to remove a requirement that the list of stockholders be available during a meeting of stockholders in accordance with recent amendments to the DGCL.

Adjournments (Section 2.12). This section was updated in order to specify that notice of adjourned meetings of stockholders may be provided in any manner permitted by the DGCL.

The foregoing description is a summary and is qualified in its entirety by reference to the full text of the Third Amended and Restated Bylaws, a copy of which is attached as Exhibit 3.2 hereto and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
3.2 104	Third Amended and Restated Bylaws of The Joint Corp., dated as of April 20, 2023 Cover page interactive data file (embedded within the Inline XBRL document)

Signature

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.

Date: April 26, 2023.

The Joint Corp.

By /s/ Peter D. Holt
Peter D. Holt
President and Chief Executive Officer

**Third Amended and Restated Bylaws of
The Joint Corp.
(Amended and Restated as of April 20, 2023)
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**Third Amended and Restated Bylaws of
The Joint Corp.**
(Amended and Restated as of April 20, 2023)

**Article 1
Offices**

1.1 Registered Office

The Corporation's registered office in the State of Delaware shall be located at 1209 Orange Street, Wilmington, Delaware 19801 (New Castle County), and its registered agent shall be The Corporation Trust Company. The Corporation's registered office and registered agent may be changed at any time by the board of directors.

1.2 Other Offices

The Corporation may also have other offices, either within or outside the State of Delaware, as the board of directors determines or as the Corporation's business requires.

**Article 2
Stockholders**

2.1 Annual Meeting

An annual meeting of stockholders for the election of directors and the transaction of any other business which properly comes before the meeting shall be held between March 31 and October 31 of each year, on the date fixed by the board of directors.

2.2 Business at Annual Meetings of Stockholders

(a) At an annual meeting of the stockholders, only such nominations for director will be made and only such other business will be conducted as will have been properly brought before the meeting. To be properly brought before an annual meeting, nominations and other business must be: either (1) proposed by or at the direction of the board of directors, either pursuant to the Corporation's notice of the meeting in compliance with Section 2.6 of these Bylaws or otherwise; or (2) proposed to be brought before the meeting by any stockholder of record (i) who is entitled to vote at the meeting, (ii) who gives timely notice of the proposed nominations or other proposed business in compliance with this Section 2.2 or Section 2.3, as applicable, and has otherwise complied with this Section 2.2 or Section 2.3, as applicable, in all respects and (iii) who is a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting. In addition, for any business to be properly brought before an annual meeting by a stockholder, the business must be a proper matter for stockholder action. Any stockholder who wishes to include nominations of persons for election to the board of directors in the Corporation's proxy statement for an annual meeting of stockholders must comply with Section 2.3 of these Bylaws, and any person who otherwise wishes to nominate a person for election as a director must comply with this Section 2.2 and with any applicable additional requirements of Rule 14a-19 of the Exchange Act. For the avoidance of doubt, the foregoing clause (2) and Section 2.3 of these Bylaws shall be the exclusive means for a stockholder to propose business (other than business to be included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Exchange Act) or nominate persons for election as directors at an annual meeting.

(b) To be timely, a stockholder's notice of proposed nominations or other proposed business must be addressed to the secretary of the Corporation and received at the Corporation's principal executive offices no later than the close of business on the 90th day, and no earlier than the close of business on the 120th day, prior to the first anniversary of the preceding year's annual meeting of stockholders. If, however, the date of the annual meeting is more than 30 days before or after the first anniversary, the

stockholder's notice must be received no later than the close of business on the later of the close of business on the 90th day prior to such annual meeting or the 10th day following the date on which public announcement of the date of such meeting was first made, and no earlier than the 120th day prior to the annual meeting. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For purposes of this Section 2.2, the term "public announcement" shall mean disclosure in a press release reported by the Dow Jones Newswires, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(c) The stockholder's notice to the secretary shall include (i) for each item of business that the stockholder proposes to bring before the annual meeting, a brief description of the business and the reasons for conducting the business at the annual meeting and a statement of any interest of the stockholder or beneficial owner in the business proposed to be brought before the meeting; (ii) if such notice pertains to the nomination of directors, as to each person whom the stockholder proposes to nominate for election or reelection as a director, the notice shall include all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Securities Exchange Act of 1934 ("Regulation 14A"), and such person's written consent to serve as a director if elected; (iii) a statement whether the stockholder intends to appear in person (or through a duly authorized agent) at the meeting to introduce the business or nomination; and (iv) as to the stockholder giving the notice in either case, the stockholder's name and address as they appear on the Corporation's books, the name and address of the beneficial owner, if any, on whose behalf the stockholder is acting and the number of shares of the Corporation's stock beneficially owned by the beneficial owner, and any other information relating to the stockholder and beneficial owner 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, as applicable, the business proposal and/or the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

(d) The chairman of the annual meeting shall have the power to determine whether any business was not properly brought before the annual meeting in accordance with the procedures in this Section 2.2. If the chairman determines that any business was not properly brought before the meeting, the chairman shall inform the meeting that the business was not brought properly before the meeting and that the business may not be transacted.

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2.3 Proxy Access for Director Nominations

(a) *Information to be Included in the Corporation's Proxy Materials* Whenever the board of directors solicits proxies with respect to the election of directors at an annual meeting of stockholders (following the 2018 annual meeting of stockholders), subject to the provisions of this Section 2.3, the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the board of directors, the name, together with the Required Information (as defined below), of any person nominated for election (a "**Stockholder Nominee**") to the board of directors by an Eligible Stockholder (as defined in Section 2.3(d)) who expressly elects at the time of providing the notice required by this Section 2.3 to have such nominee included in the Corporation's proxy materials pursuant to this Section 2.3. For purposes of this Section 2.3, the "**Required Information**" that the Corporation will include in its proxy statement is (i) the information provided to the secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement pursuant to Regulation 14A, and (ii) if the Eligible Stockholder so elects, a Supporting Statement (as defined in Section 2.3(h)). For the avoidance of doubt, nothing in this Section 2.3 shall limit the Corporation's ability to solicit against any Stockholder Nominee or include in its proxy materials the Corporation's own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation pursuant to this Section 2.3. Subject to the provisions of this Section 2.3, the name of any Stockholder Nominee included in the Corporation's proxy statement for an annual meeting of stockholders shall also be set forth on the form of proxy distributed by the Corporation in connection with such annual meeting.

(b) *Notice Period.* In addition to any other applicable requirements, for a nomination to be made by an Eligible Stockholder pursuant to this Section 2.3, the Eligible Stockholder must have given timely notice thereof (the "**Notice of Proxy Access Nomination**") in proper written form to the secretary of the Corporation. To be timely, the Notice of Proxy Access Nomination must be delivered to or be mailed and received by the secretary at the principal office of the Corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days in advance of the anniversary of the date that the Corporation first distributed its proxy statement to stockholders for the previous year's annual meeting of stockholders. If, however, the date of the annual meeting is more than 30 days before or after the first anniversary of the previous year's annual meeting, the stockholder's notice must be received no later than the close of business on the later of the close of business on the 120th day prior to such annual meeting or the 10th day following the date on which public announcement of the date of such meeting was first made, and no earlier than the 150th day prior to the annual meeting. In no event shall the adjournment or postponement of the 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 Notice of Proxy Access Nomination pursuant to this Section 2.3. For purposes of this Section 2.3, the term "public announcement" shall mean disclosure in a press release reported by the Dow Jones Newswires, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

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(c) *Permitted Number of Stockholder Nominees.*

(1) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed twenty percent (20%) of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 2.3 (the "**Final Proxy Access Nomination Date**"), or if such number is not a whole number, the closest whole number (rounding down) below twenty percent (20%) (such resulting number, the "**Permitted Number**"). In the event that one (1) or more vacancies for any reason occurs on the board of directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the board of directors resolves to reduce the size of the board of directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. The Permitted Number shall be reduced by:

- (i) Stockholder Nominees whose nominations for election are subsequently withdrawn;
- (ii) Stockholder Nominees whom the board of directors itself decides to nominate for election at such annual meeting;
- (iii) the number of incumbent directors or director candidates (including, without limitation, candidates who are not Stockholder Nominees) that in either case will be included in the Corporation's proxy statement for an annual meeting of stockholders as an unopposed (by the Corporation) nominee pursuant to any agreement, arrangement or other understanding with any stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of stock from the Corporation by such stockholder or group of stockholders); and
- (iv) the number of incumbent directors who had been Stockholder Nominees at any of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the board of directors.

(2) Any Eligible Stockholder submitting more than one (1) Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 2.3 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy materials in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.3 exceeds the Permitted Number. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.3 exceeds the Permitted Number, the highest ranking Stockholder Nominee who meets the requirements of this Section 2.3 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the number (largest to smallest) of shares of stock of the Corporation each Eligible Stockholder disclosed as owned in its Notice of Proxy Access Nomination. This selection process will continue with the next highest ranked nominees as many times as

necessary, following the same order each time, until the Permitted Number is reached.

(3) Notwithstanding anything to the contrary contained in this Section 2.3, the Corporation shall not be required to include any Stockholder Nominees in its proxy materials pursuant to this Section 2.3 for any meeting of stockholders for which the secretary of the Corporation receives notice that a stockholder intends to nominate one (1) or more persons for election to the board of directors pursuant to the advance notice requirements for stockholder nominees set forth in Section 2.2.

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(d) *Eligible Stockholder.* An “**Eligible Stockholder**” is a stockholder or group of no more than twenty (20) stockholders (counting as one (1) stockholder, for this purpose, any two (2) or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has owned (as defined in Section 2.3(e)) continuously for at least three (3) years (the “**Minimum Holding Period**”) a number of shares of stock of the Corporation that represents at least three percent (3%) of the voting power of all shares of stock of the Corporation issued and outstanding and entitled to vote in the election of directors as of the date the Notice of Proxy Access Nomination is received by the secretary at the principal office of the Corporation in accordance with this Section 2.3 (the “**Required Shares**”), (ii) continues to own the Required Shares through the date of the annual meeting and (iii) satisfies all other requirements of, and complies with all applicable procedures set forth in, this Section 2.3. A “**Qualifying Fund Group**” means two (2) or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer or (C) a “group of investment companies” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. Whenever the Eligible Stockholder consists of a group of stockholders (including a group of funds that are part of the same Qualifying Fund Group), (x) each provision in this Section 2.3 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has owned continuously for the Minimum Holding Period in order to meet the three percent (3%) ownership requirement of the “**Required Shares**” definition) and (y) a breach of any obligation, agreement or representation under this Section 2.3 by any member of such group shall be deemed a breach by the Eligible Stockholder. No person may be a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting.

(e) *Definition of Ownership.* For purposes of this Section 2.3, an Eligible Stockholder shall be deemed to “own” only those outstanding shares of stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder’s or its affiliates’ full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall “own” shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder’s ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on five (5) business days’ notice and includes in the Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation’s proxy materials and (B) will continue to hold such recalled shares through the date of the annual meeting or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of stock of the Corporation are “owned” for these purposes shall be determined by the board of directors. For purposes of this Section 2.3, the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the General Rules and Regulations under the Securities Exchange Act of 1934.

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(f) *Form of Notice.* To be in proper written form, the Notice of Proxy Access Nomination must include or be accompanied by the following:

(i) a written statement by the Eligible Stockholder certifying as to the number of shares it owns and has owned continuously for the Minimum Holding Period, and the Eligible Stockholder’s agreement to provide (A) within five (5) business days following the later of the record date for the annual meeting or the date notice of the record date is first publicly disclosed, a written statement by the Eligible Stockholder certifying as to the number of shares it owns and has owned continuously through the record date and (B) immediate notice if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the annual meeting;

(ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to or mailed and received by the Secretary of the Corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder’s agreement to provide, within five (5) business days following the later of the record date for the annual meeting or the date notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder’s continuous ownership of the Required Shares through the record date;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed with the United States Securities and Exchange Commission as required by Rule 14a-18 under the Securities Exchange Act of 1934;

(iv) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N if it existed on the date of submission of the Schedule 14N;

(v) the information and representations that would be required to be set forth in or included with a stockholder’s notice of a nomination pursuant to Section 2.2(c), together with the written consent of each Stockholder Nominee to being named as a nominee and to serve as a director if elected;

(vi) a representation that the Eligible Stockholder (A) will continue to hold the Required Shares through the date of the annual meeting, (B) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and does not presently have such intent, (C) has not nominated and will not nominate for election to the board of directors at the annual meeting any person other than the Stockholder Nominee(s) it is nominating pursuant to this Section 2.3, (D) has not engaged and will not engage in, and has not and will not be a “participant” in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Securities Exchange Act of 1934 in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the board of directors of the Corporation, (E) has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation, (F) has complied and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting and (G) has provided and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

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(vii) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 2.3 or any solicitation or other activity in connection therewith and (C) file with the Securities and Exchange Commission any solicitation or other communication with the stockholders of the Corporation relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A;

(viii) a written representation and agreement from each Stockholder Nominee that such Stockholder Nominee (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Stockholder Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation in such representation and agreement or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding 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 that has not been disclosed to the Corporation in such representation and agreement, (C) would be in compliance, if elected as a director of the Corporation, and will comply with the Corporation's code of conduct and ethics, corporate governance guidelines, stock ownership and trading policies and guidelines and any other policies or guidelines of the Corporation applicable to directors and (D) will make such other acknowledgments, enter into such agreements and provide such information as the board of directors requires of all directors, including promptly submitting all completed and signed questionnaires required of the Corporation's directors;

(ix) in the case of a nomination by a group of stockholders together constituting an Eligible Stockholder, the designation by all group members of one (1) member of the group that is authorized to receive communications, notices and inquiries from the Corporation and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 2.3 (including withdrawal of the nomination); and

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(x) in the case of a nomination by a group of stockholders together constituting an Eligible Stockholder in which two (2) or more funds that are part of the same Qualifying Fund Group are counted as one (1) stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(g) *Additional Required Information.* In addition to the information required pursuant to Section 2.3(f) or any other provision of these Bylaws, (i) the Corporation may require any proposed Stockholder Nominee to furnish any other information (A) that may reasonably be required by the Corporation to determine whether the Stockholder Nominee would be independent under the Independence Standards, (B) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Stockholder Nominee or (C) that may reasonably be required by the Corporation to determine the eligibility of such Stockholder Nominee to serve as a director of the Corporation, and (ii) the Corporation may require the Eligible Stockholder to furnish any other information that may reasonably be required by the Corporation to verify the Eligible Stockholder's continuous ownership of the Required Shares for the Minimum Holding Period.

(h) *Supporting Statement.* The Eligible Stockholder may, at its option, provide to the Secretary of the Corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed five hundred (500) words, in support of the Stockholder Nominee(s)' candidacy (a "Supporting Statement"). Only one (1) Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 2.3, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(i) *Correction of Defects.* In the event that any information or communications provided by an Eligible Stockholder or a Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any defect in such previously provided information and of the information that is required to correct any such defect; it being understood that providing such notification shall not be deemed to cure any such defect or limit the remedies available to the Corporation relating to any such defect (including the right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 2.3).

(j) *Stockholder Nominee Eligibility.* Notwithstanding anything to the contrary contained in this Section 2.3, the Corporation shall not be required to include in its proxy materials, pursuant to this Section 2.3, any Stockholder Nominee (i) who would not be an independent director under the independence standards of the NASDAQ Stock Market ("NASDAQ"), (ii) whose election as a member of the board of directors would cause the Corporation to be in violation of these Bylaws, the Corporation's certificate of incorporation, the rules and listing standards of NASDAQ, or any applicable state or federal law, rule or regulation, (iii) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (iv) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years, (v) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act, or (vi) who shall have provided any information to the Corporation or its stockholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

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(k) *Invalid Nominations.* Notwithstanding anything to the contrary set forth herein, if (i) a Stockholder Nominee and/or the applicable Eligible Stockholder breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 2.3 or (ii) a Stockholder Nominee otherwise becomes ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 2.3 or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the board of directors or the chair of the annual meeting, (x) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (y) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and (z) the board of directors or the chair of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation. In addition, if the Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting to present any nomination pursuant to this Section 2.3, such nomination shall be declared invalid and disregarded as provided in clause (z) above.

(l) *Restrictions on Re-Nominations.* Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders, but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting or (ii) does not receive at least twenty-five percent (25%) of the shares of common stock entitled to vote for such Stockholder Nominee, will be ineligible to be a Stockholder Nominee pursuant to this Section 2.3 for the next two (2) annual meetings of stockholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any stockholder from nominating any person to the board of directors pursuant to and in accordance with Section 2.2.

(m) *Exclusive Method.* Except for a nomination made in accordance with Rule 14a-19 promulgated under the Exchange Act, this Section 2.3 provides the exclusive

method for a stockholder to include nominees for election to the board of directors in the Corporation's proxy materials.

2.4 Special Meetings

A special meeting of stockholders may be called for any purpose or purposes by the chairman of the board or the president and chief executive officer, or by the secretary of the Corporation at the direction of the board of directors. The business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of the meeting. For the avoidance of doubt, the provisions of Section 2.3 shall not apply to a special meeting of stockholders, and the Corporation shall not be required to include a director nominee of a stockholder or group of stockholders in the Corporation's proxy statement or form of proxy or ballot for any special meeting of stockholders.

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2.5 Place of Meetings

Meetings of stockholders shall be held at the place designated by the board of directors, which may be within or outside the State of Delaware. If the Board does not designate a place, the place shall be the Corporation's principal office.

2.6 Notice of Meetings

Written notice of each meeting of stockholders shall be given to all stockholders entitled to vote at the meeting at least 10 but not more than 60 days prior to the meeting (unless otherwise provided by law). The notice shall state the date, place and time of the meeting, and in the case of a special meeting of stockholders, the purpose or purposes for which the meeting is called. If mailed, the notice shall be considered given when deposited in the United States mail, proper postage prepaid, directed to the stockholder at his address as it appears on the Corporation's records. If electronically transmitted, the notice shall be considered given as provided in Section 2.14.

2.7 Quorum

The holders of a majority of the shares entitled to vote at a meeting of stockholders, present in person or represented by proxy, shall constitute a quorum for the transaction of business at the meeting, except as otherwise provided by law or by the Corporation's certificate of incorporation.

2.8 Voting

Each holder of common stock shall be entitled to one vote for each share of common stock that he holds of record. When a quorum is present at any meeting of stockholders, the affirmative vote of holders of a majority of the shares present in person or represented by proxy, entitled to vote on a matter and voting shall decide the matter, except as provided in Section 3.2, Section 8.2, or when a different vote is required by law or by the Corporation's certificate of incorporation.

2.9 Proxies

Each stockholder entitled to vote at a meeting of stockholders, or to consent to corporate action without a meeting, may authorize another person to act for him by proxy authorized by an instrument in writing or by electronic transmission and delivered to the secretary of the Corporation prior to or at the time of the meeting or other action. No proxy may be voted or acted on more than three years after its date, unless the appointment expressly provides for a longer period. A stockholder may revoke his appointment of a proxy by an instrument in writing or by electronic transmission delivered to the secretary of the Corporation, by a subsequent appointment or by attendance at the meeting and voting in person. Any electronic submission pursuant to this section must either set forth or be submitted with information from which the Corporation can determine that such electronic transmission was authorized by the stockholder.

2.10 Voting List

At least 10 days before every meeting of stockholders, the secretary of the Corporation shall prepare a complete alphabetical list of the stockholders entitled to vote at the meeting, showing the address of each stockholder and the number of shares registered in his name. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. This list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting; or (ii) during ordinary business hours, at the Corporation's principal place of business.

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2.11 Inspectors

The board of directors shall appoint in advance of any meeting of stockholders one or more inspectors to act at the meeting. If no inspector appointed is able to act at the meeting, the chairman of the meeting shall appoint one or more inspectors. Each inspector shall take and sign an oath faithfully to carry out the duties of inspector with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine (and retain for a reasonable period a record of) the disposition of any challenges made to any determination of the inspectors, and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots.

2.12 Adjournments

Any meeting of stockholders may be adjourned to another time or place by the holders of a majority of the shares present or represented by proxy at the meeting and entitled to vote, even though less than a quorum. Notice need not be given of the adjourned meeting if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken or are provided in any other manner permitted by the Delaware General Corporation Law, unless the adjournment is for more than 30 days or, after the adjournment, a new record date is fixed for the adjourned meeting. The Corporation may transact any business at the adjourned meeting which might have been transacted at the original meeting.

2.13 Action by Consent

Any action which may be taken at a meeting of stockholders may be taken without a meeting (and without prior notice) if a consent or consents in writing, setting forth the action taken, are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote were present and voted. An electronic transmission consenting to an action to be taken shall be deemed to be written, signed and dated for the purposes of this section, provided that it either sets forth or is delivered with information from which the Corporation can determine that such electronic transmission was authorized by the stockholder or proxy holder (or their authorized agents) and the date on which it was transmitted. Prompt notice of the taking of any corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented.

2.14 Notice to Stockholders by Electronic Transmission

(a) 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 “DGCL”), the certificate of incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (1) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) Notice given pursuant to subsection (a) of this section shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Article 3 Directors

3.1 General Powers

The Corporation’s business and affairs shall be managed by or under the direction of a board of directors, which may exercise all of the powers of the Corporation except as otherwise provided by law or by the Corporation’s certificate of incorporation.

3.2 Number and Term of Office

The number of directors constituting the board of directors shall be nine. The number of directors may be changed by a resolution of the board of directors or the stockholders, but if changed, no decrease in the number of directors shall affect the term of any incumbent. Directors shall be elected at the annual meeting of stockholders. Each director shall be elected by the vote of a majority of the votes cast in respect of the director’s election, with the exception that if the number of nominees for election exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares present in person or represented by proxy and entitled to vote on the election of directors. For purposes of this section 3.2, a “majority of the votes cast” means that the number of shares voted “for” the director’s election exceeds the number of shares voted “against” the director’s election. If an incumbent director is not re-elected, the director shall tender his resignation to the board of directors. The Nominating and Governance Committee shall make a recommendation to the Board whether to accept or reject the director’s resignation or whether other action should be taken. The Board shall act on the Committee’s recommendation and publicly disclose its decision and the rationale behind it within 90 days from the date of certification of the election results. The director who tendered his resignation shall not participate in Committee’s deliberations (if he is a member of the Committee) or in the Board’s decision. Each director shall hold office until his successor is elected or until his earlier death, resignation or removal. Despite the expiration of a director’s term, the director shall continue to serve in office until the next meeting of stockholders at which directors are elected. Directors need not be stockholders of the Corporation.

3.3 Regular Meetings

Regular meetings of the board of directors shall be held, at least once each fiscal quarter, at the times and places determined by the board of directors. Notice of a regular meeting of the board of directors need not be given (except to a director who was absent when the determination of the time and place was made).

3.4 Special Meetings

Special meetings of the board of directors may be held at any time at the call of the chairman of the board, the president, the lead director (if applicable) or any two directors. Special meetings shall be held at the Corporation’s principal office unless the board of directors designates a different location.

3.5 Notice of Special Meetings

Written notice of a special meeting of the board of directors shall be given to each director at his business address by the secretary of the Corporation, or by the officer or one of the directors calling the meeting, by personal delivery, electronic transmission, overnight courier service or mail at least 48 hours prior to the meeting. The notice shall state the time and place of the meeting but need not specify the purpose of the meeting.

3.6 Quorum

A majority of the total number of directors shall constitute a quorum to transact business at all meetings of the board of directors. In the absence of quorum at any meeting, a majority of the directors present may adjourn the meeting without further notice other than announcement of the time and place of the adjourned meeting.

3.7 Participation by Telephone

A director or member of any committee designated by the board of directors may participate in any meeting of the board of directors or of such committee by conference telephone or similar communications equipment which enables all persons participating in the meeting to hear one another, and participation in this manner shall constitute presence in person at the meeting.

3.8 Voting

The vote of a majority of the directors present at any meeting of the board of directors at which a quorum is present shall be the act of the board of directors, unless the vote of a greater number is required by the Corporation’s certificate of incorporation.

3.9 Resignation

A director may resign at any time by written notice to the Corporation at its principal office or to the chairman of the board, president or secretary. Unless otherwise

specified in the director's notice, his resignation shall be effective on receipt by the Corporation or designated officer.

3.10 Removal

Any director may be removed, for cause, at any special meeting of stockholders called for that purpose, by the affirmative vote of holders of a majority of the shares then entitled to vote at an election of directors.

3.11 Vacancies

Any vacancy in the board of directors created by a director's resignation, death or removal, or any vacancy arising because of an increase in the number of directors may be filled by the incumbent directors. A director elected to fill a vacancy shall hold office for the balance of the term for which he was elected.

3.12 Compensation

The board of directors may establish reasonable fees to be paid to directors for their services, and may also authorize the payment of their expenses, if any, reasonably incurred in attending meetings of the board of directors.

3.13 Committees

The board of directors, by resolution passed by a majority of the whole Board, may create one or more committees (for example, a Compensation Committee or an Audit Committee) of two or more directors to serve at the Board's pleasure. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member of the committee at any meeting of the committee. To the extent provided in the resolution creating each committee, and subject to the limitations imposed by law, the committee shall have and may exercise all of the powers and authority of the board of directors in respect of matters within the scope of the committee's authority. Unless the resolution creating any committee specifies a greater number, a majority of the members of the committee shall constitute a quorum, and a majority of a quorum shall be necessary for committee action. Subject to the direction of the board of directors, each committee shall determine the time and place of its meetings and establish appropriate rules to govern its activities.

3.14 Action by Consent

Any action which may be taken at a meeting of the board of directors or of any committee of the board of directors may be taken without a meeting (and without prior notice) if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings or electronic transmissions, setting forth the actions taken, are filed with minutes of proceedings of the board of directors or the committee.

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3.15 Lead Director

Regardless of whether the Corporation's president and chief executive officer, or any other officer or employee of the Corporation, is serving as the chairman of the board, the board may appoint an outside director as the lead director, and if appointed, the lead director will have the qualifications and duties described in this Section 3.15.

The lead director shall be independent under the listing standards of the National Association of Securities Dealers, Inc., and shall serve at the board's pleasure until the next election of directors by the stockholders. The lead director shall: working with the chairman of the board, if any, coordinate the scheduling and agenda of board meetings and the preparation and distribution of agenda materials; preside when the board meets in executive session or otherwise in the absence of the chairman of the board; call special meetings of the board when he considers appropriate; oversee the scope, quality and timeliness of the flow of information from the Corporation's management to the board; and serve as an independent point of contact for stockholders wishing to communicate with the board (other than through the chairman of the board, if any).

Article 4 Officers

4.1 Principal Officers

The principal officers of the Corporation shall consist of a president, chief financial officer, and secretary, and if the board of directors considers it advisable, a chief operating officer. The board of directors may elect a chairman of the board from among the directors and may appoint such other officers and assistant officers, including one or more vice presidents, assistant treasurers and assistant secretaries as the board considers advisable. More than one office may be held by the same person.

4.2 Election and Term of Office

The president, chief financial officer, secretary, and chief operating officer (if one is elected) shall be elected annually by the board of directors at the first meeting of the board of directors following the annual meeting of stockholders. A chairman of the board and other officers may be elected or appointed at this meeting or at any other meeting. Each officer shall hold office until his successor is elected and qualified or until his earlier death, resignation or removal. The election or appointment of an officer shall not of itself create any contract rights.

4.3 Resignation

An officer may resign at any time by written notice to the Corporation at its principal office or to the chairman of the board, president or secretary. Unless otherwise specified in the officer's notice, his resignation shall be effective on receipt by the Corporation or designated officer.

4.4 Removal

Any officer may be removed by the board of directors, with or without cause, whenever in its judgment the officer's removal would serve the Corporation's best interests. Unless the board of directors determines otherwise, no officer who is removed shall have any right to compensation as an officer for any period following his removal except as provided in an authorized contract with the Corporation.

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4.5 Vacancies

The board of directors may fill a vacancy in any office occurring for any reason or may leave any vacant office unfilled other than the offices of president, Treasurer or secretary.

4.6 Chairman of the Board

The chairman of the board, if one is elected, shall confer with the president on matters of general policy affecting the day- to-day management of the Corporation's business and have such other powers and duties as the board of directors assigns. The chairman of the board shall preside at all meetings of the board of directors.

4.7 President

The president shall be the Corporation's chief executive officer and, subject to the direction of the board of directors and such supervisory powers, if any, that the board may give to the chairman of the board, shall have general charge of the Corporation's business and day-to-day management. He shall also supervise the Corporation's other officers and see that all resolutions and orders of the board of directors are carried into effect. He shall preside at all meetings of the stockholders and, in the absence of the chairman of the board or if one is not elected, at all meetings of the board of directors. In general, the president shall have the powers and duties usually vested in the office of president of a corporation and such other powers and duties as the board of directors assigns.

4.8 Chief Operating Officer

The chief operating officer of the Corporation shall be responsible, under the president's direction, for overseeing the Corporation's day-to-day business operations. The chief operating officer shall have the powers and duties usually vested in the office of chief operating officer of a corporation and such other powers and duties as the president or the board of directors assigns.

4.9 Chief Financial Officer

The chief financial officer of the Corporation shall be responsible, under the president's direction, for all financial and accounting matters, including custody of the Corporation's funds and securities and responsibility for depositing, investing and disbursing the Corporation's funds. The chief financial officer shall have the powers and duties usually vested in the office of chief financial officer of a corporation and such other powers and duties as the president or board of directors assigns.

4.10 Vice Presidents

The vice president, if one is appointed, or, if there is more than one, the vice presidents, shall assist the president as he directs in the management of the Corporation's business and the implementation of resolutions and orders of the board of directors. If there is more than one vice president, the board of directors may give them titles that are descriptive of their respective functions or indicative of their relative seniority. In the event of the absence or inability to act of the president, the vice president, or if there is more than one, the vice presidents in the order of their seniority as indicated by their titles or as otherwise determined by the board of directors, shall perform the duties of president. The vice president or vice presidents shall also have such other powers and duties as the president or board of directors assigns.

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4.11 Secretary

The secretary shall have the powers and duties usually vested in the office of secretary of a corporation, including custody of the Corporation's corporate records and responsibility for sending all notices to stockholders and directors required by law or by these Bylaws and recording all proceedings of meetings of the stockholders and the directors. The secretary shall have authority to certify copies of these Bylaws, resolutions of the stockholders and directors and other documents of the Corporation as true and correct and shall also have such other powers and duties as the president or board of directors assigns.

4.12 Assistant Officers

The assistant treasurer and the assistant secretary (or if more than one is appointed, the assistant treasurers and assistant secretaries in the order determined by the board of directors) shall perform the duties of the treasurer or secretary, as the case may be, in the event of his absence or inability to act. Each assistant treasurer or assistant secretary shall also have such powers and duties as the president or board of directors assigns.

4.13 Salaries

Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as the board of directors determines. No officer shall be prevented from receiving a salary by reason of the fact that he is also a director.

Article 5 Indemnification

5.1 Third Party Suits

The Corporation shall indemnify each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Corporation (a "proceeding") by reason of the fact that he, or the person of whom he is the legal representative, is or was a director or officer of the Corporation or, while a director or officer, is or was serving at the Corporation's request as a director, officer, trustee, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement that he reasonably incurs in connection with the proceeding, to the fullest extent authorized by the DGCL, as it now exists and as it may be amended (but in the case of any amendment, only to the extent that the amendment authorizes the Corporation to provide broader indemnification rights than were permitted prior to the amendment).

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5.2 Derivative Suits

The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) that he reasonably incurs in connection with the defense or settlement of such action or suit to the fullest extent authorized by the DGCL, as it now exists and as it may be amended (but in the case of any amendment, only to the extent that the amendment authorizes the Corporation to provide broader indemnification rights than were permitted prior to the amendment).

5.3 Suits Initiated by Director or Officer

Notwithstanding Sections 5.2 and 5.3, and except with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any director or officer seeking indemnity in connection with a proceeding initiated by such director or officer only if such proceeding was authorized or approved by the board of directors.

5.4 Survival of Indemnification

The right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his heirs and legal representatives.

5.5 Expenses Payable in Advance

The right to indemnification shall include the right to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition. Payment of such expenses shall be made, however, only upon delivery of an undertaking by the director or officer to repay all amounts advanced if it is ultimately determined that he is not entitled to indemnification under this Article (or otherwise).

5.6 Non-Exclusivity of Indemnification

The right to indemnification under this Article shall not be exclusive of any other rights that a director or officer may have by law, under the corporation's certificate of incorporation, these Bylaws or any contract or by vote of the stockholders or disinterested directors or otherwise.

5.7 Indemnification of Employees and Agents

The Corporation, by action of its board of directors, may provide indemnification to its employees and agents with the same scope and effect as the indemnification provided to its directors and officers in this Article.

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5.8 Insurance

The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the Corporation's request as a director, officer, trustee, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, whether or not the Corporation would have the power to indemnify such person against such liability under this Article 5 or the General Corporation Law of the State of Delaware.

Article 6 Stock

6.1 Stock Certificates

The shares of the Corporation shall be represented by certificates. The board of directors may provide by resolution that some or all of the Corporation's stock shall be uncertificated shares, but any such resolution shall not apply to any shares represented by a certificate until the certificate is surrendered to the Corporation. In any case, every holder of stock represented by certificates, and upon request every holder of uncertificated shares, shall be entitled to a certificate representing the number of shares registered in his name. Each certificate shall be signed by or in the name of the Corporation by the chairman of the board or the president or a vice president and by the secretary or an assistant secretary. Any or all of the signatures on the certificate may be a facsimile. If any officer, transfer agent or registrar who has signed a certificate, or whose facsimile signature has been placed upon a certificate, ceases to serve before the certificate is issued, the certificate may be issued with the same effect as if the officer, transfer agent or registrar were still serving at the time of issuance. All certificates shall be in the form prescribed by the board of directors, and shall be consecutively numbered or otherwise identified. The name and post office address of the person to whom the shares represented by the certificate are issued, with the number of shares and date of issuance, shall be entered on the Corporation's stock transfer books.

6.2 Endorsements

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Corporation's certificate of incorporation, these Bylaws, applicable securities laws or an agreement between the Corporation and any number of stockholders shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement that the shares of stock represented by the certificate are subject to the restriction.

6.3 Transfers

Shares of stock of the Corporation may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, with such proof of authority or authenticity of signature as may be required by rules and regulations adopted by the board of directors. Whenever any transfer of shares is made for collateral security and not absolutely, it shall be so expressed in the entry in the Corporation's stock transfer books if, when the certificate is presented for transfer, both the transferor and the transferee request the Corporation to do so.

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6.4 Lost Certificates

The Corporation may issue a new certificate of stock in place of any certificate previously issued which is alleged to have been lost, stolen or destroyed on such terms and conditions as the board of directors may prescribe, including presentation of reasonable evidence of such loss, theft or destruction and such bond or other indemnity as the board of directors requires for the protection of the Corporation and its transfer agent.

6.5 Stockholders of Record

Except as may be otherwise required by law, the Corporation shall be entitled to treat the holder of record of any shares of its stock as shown on its stock transfer records as the owner of those shares for all purposes, including the payment of dividends and the right to vote, until the shares have been transferred on the Corporation's stock transfer records in accordance with these Bylaws, regardless of any intervening transfer, pledge or other disposition of the shares.

6.6 Record Date

The board of directors may fix a date in advance as the record date for purposes of determining the stockholders entitled to notice of or to vote at any meeting of stockholders, to consent to corporate action without a meeting, to receive payment of any dividend or other distribution, to exercise any rights in respect of any change, conversion or exchange of stock, or for purposes of any other lawful action. The record date may be fixed within these limits:

- (i) the record date for determining the stockholders entitled to notice of and to vote at any meeting of stockholders shall not be less than 10 or more than 60

days prior to the date of the meeting;

(ii) the record date for determining the stockholders entitled to consent to corporate action without a meeting shall not be earlier than the date of the resolution fixing the record date or more than 10 days after such date; and

(iii) the record date for determining the stockholders for any other purpose shall not be earlier than the date of the resolution fixing the record date or more than 60 days prior to the action for which the determination is being made.

If the board of directors does not fix a record date:

(i) the record date for determining the stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the date on which notice is given;

(ii) the record date for determining stockholders entitled to consent to corporate action without a meeting shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation; and

(iii) the record date for determining the stockholders for any other purpose shall be the close of business on the day that the board of directors adopts the resolution authorizing the action with respect to which the determination is being made.

Article 7 General Provisions

7.1 Contracts

The board of directors may authorize any officer or officers to enter into any contract or agreement for the Corporation. This authorization may be general or confined to specific instances.

7.2 Loans

The Corporation shall not borrow money unless authorized by the board of directors. This authorization may be general or confined to specific instances.

7.3 Checks

All checks, drafts and other orders for the payment of money, and all promissory notes and other evidences of indebtedness issued in the Corporation's name, shall be signed by the officer or officers and in the manner authorized by the board of directors.

7.4 Depositories

All funds of the Corporation shall be deposited in its name in the banks, trust companies or other depositories authorized by the board of directors.

7.5 Fiscal Year

The Corporation's fiscal year shall be fixed by the board of directors.

7.6 Corporate Seal

The corporate seal shall be in such form as the board of directors approves.

7.7 Waiver of Notice

Whenever notice is required to be given by law, the Corporation's certificate of incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, at any time before or after the time stated in the waiver, shall be considered equivalent to proper notice. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting, unless the person attends for the express purpose of objecting, at the beginning of the meeting, to transacting any business the meeting because the meeting was not lawfully called or convened.

7.8 Evidence of Authority

A certificate by the secretary or an assistant secretary as to any action taken by the stockholders or board of directors or any committee of the board of directors or officer of the Corporation shall be conclusive evidence of such action as to all persons who rely on the certificate in good faith.

7.9 Transactions with Interested Parties

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum;

(b) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote on the matter, and the contract or transaction is specifically approved in good faith by the vote of the stockholders; or

(c) the contract or transaction is fair as to the Corporation as of the time that it is authorized, approved or ratified by the board of directors, committee or stockholders.

Interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee of directors which authorizes the contract or transaction.

7.10 Use of Words

Whenever the context requires, words used in these Bylaws in the singular shall be considered to be in the plural, and conversely. Similarly, the words “he,” “his” and “him” shall be considered “she” or “her” or “it” or “its” when appropriate to the reference.

7.11 Electronic Transmission

For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

**Article 8
Amendments**

8.1 By Board of Directors

These Bylaws may be amended or repealed or new bylaws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the board of directors at which a quorum is present.

8.2 By Stockholders

These Bylaws may be amended or repealed or new bylaws may be adopted by the affirmative vote of holders of a majority of the shares entitled to vote at any annual meeting of stockholders or at any special meeting of stockholders at which notice of the meeting included a statement or description of the proposed amendment, repeal or adoption of new bylaws.