

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): January 22, 2026

SPAR Group, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

0-27408
(Commission File No.)

33-0684451
(IRS Employer Identification No.)

110 East Boulevard, Suite 1600, Charlotte, NC
(Address of Principal Executive Offices)

28203
(Zip Code)

Registrant's telephone number, including area code: (704) 837-1651

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

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

- 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, \$0.01 par value	SGRP	The Nasdaq Stock 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 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Introductory Note

SPAR Group, Inc. ("SGRP" or the "Corporation", and together with its subsidiaries, the "Company", "SPAR" or "SPAR Group") has listed its shares of common stock, par value \$0.01 ("Common Stock") for trading through the Nasdaq Stock Market LLC ("Nasdaq") under the trading symbol "SGRP" and periodically files reports with the Securities and Exchange Commission ("SEC"). Reference is made to: (a) SGRP's Amended 2024 Annual Report on Form 10-K/A for the year ended December 31, 2024, as filed with the SEC on July 17, 2025 (the "2024 Annual Report"), and (b) SGRP's Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports and statements as and when filed with the SEC (together with the 2024 Annual Report, each an "SEC Report").

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

On January 22, 2026, the Board adopted and approved amendments to the existing Amended and Restated By-Laws of the Corporation. The Amendments include the following:

- I. Section 2.07. Voting.
 - Directors shall be chosen by a plurality of the votes cast, instead of a majority of the votes cast.
- II. Section 2.11(d). Stockholder Proposals and Nominations.
 - If the presiding Officer of the Annual Meeting determines at the Annual Meeting, that a stockholder proposal was made in contravention of any agreement that such proponent may have with the Corporation, such Officer shall so declare at the Annual Meeting and any such proposal shall not be acted upon at the Annual Meeting, unless a court of competent jurisdiction makes a contrary determination before or after the Annual Meeting.
- III. Section 3.01. Number.
 - The number of directors that shall constitute the whole Board shall be no fewer than five (5) and no more than seven (7), instead of set at seven (7) directors.
- IV. Section 3.07. Action by Written Consent.
 - Any action required or permitted to be taken by the Board may be taken without a meeting if at least the Required Number consent in writing to the action, instead of all members of the Board consenting in writing.
- V. Section 3.11. Director Re-election.
 - This Section has been updated to reflect a change from majority to plurality vote to be compliant with the change to Section 2.07.
- VI. Section 3.12. Supermajority Board Approval.
 - The Board shall not take any action at a meeting unless five (5) business days prior notice was given to all directors stating the purpose thereof, instead of 20 business days prior notice.
- VII. Section 4.02(c). Committee Charters, Powers, Etc.
 - Five (5) business days prior notice shall not be required to amend a Committee Charter as is required to amend the By-Laws, instead of 20 business days prior notice.
- VIII. Section 4.06(a). Quorum, Manner of Participation and Voting.
 - At each meeting of any Committee the presence of a majority of its members then serving in office shall be necessary and sufficient to constitute a quorum for the transaction of business, instead of the Required Number of its members, but not less than one-third of the entire Committee.
- IX. Section 5.01. Positions, Election, Executives, Etc.
 - This Section has been updated to reflect the descriptions that were previously in Sections 5.04 through 5.18, which have been removed.
- X. Sections 1.03, 1.05, 1.06, 7.02, 7.03, 7.05, 7.07, 7.08, 9.03, and 9.04.
 - The information in these Sections has been removed. These Section numbers have been left as placeholders and are marked RESERVED.

The foregoing description is only a summary of the Amendments and is qualified in its entirety by reference to a copy of the Amended and Restated By-Laws of the Corporation, As Adopted, Restated, Effective and Dated as of January 22, 2026, as attached to this Current Report as Exhibit 3.3, and is hereby incorporated herein by reference.

Forward Looking Statements

This Current Report on Form 8-K (this "Current Report") contains forward-looking statements within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, made by, or respecting, the Corporation and its subsidiaries. "Forward-looking statements" are defined in Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, and other applicable federal and state securities laws, rules and regulations, as amended.

Readers can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. Words such as "may," "will," "expect," "intend," "believe," "estimate," "anticipate," "continue," "plan," "project," or the negative of these terms or other similar expressions also identify forward-looking statements. Forward-looking statements made by the Corporation in this Current Report may include (without limitation) statements regarding: risks, uncertainties, cautions, circumstances and other factors ("Risks"). Those Risks include (without limitation): collection of the termination fee from Highwire Capital, potential non-compliance with applicable Nasdaq rules regarding the filing of periodic financial reports, director independence, bid price or other rules; any potential non-compliance with applicable Nasdaq annual meeting, director independence, bid price or other rules; the impact of selling certain of the Corporation's subsidiaries or any resulting impact on revenues, earnings or cash; the Company's cash flows or financial condition; and plans, intentions, expectations.

For additional information and risk factors that could affect the Corporation, see its 2024 Annual Report and other SEC Reports as filed with the SEC. The information contained in this Current Report is made only as of the date hereof, even if subsequently made available by the Corporation on its website or otherwise.

You should carefully review and consider the Corporation's forward-looking statements (including all risk factors and other cautions and uncertainties) and other information made, contained or noted in or incorporated by reference into this Current Report, but you should not place undue reliance on any of them. The results, actions, levels of activity, performance, achievements or condition of the Company (including its affiliates, assets, business, clients, capital, cash flow, credit, expenses, financial condition, income, legal costs, liabilities, liquidity, locations, marketing, operations, performance, prospects, sales, strategies, taxation or other achievement, results, risks, trends or condition) and other events and circumstances planned, intended, anticipated, estimated or otherwise expected by the Company (collectively, "Expectations"), and our forward-looking statements (including all Risks) and other information reflect the Corporation's current views about future events and circumstances. Although the Corporation believes those Expectations and views are reasonable, the results, actions, levels of activity, performance, achievements or condition of the Company or other events and circumstances may differ materially from our Expectations and views, and they cannot be assured or guaranteed by the Corporation, since they are subject to Risks and other assumptions, changes in circumstances and unpredictable events (many of which are beyond the Corporation's control). In addition, new Risks arise from time to time, and it is impossible for the Corporation to predict these matters or how they may arise or affect the Company. Accordingly, the Corporation cannot assure you that its Expectations will be achieved in whole or in part, that it has identified all potential Risks, or that it can successfully avoid or mitigate such Risks in whole or in part, any of which could be significant and materially adverse to the Company and the value of your investment in the Corporation's common stock.

These forward-looking statements reflect the Corporation's Expectations, views, Risks and assumptions only as of the date hereof, and the Corporation does not intend, assume any obligation, or promise to publicly update or revise any forward-looking statements (including any Risks or Expectations) or other information (in whole or in part), whether as a result of new information, new or worsening Risks or uncertainties, changed circumstances, future events, recognition, or otherwise.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

3.3 [Amended and Restated By-Laws of the Corporation, As Adopted, Restated, Effective and Dated as of January 22, 2026, as filed herewith.](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

SPAR Group, Inc.

Date: January 28, 2026

By: /s/ William Linnane

William Linnane, President and CEO

AMENDED AND RESTATED BY-LAWS

of

SPAR Group, Inc.

As Adopted, Restated, Effective and Dated as of January 22, 2026

TABLE OF CONTENTS

	<u>Page</u>
Article I. CERTIFICATE, BY-LAWS AND OFFICES	1
Section 1.01. Certificate of Incorporation	1
Section 1.02. By-Laws and Restatement; Conformed Version Includes All Amendments	1
Section 1.03. RESERVED	1
Section 1.04. Registered Office	1
Section 1.05. RESERVED	1
Section 1.06. RESERVED	1
Article II. MEETINGS OF SHAREHOLDERS	1
Section 2.01. Annual Meetings	1
Section 2.02. Special Meetings	2
Section 2.03. Notice of Meeting	2
Section 2.04. Quorum and Manner of Participation; Treasury Stock	2
Section 2.05. Adjournments	3
Section 2.06. Secretary and Inspectors	3
Section 2.07. Voting	3
Section 2.08. Proxies	4
Section 2.09. Action by Written Consent	4
Section 2.10. List of Shareholders	5
Section 2.11. Stockholder Proposals and Nominations	5
Article III. BOARD	7
Section 3.01. Number	7
Section 3.02. Power	7
Section 3.03. Term of Office	7
Section 3.04. Vacancies and Additional Directorships	7
Section 3.05. Meetings	7
Section 3.06. Quorum, Manner of Participation and Voting	8
Section 3.07. Action by Written Consent	9
Section 3.08. Resignation of Directors	9
Section 3.09. Removal of Directors	9
Section 3.10. Compensation of Directors	9
Section 3.11. Director Re-Election	9
Section 3.12. Supermajority Board Approval	9
Section 3.13. Director Independence	10
Article IV. COMMITTEES OF THE BOARD	12
Section 4.01. Standing Committees, Designation of Additional Committees, Etc	12

Section 4.02.	Committee Charters, Powers, Etc	12
Section 4.03.	Appointment and Term	13
Section 4.04.	Committee Chairman	13
Section 4.05.	Meetings, Notices and Records	14
Section 4.06.	Quorum, Manner of Participation and Voting	14
Section 4.07.	Action by Written Consent	15
Section 4.08.	Resignations	15
Section 4.09.	Removal	15
Section 4.10.	Vacancies	15
Section 4.11.	Compensation	15
Section 4.12.	Subcommittees	15
Article V. OFFICERS		16
Section 5.01.	Positions, Election, Executives, Etc	16
Section 5.02.	Term of Office, Resignation and Removal	17
Section 5.03.	Vacancies	17
Article VI. INDEMNIFICATION		17
Section 6.01.	Certain Defined Terms	17
Section 6.02.	Persons Indemnified	19
Section 6.03.	Notice of Proceeding	19
Section 6.04.	Defense Counsel	19
Section 6.05.	Right to Indemnification, Etc	20
Section 6.06.	Right to Advancement of Expenses	20
Section 6.07.	Determination of Right to Indemnification	20
Section 6.08.	Indemnification on Success	20
Section 6.09.	Payment Claims to Recover Losses and Expenses	20
Section 6.10.	Suits Brought by an Indemnitee	21
Section 6.11.	Suits on Payment Claims, Etc	21
Section 6.12.	Indemnification Enforcement Expenses	21
Section 6.13.	Indemnitee's Proper Conduct	21
Section 6.14.	Continuation of Rights	21
Section 6.15.	Non-Exclusivity of Rights	21
Section 6.16.	Insurance	22
Section 6.17.	Indemnification of Officers, Employees and Agents of the Corporation	22
Section 6.18.	Savings Clause	22
Section 6.19.	Changes in Indemnification Rights	22
Section 6.20.	Contractual and Beneficial Rights	22
Article VII. SHARES		23
Section 7.01.	Certificates	23
Section 7.02.	RESERVED	23
Section 7.03.	RESERVED	23

Section 7.04.	Transfer of Shares	23
Section 7.05.	RESERVED	23
Section 7.06.	Lost Stock Certificates	23
Section 7.07.	RESERVED	24
Section 7.08.	RESERVED	24
Article VIII. RECORD DATES AND DIVIDENDS		24
Section 8.01.	Record Dates	24
Section 8.02.	Dividends	24
Article IX. MISCELLANEOUS CORPORATE POWERS AND RESTRICTIONS		25
Section 9.01.	Execution of Instruments Generally	25
Section 9.02.	Transactions with Interested Parties	25
Section 9.03.	RESERVED	25
Section 9.04.	RESERVED	25
Section 9.05.	Proxies	26
Section 9.06.	Fiscal Year	26
Section 9.07.	Corporate Seal	26
Article X. AMENDMENTS AND INTERPRETATION		26
Section 10.01.	Amendments	26
Section 10.02.	Notices, Electronic Messages, Copies, Etc	26
Section 10.03.	Number and Gender	26
Section 10.04.	Section and Other Headings	27
Section 10.05.	Severability	27
Section 10.06.	Conflicting Provisions of the Certificate of Incorporation and Applicable Law	27
Section 10.07.	Applicable Law	27
Section 10.08.	Non-Exclusive Provisions	27
Section 10.09.	Forum Selection	28

AMENDED AND RESTATED BY-LAWS

OF

SPAR GROUP, INC.

As Adopted, Restated, Effective and Dated as of January 22, 2026

ARTICLE I.

CERTIFICATE, BY-LAWS AND OFFICES

Section 1.01. Certificate of Incorporation. SPAR Group, Inc., a Delaware corporation, formerly known as PIA Merchandising Services, Inc. (the "Corporation"), was formed pursuant to a Certificate of Incorporation filed on November 29, 1995, with the Secretary of State of the State of Delaware (as the same may have been and hereafter may be supplemented, modified, amended or restated from time to time in the manner provided therein and under Applicable Law, the "Certificate").

Section 1.02. By-Laws and Restatement. The Corporation, through the action of its Board of Directors (the "Board"), has adopted these amended and restated By-Laws for the Corporation (these "By-Laws"), dated and effective as of January 22, 2026 (the "Restatement Date"). These By-Laws, the Audit Committee Charter, the Compensation Committee Charter and the Governance Committee Charter together amend, restate and completely replace all previous By-Laws and committee charters of the Corporation, effective as of the Restatement Date.

Section 1.03. RESERVED.

Section 1.04. Registered Office. The registered office of the Corporation in the State of Delaware shall be located at the office of the registered agent of the Corporation in the State of Delaware and may be changed by the Board or registered agent from time to time in the manner permitted by Applicable Law.

Section 1.05. RESERVED.

Section 1.06. RESERVED.

ARTICLE II.

MEETINGS OF SHAREHOLDERS

Section 2.01. Annual Meetings. The annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held on such date and at such time and place within or without the State of Delaware as may be designated by the Board from time to time.

Section 2.02. Special Meetings. Special meetings of the stockholders for any proper purpose or purposes may be called at any time by the Board or the Chief Executive Officer to be held on such date and at such time and place (within or without the State of Delaware) as the person or persons calling the meeting shall direct. A special meeting of the stockholders also may be called by the Secretary at the direction of the Board or the Chief Executive Officer. On or before December 31, 2026, a special meeting of the shareholders shall be called promptly by the Chief Executive Officer or the Secretary whenever such Officer receives Physical Delivery of the written request for such a meeting from stockholders owning at least three-fourths (75%) of the shares of the Corporation then issued and outstanding and entitled to vote on matters to be submitted to stockholders at the meeting. On or after January 1, 2027, a special meeting of the shareholders shall be called promptly by the Chief Executive Officer or the Secretary whenever such Officer receives Physical Delivery of the written request for such a meeting from stockholders owning at least one-fourth (25%) of the shares of the Corporation then issued and outstanding and entitled to vote on matters to be submitted to stockholders at the meeting. Any such written request by the stockholders shall state a proper purpose or purposes for the meeting, to which other purposes may be added by the Board or the Chief Executive Officer (or by the Secretary at the direction of any of them) in submitting notice of the special meeting to the stockholders. At any special meeting, however called, only such business as is related to the purpose or purposes set forth in the notice to stockholders may be transacted.

Section 2.03. Notice of Meeting. Written notice of every meeting of stockholders stating the place, date and hour of the meeting shall be signed by the Chief Executive Officer or the Secretary, or by any other Officer authorized to do so by the Board or these By-Laws. Such notice shall be given, either personally, by Physical Delivery or (to the extent the recipient has consented specifically thereto as required by the DGCL) Electronic Delivery, to each stockholder of record entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the meeting, except as otherwise provided by Applicable Law. Notice of a special meeting also shall state the purpose or purposes for which the meeting is called (which may include the election of directors if so stated) and the person or persons calling the meeting. A notice sent by Physical Delivery shall be directed to a stockholder's address listed in the records of the Corporation, which may be changed by a written notice to the Secretary of a new address. Notice need not be given to any stockholder who submits a signed waiver of notice, in person or by proxy, either before or after the meeting. The attendance of any stockholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such stockholder.

Section 2.04. Quorum and Manner of Participation; Treasury Stock.

(a) Except as otherwise provided by the Certificate or Applicable Law: the presence at any meeting, in person or by proxy, of the holders of record of at least one-half of the shares then issued and outstanding and entitled to vote shall be necessary and sufficient to constitute a quorum for the transaction of business; and a quorum present at the commencement of a meeting shall not be broken by a subsequent withdrawal of one or more stockholders. For purposes of the foregoing, two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting.

(b) Any one or more stockholders may participate in a meeting of the stockholders by means of a telephone conference or other electronic communication allowing all persons participating in the meeting to hear each other. Participation by such means shall constitute presence in person at a meeting.

(c) Shares of the capital stock of the Corporation owned by the Corporation or any of its direct or indirect subsidiaries shall not be entitled to vote and shall not be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any of its subsidiaries to vote any of the capital stock of the Corporation held by it in any fiduciary capacity for any Officer, employee or other unrelated person or the right of the Corporation to count such shares for quorum purposes.

Section 2.05. Adjournments. In the absence of a quorum, the stockholders holding a majority of the shares entitled to vote and present at the time and place of any meeting, in person or by proxy, or any Officer entitled to preside or act as secretary of such meeting, may adjourn the meeting from time to time without notice, other than the announcement at the meeting of the date, time and place of the adjourned meeting, until a quorum is present. However, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.06. Secretary and Inspectors. The Board, in advance of any stockholders' meeting, may appoint one or more Officers to act as secretary and inspector(s) to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a stockholders' meeting may, and on the request of any stockholder entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the Board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector shall execute faithfully the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability, and if requested to do so before entering upon the discharge of his or her duties, each inspector shall give or sign an oath to do so. If inspectors have been designated, the inspectors (or if there are no inspectors, the secretary of the meeting) shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum and the validity and effect of proxies, and the inspectors shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such other things as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

Section 2.07. Voting. Except as otherwise provided by the Certificate or Applicable Law: (a) each stockholder shall be entitled to one vote for each share of the Corporation's stock entitled to vote on the matter registered in his or her name on the books of the Corporation on the applicable record date, as determined in accordance with Section 8.01 of these By-Laws; and (b) at any meeting of stockholders at which a quorum is present: (i) directors shall be chosen by a plurality of the votes cast; (ii) directors may be removed by the votes of a majority of the shares then entitled to vote for directors; and (iii) all other questions brought before the stockholders shall be determined by a majority of the votes cast. For clarity, votes cast do not include abstentions, non-votes or inconclusive votes (*i.e.*, no box clearly checked, multiple boxes checked, and the like) respecting any candidate or matter. For purposes of the foregoing, two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting.

Section 2.08. Proxies.

(a) Any stockholder entitled to vote may vote by proxy, provided that the instrument authorizing such proxy to act is dated and has been signed by the stockholder or by his or her duly authorized attorney, Officer, director, employee or agent, who may affix such signature by any reasonable means (including facsimile). A proxy need not be sealed, witnessed or acknowledged. A proxy shall expire six (6) months after it is created unless it is coupled with an interest or it expressly provides for a longer period (which in any event may not exceed seven (7) years from the date of its creation). A proxy shall be presumed to be revocable unless it expressly provides otherwise. Proxies may be delivered to the Secretary before the meeting begins or to the secretary of the meeting or the inspectors of election at the meeting.

(b) A duly executed proxy may be made irrevocable by an express statement to that effect if, and only so long as, it is coupled with an interest sufficient under Applicable Law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

(c) A stockholder may authorize another person or persons to act for him as proxy by transmitting, or authorizing the transmission of, an email, fax, tested telex, cable, telegram or other reliable electronic transmission: (i) to the person who will be the holder of the proxy; or (ii) to a firm that solicits proxies or similar agent who is authorized by the person who will be the holder of the proxy to receive the transmission. Any such email, fax, tested telex, cable, telegram or other reliable electronic transmission must either set forth or be submitted with information from which it can be determined that such email, fax, tested telex, cable, telegram or other reliable electronic transmission was authorized by the stockholder. If it is determined that the email, fax, tested telex, cable, telegram or other reliable electronic transmission is valid, the persons appointed by the Corporation to count the votes of stockholders and determine the validity of proxies and ballots or other persons making those determinations must specify the information upon which they relied.

Section 2.09. Action by Written Consent. Any action required or permitted to be taken by the stockholders may be taken without any meeting, vote or notice if authorized (whether before or after such action) in a written consent or consents signed by those stockholders entitled to vote on such action having sufficient shares to have authorized it in a duly convened meeting at which all stockholders entitled to vote were present and voted. Notice of any action so authorized shall be given promptly to any stockholder not signing any such consent, but failure to give that notice shall not affect the validity of the consent. Written consents of the stockholders shall be filed with the minutes of the Corporation.

Section 2.10. List of Shareholders. At least ten (10) days before every meeting of stockholders, the Officer in charge of the Corporation's stock ledger shall prepare and make, or cause to be prepared and made, a complete list of all of the stockholders of the Corporation entitled to vote at the meeting, which list shall be arranged in alphabetical order and show each stockholder's address and the number of shares registered in the name of each stockholder; provided, however, that if there have been no changes in the stockholders of record since the last list was prepared, a new list need not be prepared. This list shall be opened to the examination of any stockholder for any purpose germane to the meeting, and shall be made available by the Corporation during normal business hours, for a period of at least ten (10) days prior to the meeting, either at the place where the meeting is to be held or any other place designated within the city where the meeting is to be held that may have been designated in the notice to stockholders. This list also shall be produced and made available throughout the meeting of stockholders and may be inspected by any stockholder present. No such list need be prepared if the actions to be taken at an annual meeting instead are approved by the written consent of the stockholders.

Section 2.11. Stockholder Proposals and Nominations. If and for so long as any shares of capital stock issued by the Corporation are listed for trading on any securities exchange or registered under Section 12 of the Securities Exchange Act of 1934, as amended, the following provisions shall apply:

(a) At an Annual Meeting, only such business shall be conducted, only such nominees for director shall be considered, and only such proposals shall be acted upon, as shall have been brought before the Annual Meeting: (i) by any stockholder of the Corporation (acting in his, her or its capacity as stockholder) who complies with the notice procedures set forth in this Section 2.11 of these By-Laws; or (ii) by, or at the direction of, at least 70% of the members of the Board, including at least a majority of the Super Independent Directors.

(b) For any business, nominee or proposal to be properly brought before an Annual Meeting by a stockholder (acting in his or her capacity as stockholder), such stockholder must have given timely written notice thereof by Physical Delivery to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to, or received at, the principal executive offices of the Corporation not later than the ninetieth (90th) day prior to the first anniversary of the preceding year's Annual Meeting, except that if no Annual Meeting was held in the previous year, or if the date of the Annual Meeting is more than thirty (30) days before or more than thirty (30) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or received, not later than the later of the ninetieth (90th) day prior to such Annual Meeting or the tenth (10th) day following the date on which public announcement of the date of such meeting is first made by the Corporation. Notwithstanding anything in the preceding sentence to the contrary, in the event that there has been no public announcement naming all of the Board's nominees for director made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the preceding sentence, a stockholder's notice required by this Section 2.11 shall also be considered timely for any nominees for director if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(c) A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the Annual Meeting: (i) a brief description of the business, nominee or proposal desired to be brought before the Annual Meeting and the reasons for considering the same at the Annual Meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business and any other stockholders known by such stockholder to be supporting such proposal; (iii) the class and number of shares of the Corporation's stock which are beneficially owned by the stockholder on the date of such stockholder notice and by any other stockholders known by such stockholder to be supporting such proposal on the date of such stockholder notice; and (iv) any financial interest of such stockholder (or any affiliate or family member of such stockholder), whether current or at any time within the past three (3) years, in such business, nominee or proposal. In addition, if the notice is a nomination of a candidate for director, the stockholder's notice also must contain: (A) the proposed nominee's name and qualifications, including five (5) year employment history with employer names and a description of the employer's business, whether such individual can read and understand basic financial statements, and board memberships (if any); (B) the reason for such recommendation; (C) the number of shares of stock of the Corporation that are beneficially owned by such nominee; (D) a description of any business or other relationship, whether current or at any time within the past three (3) years, between such nominee (or any affiliate or family member of such nominee) and either the Corporation, any of its directors or Officers, its auditor, or any of its customers or vendors; and (E) a description of any financial or other relationship, whether current or at any time within the past three (3) years, between the stockholder (or any affiliate or family member of such stockholder) and such nominee (or any affiliate or family member of such nominee).

(d) If the Governance Committee determines in advance of the Annual Meeting, or if it has not passed on the proposal, if the presiding Officer of the Annual Meeting determines at the Annual Meeting, that a stockholder proposal was not made in accordance with the terms of this Section 2.11, that a stockholder proposal was made in contravention of any agreement that such proponent may have with the Corporation, or that a stockholder proposal is not a proper subject for stockholder action under Delaware law or other Applicable Law or could have been excluded under Rule 14a-8 (as defined below), whether or not applicable, such Officer shall so declare at the Annual Meeting and any such proposal shall not be acted upon at the Annual Meeting, unless a court of competent jurisdiction makes a contrary determination before or after the Annual Meeting. Nothing in this Section 2.11 shall prevent the Corporation from excluding stockholder proposals under the following circumstances: (i) with respect to any stockholder proposal, the Corporation may exclude such proposal if it would be reasonably likely to result in any direct or indirect compensatory or pecuniary benefit limited to any stockholder or any member of a group of stockholders and not all stockholders (each a "specified stockholder"), any of their respective family members, or any company or other business or entity directly or indirectly owned or controlled by any one or more of the specified stockholders and their respective family members; and (ii) with respect to any stockholder proposal submitted pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), or submitted pursuant to this Section 2.11 (whether or not such Rule is applicable), the Corporation may exclude such proposal in accordance with the provisions and procedures of such Rule. If the Governance Committee determines in advance of the Annual Meeting, or if it has not passed on the proposal, if the presiding Officer of the Annual Meeting determines at the Annual Meeting, that a proposal may be excluded pursuant to the preceding clause (i), such Officer shall so declare at the Annual

Meeting and any such proposal shall not be acted upon at the Annual Meeting, unless a court of competent jurisdiction makes a contrary determination before the Annual Meeting.

(e) This Section 2.11 shall not prevent the consideration and approval or disapproval at the Annual Meeting of reports of Officers, Directors and Committees of the Board or any other matter that comes before the meeting with the consent of the Board and the Chief Executive Officer, but, in connection with any such report on a stockholder's proposal, no business shall be acted upon at such Annual Meeting unless stated, filed and received as herein provided.

ARTICLE III.

BOARD

Section 3.01. Number. The number of directors that shall constitute the whole Board shall be no fewer than five (5) and no more than seven (7).

Section 3.02. Power. To the extent not inconsistent with the Certificate, these By-Laws or Applicable Law, the Board may adopt such policies, rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the business of the Corporation as it may deem necessary or desirable. In addition, the Board may exercise all powers of the Corporation and carry out all lawful acts not required to be exercised or done by the stockholders under the Certificate, these By-Laws or Applicable Law.

Section 3.03. Term of Office. Each director (whether elected at an annual meeting, to fill a vacancy or otherwise) shall continue in office until his or her successor shall have been duly elected and qualified or until his earlier death, resignation or removal in the manner provided in these By-Laws or Applicable Law.

Section 3.04. Vacancies and Additional Directorships. If any vacancy or newly created directorship shall occur among the directors for any reason (including death, retirement, resignation, removal, with or without cause, or as the result of an increase in the number of directors), any such vacancy or newly created directorship may be filled by: (i) a vote of the stockholders; or (ii) the directors then in office, though less than a quorum, or by the sole remaining director.

Section 3.05. Meetings.

(a) A meeting of the Board shall be held for organization and for the transaction of such other business as may properly come before the meeting, within thirty (30) days after each annual election of directors.

(b) The Board by resolution may provide for the holding of regular meetings and may fix the time and place at which such meetings may be held, which may be within or without the State of Delaware. Notice of regular or scheduled meetings shall not be required to be given, provided that, whenever the time or place of regular or scheduled meetings shall be first fixed or later changed, notice of such action shall be sent to each director who was not present at the meeting at which such action was taken at his or her residence or usual place of business by: (i) Electronic Delivery not later than two (2) days before the day on which the new or changed meeting is to be held; or (ii) Physical Delivery not later than five (5) days before the day on which the new or changed meeting is to be held.

(c) Special meetings of the Board may be called by the Chief Executive Officer or any director. Except as otherwise required by Applicable Law, notice of each special meeting shall be sent to each director at his or her residence or usual place of business by: (i) Electronic Delivery not later than two (2) days before the day on which the meeting is to be held; or (ii) Physical Delivery not later than five (5) days before the day on which the meeting is to be held. That notice shall state the place (which may be within or without the State of Delaware), date, time and a description of the business to be transacted at such meeting.

(d) Notice of any meeting need not be given to any director who attends such meeting in person without protesting the lack of notice or who shall waive notice thereof, before, at or after such meeting, by email, fax, tested telex, cable, telegram or other reliable electronic transmission or other writing.

Section 3.06. Quorum, Manner of Participation and Voting.

(a) At each meeting of the Board the presence of the Required Number (as defined below) of its members then serving in office shall be necessary and sufficient to constitute a quorum for the transaction of business. "Required Number" shall mean at least 70% of its members, including a majority of the Super Independent Directors, then serving in office if the Board or applicable Committee then consists of an odd number of directors then serving in office. In the absence of a quorum, a majority of those present at the time and place of any meeting may adjourn the meeting from time to time until a quorum shall be present and the meeting may be held as adjourned without further notice or waiver.

(b) Any one (1) or more members of the Board may participate in a meeting of the Board by means of a telephone conference or other electronic communication allowing all persons participating in the meeting to hear each other. Participation by such means shall constitute presence in person at a meeting.

(c) Except as otherwise provided by these By-Laws, the Certificate or Applicable Law, each director shall be entitled to one (1) vote, and the vote of the majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, *provided, however*, that in the event the Board: (i) includes two (2) Super Independent Directors and the Chief Executive Officer, the director with the least tenure on the Board who is not a Super Independent Director (other than the Chief Executive Officer) shall lose the right to vote on any matters that come before the Board; (ii) includes one (1) Super Independent Director and the Chief Executive Officer, then two (2) of the then-serving directors who have the least tenure on the Board and are not Super Independent Directors (other than the Chief Executive Officer) shall lose the right to vote on any matters that come before the Board; or (iii) includes no Super Independent Directors and the Chief Executive Officer, all of the then-serving directors who are not Super Independent Directors (other than the Chief Executive Officer) shall lose the right to vote on any matters that come before the Board.

Section 3.07. Action by Written Consent. Any action required or permitted to be taken by the Board may be taken without a meeting if at least the Required Number consent in writing to the action. Written consents by the Board shall be filed with the minutes of the Board.

Section 3.08. Resignation of Directors. Any director may resign at any time by giving written notice of such resignation to the Board (in care of the Corporation) and to the Chief Executive Officer, the Secretary or any other Executive. Any such resignation shall take effect on the date specified in such notice, or if no effective date is specified, upon receipt and acceptance thereof by the Board or any such Officer.

Section 3.09. Removal of Directors. Any director or directors may be removed from office, either with or without cause, with the approval of stockholders required by Section 2.07 hereof at any special meeting of the stockholders, duly held as provided in these By-Laws, or by their written consent as provided in these By-Laws. At such a meeting or in such consent a successor or successors may be elected by a plurality of the votes cast as provided in Section 2.07 hereto.

Section 3.10. Compensation of Directors. Directors shall receive such reasonable compensation for their services as directors, whether in the form of salary or a fixed fee for attendance at meetings, with reimbursement of expenses, if any, as the Board from time to time may determine. Except as otherwise provided in these By-Laws, any Committee Charter or Applicable Law, any director may serve the Corporation in any other capacity and receive compensation for that service.

Section 3.11. Director Re-election. A person shall not be qualified for election or re-election as a director unless he or she tenders, before his or her election or re-election, a written irrevocable letter of resignation and retirement (which shall constitute an irrevocable resignation for purposes of DGCL Section 141(b)), pursuant to which the departing director shall be deemed to have retired for all purposes (including all plans and other benefits) which letter shall be effective as and when, and effective upon, such person failing to be re-elected by the required plurality vote at any future meeting of stockholders at which such person is subject to re-election.

Section 3.12. Supermajority Board Approval. Notwithstanding anything in these By-Laws to the contrary, but subject to any provision of the Certificate or Applicable Law, the Board shall not take (or permit any direct or indirect subsidiary of the Corporation to take) any of the following actions (or enter into an agreement to take such actions) after the Restatement Date, and shall not delegate to any officer, employee or agent of the Corporation the authority to take any such actions, without the approval of at least 70% of the directors then in office, including a majority of the Super Independent Directors, at a meeting for which five (5) business days prior notice was given to all directors stating the purpose thereof (including the text of any proposed By-Law amendment, if applicable):

(a) Issue or sell (or, solely with respect to any securities directly or indirectly owned or held by the Corporation, transfer to any person or entity other than to the Corporation or one of its subsidiaries), in one (1) or a series of related transactions, more than 250,000 shares of common stock of the Corporation (as adjusted for any combination or subdivision of common stock of the Corporation); provided that for purposes of this sentence the authorization, issuance, transfer or sale of any security of any entity that is convertible into or exercisable or exchangeable for (either immediately or following the passage of time or happening of events) common stock of the Corporation shall be deemed a sale of the number of shares of common stock of the Corporation that may be acquired upon such conversion, exercise or exchange;

(b) Authorize, issue, or sell (or, solely with respect to any securities directly or indirectly owned or held by the Corporation, transfer to any person or entity other than to the Corporation or one of its subsidiaries): (i) shares of any class or series of preferred stock of the Corporation; or (ii) any security of any entity that is convertible into or exercisable or exchangeable for (either immediately or following the passage of time or happening of events) shares of any class or series of preferred stock of the Corporation;

(c) Declare any dividend on the shares of capital stock of the Corporation (other than dividends consisting solely of cash);

(d) Amend, restate, repeal or replace these By-Laws, or amend, restate or adopt new By-Laws, in whole or in part; and

(e) Amend, restate, repeal or replace any charter or organizational document of any Committee or the Corporation's Code of Ethical Conduct for its Directors, Officers, Employees, Consultants and other Representatives.

Notwithstanding anything to the contrary in these By-Laws or any Committee Charter or resolution adopted by the Board prior to adoption of this Section 3.12, but subject to any requirement of the Certificate or Applicable Law, no committee of the Board shall exercise the power and authority of the Board with respect to any action that requires the supermajority approval of the directors in accordance with this Section 3.12. The foregoing provisions of this Section 3.12: (i) shall not change or affect the validity of any agreement between the Corporation and any other party or parties if such agreement was approved by the Corporation prior to September 18, 2018 (provided that this sentence shall not apply to amendments to any such agreement entered into on or after September 18, 2018, unless approved by the Board as provided in this Section); and (ii) shall not apply to any stock compensation plan of the Corporation approved by its stockholders in accordance with Section 2.07 above (or the applicable preceding version of that Section) and any and all awards made thereunder (including, without limitation, awards or agreements representing stock options or restricted stock granted pursuant to the Corporation's 2018 Stock Compensation Plan, 2008 Stock Compensation Plan or other predecessor or successor plan duly adopted by the Corporation's stockholders).

Section 3.13. Director Independence.

(a) A majority of the members of the Board shall be Independent Directors as and when required by the Nasdaq Stock Market Rules. For purposes of this Section 3.13, "Independent Director" shall mean a person who: (1) is not an Executive Officer or employee of the Corporation as such terms are defined in the Nasdaq Stock Market Rules); (2) is not a Family Member (as such term is defined in Rule 5605(a)(2) of the Nasdaq Stock Market Rules) of an individual who is, or at any time during the past three (3) years was, employed by the Corporation as an Executive Officer; and (3) otherwise satisfies the independence criteria set forth in Rule 5605(a)(2) of the Nasdaq Stock Market Rules. The standards of independence applicable to members of the Audit Committee, Compensation Committee and Governance Committee shall be consistent with the independence standards set forth for each such Committee in the applicable Nasdaq Stock Market Rules and rules promulgated under the Securities and Exchange Act of 1934, as amended, subject to any exemptions or cure periods under such rules.

(b) In addition to satisfying the independence requirements of Section 3.13(a), the Board shall include at least three (3) Super Independent Directors. In addition to satisfying the independence requirements of Nasdaq and the Charters of the Audit Committee and Governance Committee, each such Committee shall include at least two (2) Super Independent Directors. "Super Independent Director" shall mean a member of the Board who (1) qualifies as an independent director under applicable laws and regulations, including, but not limited to (A) Delaware law, (B) the independence standards of the Nasdaq Stock Market Rules and (C) the United States Securities and Exchange Commission, (2) is affirmatively determined to be an independent director by the Governance Committee of the Board, (3) excludes Robert G. Brown, William H. Bartels, Spar Administrative Services, Inc. and Spar Business Services, Inc., (collectively, the "Majority Stockholders") and any of their respective Relatives, Family Members, or Affiliates, and (4) excludes any Person that is or was a present or past employee or advisor of any company with which any of the Majority Stockholders has been involved and any Person that is, or was in the past, related or affiliated in any way to any of the Majority Stockholders, including, without limitation, any Affiliates of Innovative Global Technologies, LLC or SP/R, Inc. Defined Benefit Pension Trust. For purposes of this Section 3.13(b):

i. "Affiliate" means (a) a Person controlled by, controlling or under common control with another Person, and for this purpose, "control" means the power to vote a majority of the voting power of a Person or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise; or (b) with respect to individuals, any family member, whether by blood, marriage or legal guardianship (including without limitation parents, children, aunts, uncles, cousins, nieces, nephews, grandparents or grandchildren of an individual, regardless of whether such individuals share a household with one another).

ii. "Family Member" of a Person shall mean any of the following: (i) any spouse, child, stepchild, parent, stepparent, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the Person, above, wherever residing, (ii) any person residing (other than solely as a tenant or employee) in the same household as the Person and (iii) anyone else deemed to be a "family member" under applicable or relevant law, rule or regulation.

iii. "Person" means and includes an individual, a general or limited partnership, a limited liability company, a joint venture, a corporation (including any non-profit corporation), an estate, a trust, an unincorporated organization, an association, a government or any department or agency thereof or any entity similar to any of the foregoing.

iv. "Relative" means any person who is related by blood, marriage, adoption, convention, law or similar relationship with another Person. A Person's relatives include (without limitation) his or her spouse, any mother, father, grandmother, grandfather, sister, brother, daughter, son, niece, nephew, or other descendent of the Person or his or her spouse, or any of their respective spouses or descendants, in each case whether related by blood, marriage, adoption, law or otherwise and including (without limitation) "step" relationships (stepfather, stepmother, stepchild and the like) and "in-law" relationships (mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law and the like).

ARTICLE IV.

COMMITTEES OF THE BOARD

Section 4.01. Standing Committees, Designation of Additional Committees, Etc. The Board shall have standing committees for audit matters (the "Audit Committee"), compensation matters (the "Compensation Committee") and governance matters (the "Governance Committee"), and from time to time may have such other committees as the Board, in any meeting duly held or action duly taken as provided in these By-Laws, may create (each an "Additional Committee"), and together with the Audit Committee, Compensation Committee and Governance Committee, each a "Committee").

Section 4.02. Committee Charters, Powers, Etc.

(a) The Board has adopted: (i) the Amended and Restated Charter of the Audit Committee of the Board of SPAR Group, Inc., Dated (as of) May 18, 2004 (as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided therein, the "Audit Committee Charter"); (ii) the Charter of the Compensation Committee of the Board of SPAR Group, Inc., Dated (as of) May 18, 2004 (as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided therein, the "Compensation Committee Charter"); and (iii) the Charter of the Governance Committee of the Board of SPAR Group, Inc., Dated (as of) May 18, 2004 (as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided therein, the "Governance Committee Charter"). Subject to Section 4.02(e) of these By-Laws, the Audit Committee, Compensation Committee and Governance Committee shall have the duties, power and authority respectively granted to them in the Audit Committee Charter, Compensation Committee Charter and Governance Committee Charter.

(b) Subject to Section 4.02(e) of these By-Laws, each Additional Committee shall have the duties, power and authority provided in the resolution or action creating such Committee or any charter adopted for such Committee by the Board (such resolution, action or charter, as adopted, and as the same may be supplemented, modified, amended, restated or replaced from time to time in the manner provided herein for these By-Laws, will each be referred to as an "Additional Committee Charter").

(c) Each Audit Committee Charter, Compensation Committee Charter, Governance Committee Charter and Additional Committee Charter (each a "Committee Charter"), except to the extent specifically provided otherwise therein, shall be governed by and construed and amended in accordance with these By-Laws as if such Committee Charter were part of these By-Laws (except five (5) business days prior notice shall not be required to amend a Committee Charter).

(d) In addition, except as otherwise provided by the Certificate, these By-Laws, the applicable Committee Charter or Applicable Law, each Committee in the exercise and performance of its specific duties, power and authority shall have and may exercise any and all duties, power and authority of the Board reasonably incidental thereto and may make rules for the conduct of its own business.

(e) Notwithstanding anything in these By-Laws to the contrary, the Board shall not take any of the following actions without the approval of at least a majority of the directors then in office at a meeting for which notice was given to all directors stating the purpose thereof: form or authorize any Committee, expand the authority of any Committee, remove a director from a Committee, appoint a director to serve as a member or alternate member of any Committee or authorize any Committee of the Board to create a subcommittee of such Committee. For the avoidance of doubt, the preceding sentence is not intended to eliminate any Committee of the Board (or a subcommittee of any Committee of the Board) formed prior to September 18, 2018 and is not intended to eliminate or modify any authority delegated to any such Committee (or subcommittee) pursuant to any resolution adopted by the Board or a Committee of the Board prior to September 18, 2018.

Section 4.03. Appointment and Term. Except as otherwise provided in any applicable Committee Charter, each Committee shall consist of one (1) or more directors, and any advisory Committee also may have one (1) or more non-directors as members. Each member shall serve a term of office of one (1) year, unless otherwise fixed from time to time by the Board, subject to earlier termination and removal as provided in this Section, or until his or her successor shall be duly elected and qualified. Subject to Section 4.02(e) of these By-Laws, the Board, in any meeting duly held or action duly taken as provided in these By-Laws, at any time may: (a) appoint a person to be a member of any Committee; and (b) remove any Committee member, either with or without cause. Any Committee member who ceases to be a member of the Board automatically shall simultaneously cease to be a member of each applicable Committee. Subject to Section 4.02(e) of these By-Laws, the Board may designate one or more directors as alternate members of any Committee, who, in the order specified by the Board, may replace any absent or disqualified member or members at any meeting of the Committee.

Section 4.04. Committee Chairman. The Board, in any meeting duly held or action duly taken as provided in these By-Laws, at any time may: (a) appoint a chairman of any Committee (each a "Committee Chairman") from among the Committee's members who also are directors of the Corporation and who also qualify as Super Independent Directors; and (b) remove any Committee Chairman, either with or without cause, and whether appointed by the Board or the Committee. If the Board has not appointed a Committee Chairman, the members of a Committee may designate its Committee Chairman by majority vote of the full Committee membership so long as such designee qualifies as a Super Independent Director. Any Committee Chairman who ceases to be a member of the Board or Audit Committee automatically shall simultaneously cease to be Chairman of the Audit Committee.

Section 4.05. Meetings, Notices and Records.

(a) Each Committee may provide for the holding of regular meetings and may fix the time and place at which such meetings may be held. Notice of regular or scheduled meetings shall not be required to be given, provided that whenever the time or place of regular or scheduled meeting shall be first fixed or later changed, notice of such action shall be sent to each Committee member who was not present at the meeting at which such action was taken at his residence or usual place of business by: (i) Electronic Delivery not later than one (1) day before the day on which the new or changed meeting is to be held; or (ii) Physical Delivery not later than two (2) days before the day on which the new or changed meeting is to be held.

(b) Special meetings of each Committee shall be held upon call by or at the direction of its chairman, or by or at the direction of any of its members, or the Chief Executive Officer or Chief Financial Officer, at the time and place specified in the respective notices or waivers of notice thereof. Notice of each special meeting of a Committee shall be sent to each member of such Committee, the Chairman, the Chief Executive Officer and the Chief Financial Officer, in each case to such person at his or her residence or usual place of business by: (i) Electronic Delivery not later than one (1) day before the day on which the meeting is to be held; or (ii) Physical Delivery not later than two (2) days before the day on which the meeting is to be held. That notice shall state the place (which may be within or without the State of Delaware), date and time of such meeting, but need not state the purpose(s) for the meeting unless otherwise required by the Certificate, these By-Laws or Applicable Law.

(c) Notice of any meeting of a Committee need not be given to any Committee member who shall attend the meeting in person or who shall waive notice thereof by email, fax, tested telex, cable, telegram or other reliable electronic transmission or other writing. Notice of any adjourned meeting need not be given.

(d) The notice of a meeting may provide, or the Committee may request, that members of the Corporation's senior management or others attend a meeting of the Committee and provide pertinent information as may be necessary or desirable and readily available.

Section 4.06. Quorum, Manner of Participation and Voting.

(a) At each meeting of any Committee the presence of a majority of its members then serving in office shall be necessary and sufficient to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the members present at the time and place of any meeting may adjourn the meeting from time to time and until a quorum shall be present.

(b) Any one (1) or more members and guests of any Committee may participate in a meeting of the Committee by means of a telephone conference or other electronic communication equipment allowing all persons participating in the meeting to hear each other. Participation by such means shall constitute presence in person at a meeting.

(c) Except as otherwise provided by the Certificate or Applicable Law, each member of a Committee shall be entitled to one (1) vote, and the vote of the majority of the members of a Committee present at any meeting at which a quorum is present shall be the act of such Committee.

(d) Each Committee shall maintain minutes or other records of its meetings and activities, which shall be maintained with the minutes of the Board, and shall report the same to the Board as and when requested.

Section 4.07. Action by Written Consent. Any action required or permitted to be taken by any Committee may be taken without a meeting if all members of the Committee consent in writing to the action (whether before or after such action). Written consents by the members of a Committee shall be filed with the minutes of the Board.

Section 4.08. Resignations. Any member of a Committee may resign at any time by giving written notice of such resignation to the Board, the Chairman, the Chief Executive Officer, the Chief Financial Officer and the Secretary. Any such resignation shall take effect on the date specified in such notice, or if no effective date is specified, upon receipt and acceptance thereof by such person(s). Resignation from a Committee shall not constitute resignation as a director, but resignation as a director shall be deemed to be a simultaneous resignation from all Committees.

Section 4.09. Removal. Subject to Section 4.02(e) of these By-Laws: (i) the Board, in any meeting duly held or action duly taken as provided in these By-Laws, at any time may remove any member from any Committee, either with or without cause, and may appoint the successor Committee member(s); and (ii) if any vacancy created by such removal is not so filled, it may be filled later at any time by the Board.

Section 4.10. Vacancies. If any vacancy shall occur in any Committee by reason of death, resignation, disqualification, removal or otherwise, the remaining members of such Committee, though less than a quorum, shall continue to act until such vacancy is filled by the Board. Subject to Section 4.02(e) of these By-Laws, the Board may appoint a successor to fill any such vacancy in any meeting duly held or action duly taken as provided in these By-Laws.

Section 4.11. Compensation. Committee members shall receive such reasonable compensation for their services as Committee members, whether in the form of salary or a fixed fee for attendance at meetings, with reimbursement of expenses, if any, as the Board from time to time may determine in its discretion. Nothing contained in these By-Laws, however, shall be construed to preclude any Committee member from serving the Corporation in any other capacity and receiving compensation for that service.

Section 4.12. Subcommittees. No Committee shall form a subcommittee thereof without prior approval by the Board in accordance with Section 4.02(e) of these By-Laws.

ARTICLE V.

OFFICERS

Section 5.01. Positions, Election, Executives, Etc. The officers of the Corporation shall consist of a Chairman of the Board, who shall qualify as a Super Independent Director (which role may be held by an employee of the Corporation (*i.e.*, an Executive Chairman)), a Chief Executive

Officer, a President, a Chief Financial Officer one or more Vice Presidents, a Secretary, a Treasurer and such other officers as may from time to time be appointed by the Board (each, an "Officer"). Officers shall be elected by the Board, which shall consider that subject at its first meeting after every annual meeting of stockholders. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. The salaries of officers elected by the Board shall be fixed from time to time by the Board or by such officers as may be designated by resolution of the Board.

(a) Chief Executive Officer. The Board shall designate either the Chairman of the Board or the President as the Chief Executive Officer of the Corporation. Subject to the provisions of these By-Laws and to the direction of the Board, the Chief Executive Officer shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive or which are delegated to him or her by the Board. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

(b) The President. The President of the Corporation, subject to the direction and under the supervision of the Board and its applicable Committees, may also be the Chief Executive Officer and shall be the chief operating officer of the Corporation and be responsible for the general and active operation of the business of the Corporation and supervision and direction over the other junior Officers, employees and agents of the Corporation.

(c) Chief Financial Officer. The Board may designate an officer of the Corporation as the Chief Financial Officer of the Corporation. The Chief Financial Officer shall have general responsibility for the management and control of the financial operations of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief financial officer or which are delegated to him or her by the Board. Subject to the direction of the Board and the Chief Executive Officer, the Chief Financial Officer shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision of other officers (other than the Chairman of the Board and the Chief Executive Officer), employees and agents of the Corporation as directed by the Chief Executive Officer.

(d) Vice President. Each Vice President shall have such powers and duties as may be delegated to him or her by the Board. One (1) Vice President shall be designated by the Board to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

(e) Treasurer. The Treasurer shall have the responsibility for maintaining the financial records of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. The Treasurer shall also perform such other duties as the Board may from time to time prescribe.

(f) Secretary. The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board. He or she shall have charge of the corporate books and shall perform such other duties as the Board may from time to time prescribe.

(g) Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

(h) Duties of Officers May Be Delegated. In case any Officer is absent, or for any other reason that the Board may deem sufficient, the Chief Executive Officer or the President or the Board may delegate for the time being the powers or duties of such officer to any other Officer or to any director.

Section 5.02. Term of Office, Resignation and Removal. Each Officer serves at the discretion of the Board. Any Officer may resign at any time by giving written notice of such resignation to the Board, the Chief Executive Officer or the Secretary. Any such resignation shall take effect on the date specified in such notice, or if no effective date is specified, receipt thereof by the Board or any such Officer. Each Officer may be removed at any time by the Board, either with or without cause. Any Officer of a class who may be appointed by another Officer (irrespective of whether actually appointed by the Board or another Officer) also may be removed, either with or without cause, by the Chief Executive Officer or by any Officer senior to such Officer.

Section 5.03. Vacancies. A vacancy in an office by reason of death, resignation, removal, disqualification or otherwise shall be filled in the manner prescribed by these By-Laws for regular election or appointment to such office. In the event of the temporary absence of any Officer of the Corporation, the Board or (with respect to more junior Officers) the Chief Executive Officer may confer for the duration of such absence the absent Officer's powers and duties, in whole or in part, on such other person(s) as they may specify.

ARTICLE VI.

INDEMNIFICATION

Section 6.01. Certain Defined Terms.

(a) "DGCL" shall mean the General Corporation Law of the State of Delaware, as the same currently exists and from time to time hereafter may be amended or restated, and any succeeding statute, but in the case of any such amendment or succeeding statute, only to the extent that it permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment.

(b) "Entity" shall mean any association, business trust, company, corporation, employee benefit plan, estate, governmental authority, group (including, without limitation, one under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended), joint venture, limited liability company, partnership, syndicate, trust or other entity or enterprise.

(c) "Expenses" shall mean the reasonable fees, disbursements and expenses of attorneys and other necessary professionals representing the Indemnitee in any Proceeding, provided that such attorneys and professionals are permitted under Section 6.04 hereof and have been approved in advance by the Corporation, which approval shall not be unreasonably withheld or delayed by the Corporation; and provided further that to the extent covered by insurance, the selection of such attorneys and other professionals shall be made in accordance with the applicable policies. Expenses shall not include any amounts attributable to services performed prior to the Corporation's receipt of the Indemnitee's written request for such approval unless the Board in its discretion consents otherwise.

(d) "Final Decision" shall mean with respect to a particular issue any: (i) final decision of such issue pursuant to Applicable Law of a court, other governmental official or arbitrator having proper substantive and personal jurisdiction and venue from which there is no further right to appeal; or (ii) final settlement of such issue in a written settlement agreement approved by the Board, as the case may be. A Proceeding may involve more than one (1) issue, and whether the Indemnitee has met the applicable standards of Proper Conduct shall be deemed to be a separate issue from the existence or amount of any Losses or Expenses.

(e) "Indemnitee" shall mean: (i) any person who is or was a director of the Corporation or an Executive, Chairman, Vice Chairman, Vice President, Assistant Vice President or Authorized Signatory of the Corporation or any of its subsidiaries (meaning any Officer so designated in these By-Laws or in such Officer's appointment); (ii) any person who is serving or served as a director or executive Officer of an affiliate of the Corporation at the request of the Corporation; or (iii) any other Officer or Representative of the Corporation or any subsidiary designated in writing from time to time by the Board or by agreement with the Corporation as being entitled to Indemnification Rights, whether serving in such capacity or serving at the request of the Corporation as a Representative of: (A) any direct or indirect subsidiary or affiliate of the Corporation; or (B) any other Entity.

(f) "Indemnification Rights" shall mean the rights of each Indemnitee to be defended, to be indemnified, reimbursed and held harmless from and against Losses and Expenses, and to receive advances of Expenses, in each case as, to the extent and under the circumstances specifically provided in this Article.

(g) "Losses" shall mean any and all losses, damages, liabilities, payments, settlements, judgments, awards, fines, penalties, fees, charges or costs, in each case to the extent determined in a Final Decision, but excluding any and all Expenses.

(h) "Proceeding" shall mean any action, suit, arbitration, mediation, investigation or other proceeding, whether civil, criminal, administrative or investigative, whether pending, threatened or otherwise.

(i) "Proper Conduct" shall mean any action or conduct of the Indemnitee if all of the following are true with respect thereto: (i) the Indemnitee acted in good faith; (ii) the Indemnitee acted in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and its subsidiaries and affiliates; (iii) with respect to any criminal Proceeding, the Indemnitee had no reasonable cause to believe such action or conduct was unlawful; and (iv) such action or conduct does otherwise disqualify the Indemnitee from receiving indemnification under the DGCL.

(j) "Reimbursement Agreement" shall mean an unconditional agreement or other undertaking in favor of the Corporation from an Indemnitee to promptly repay the Expense Advances if, when and to the extent determined in a Final Decision that such Indemnitee is not entitled to be indemnified for such Expenses under this Article or otherwise.

(k) "Representative" shall mean any shareholder, partner, equity holder, member, director, Officer, manager, employee, consultant, agent, accountant, advisor or other representative of the referenced person.

Section 6.02. Persons Indemnified. The Indemnification Rights granted under this Article apply to each Indemnitee who was or is made a party or who is threatened to be made a party to or who is otherwise involved in any Proceeding by reason of the Indemnitee's position with the Corporation or any of its subsidiaries or with any other Entity (including, without limitation, any affiliate of the Corporation) at the request of the Corporation, in each case irrespective of whether the basis of such proceeding is alleged action in any such official capacity, in any other capacity while serving in any such official capacity or otherwise.

Section 6.03. Notice of Proceeding. If any Proceeding is commenced, asserted or overtly threatened against an Indemnitee in respect of which a claim or demand may be sought against the Corporation under this Article, the Indemnitee shall give written notice thereof to the Corporation as promptly as reasonably practicable thereafter; provided, however, that an Indemnitee's failure to give such notice shall not relieve or otherwise affect the Indemnification Rights of such Indemnitee except to the extent the Corporation's ability to defend such Proceeding is materially prejudiced thereby (e.g., expiration of time periods to defend, etc.).

Section 6.04. Defense Counsel. The Corporation shall have the right to engage counsel to defend itself, its subsidiaries and affiliates and all applicable Indemnitees in any common Proceeding, and the Corporation shall directly pay the Expenses of such counsel. In such case, each Indemnitee shall enter into a common defense agreement with the Corporation in form and substance reasonably acceptable to all parties. However, an Indemnitee or group of Indemnitees shall have the right to engage separate counsel approved by the Corporation (which approval will not be unreasonably withheld or delayed) in any covered Proceeding if counsel to the Corporation or such Indemnitee(s) advises the Corporation in writing that, in the professional judgment of such counsel: (a) one or more legal defenses or counterclaims may be reasonably available to such Indemnitee(s) and reasonably could be inconsistent with, different from or additional to those available to such other parties; or (b) use of counsel selected by the Corporation could reasonably be expected to give rise to a conflict of interest. Notwithstanding the preceding portions of this Section, if the Losses and Expenses could reasonably be expected to be covered by insurance, counsel shall be selected in accordance with the applicable insurance policies.

Section 6.05. Right to Indemnification, Etc. Except as otherwise provided in this Article, to the fullest extent authorized by DGCL, each Indemnitee shall be indemnified, reimbursed and held harmless by the Corporation from and against any and all Losses and Expenses actually and reasonably incurred or suffered by such Indemnitee in connection with any Proceeding or portion thereof by reason of the Indemnitee's position with the Corporation or any of its subsidiaries or with any other Entity (including, without limitation, any affiliate of the Corporation) at the request of the Corporation, except in each case to the extent determined in a Final Decision to be attributable to any action or conduct of the Indemnitee other than Proper Conduct. However, if such Proceeding or portion thereof has been brought by or in the right of the Corporation (including, without limitation, any derivative suit), such Indemnitee shall not be indemnified, reimbursed or held harmless under this Article in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Indemnitee is fairly and reasonably entitled to indemnity for such Losses and Expenses as the Delaware Court of Chancery or such other court shall deem proper.

Section 6.06. Right to Advancement of Expenses. The Indemnification Rights of each Indemnitee shall include the right to have the Corporation advance the Expenses actually and reasonably incurred in defending any Proceeding in advance of its final disposition ("Expense Advances") provided, however, that the Indemnitee shall execute and deliver a Reimbursement Agreement to and with the Corporation if and to the extent the DGCL requires such a Reimbursement Agreement under the circumstances. The Corporation shall not require collateral or other security or the support of any spouse or other surety (whether by co-signature, endorsement or otherwise) for any of the Indemnitee's obligations under any such Reimbursement Agreement.

Section 6.07. Determination of Right to Indemnification. Any indemnification or reimbursement under this Article (unless otherwise ordered in a Final Decision by a court on such issue) shall be made by the Corporation only as authorized respecting a specific Proceeding upon a determination by the Corporation (as provided in this Section) that indemnification and reimbursement of the Indemnitee by the Corporation is proper under the circumstances, including (without limitation) a determination that the Indemnitee has met the applicable standards of Proper Conduct. Such determination by the Corporation shall be made: (i) by the Board through the majority vote of the directors who are or were not parties to such Proceeding, even though less than a quorum; (ii) by a committee of such disinterested directors designated by a majority vote of such disinterested directors, even though less than a quorum; (iii) by independent legal counsel in a written opinion if: (A) there are no such disinterested directors; or (B) such disinterested directors so direct; or (iv) by the stockholders of the Corporation.

Section 6.08. Indemnification on Success. Notwithstanding anything to the contrary in this Article, to the extent that an Indemnitee has been successful (on the merits or otherwise) in any Final Decision in defense of any Proceeding covered by this Article, the Indemnitee shall in any event be indemnified and reimbursed for and against all Losses and Expenses actually and reasonably incurred by such Indemnitee in connection therewith.

Section 6.09. Payment Claims to Recover Losses and Expenses. If and to the extent the Indemnitee owes any unpaid Losses or Expenses for which the Corporation is responsible under this Article, the Indemnitee may request that the Corporation pay such Losses and Expenses directly to the applicable persons. If and to the extent the Indemnitee has directly paid any Losses or Expenses for which the Corporation is responsible under this Article, the Indemnitee may request that the Corporation reimburse the Indemnitee for such payments. The Indemnitee shall request such payments through delivery of a written notice to the Corporation, together with supporting documentation reasonably evidencing the amounts of such Losses, Expenses and payments (each a "Payment Claim"). The Corporation shall promptly comply with any valid Payment Claim or (to the extent applicable) request its insurer to do so.

Section 6.10. Suits Brought by an Indemnitee. Except as provided in Section 6.11 of this Article, the Indemnification Rights of any Indemnitee shall not apply to any Proceeding (or part thereof) initiated by such Indemnitee unless such Proceeding (or part thereof) was approved by the Board in advance. In the case of a compulsory counterclaim required to be initiated by the Indemnitee, the Corporation agrees that such approval will not be unreasonably withheld or delayed but may require some reasonable sharing of Expenses in the event the Indemnitee recovers any Losses pursuant to such counterclaim.

Section 6.11. Suits on Payment Claims, Etc. If a valid Payment Claim by an Indemnitee under of this Article is not paid or satisfied in full by the Corporation within sixty (60) days after such claim has been received by the Corporation, the Indemnitee may at any time thereafter bring suit against the Corporation to enforce the direct payment or recover the unpaid reimbursement of the Payment Claim, as the case may be.

Section 6.12. Indemnification Enforcement Expenses. If an Indemnitee is successful in whole or in part: (a) in any suit by the Indemnitee for a Payment Claim; or (b) in defending a suit brought by the Corporation to recover Expense Advances pursuant to a Reimbursement Agreement, the Indemnitee also shall be entitled to be paid the Indemnitee's court costs and reasonable attorney's fees, disbursements and expenses in prosecuting or defending any such suit, subject to the other provisions of this Article and the DGCL.

Section 6.13. Indemnitee's Proper Conduct. The Indemnification Rights of each Indemnitee are each subject to the Indemnitee's satisfaction of the applicable standards of Proper Conduct. In any suit for any Payment Claim (other than for Expense Advances), the Corporation shall have available to it the defense that the Indemnitee has not met the applicable standards of Proper Conduct. In any suit brought by the Corporation to recover any Expenses Advances pursuant to a Reimbursement Agreement or Applicable Law, the Corporation shall be entitled to recover such Expense Advances upon a Final Decision that the Indemnitee has not met the applicable standards of Proper Conduct. An Indemnitee shall not be presumed in any such suit to have either satisfied or failed to satisfy the applicable standards of Proper Conduct as a result of any determination or non-determination thereof by the Corporation, its Board, Executives or other representatives, any of its stockholders or its independent legal counsel. In any such suit, the burden of proving that the Indemnitee has not met the applicable standards of Proper Conduct shall be on the Corporation.

Section 6.14. Continuation of Rights. The Indemnification Rights of each Indemnitee shall continue in full force and effect with respect to and for the benefit of any person who has ceased to be a director, Officer, employee or agent of or at the direction of the Corporation and shall inure to the benefit of the heirs, executors, administrators and other legal representatives of such person.

Section 6.15. Non-Exclusivity of Rights. The Indemnification Rights of each Indemnitee shall not be exclusive of any other right that any Indemnitee, Representative or other person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, these By-Laws, any employment or other agreement, any vote of stockholders or disinterested directors, or otherwise.

Section 6.16. Insurance. The Corporation shall have the right in its discretion to from time to time purchase, maintain, modify and surrender directors and Officers liability and other insurance, in each case from such insurers, in such amounts, upon such terms and conditions, and subject to such deductions, in order to protect itself or to directly or indirectly protect any director, Officer, employee or agent of the Corporation or another Entity against any expense, liability or loss whatsoever, whether or not the Corporation would have the obligation or power to indemnify such person against such expense, liability or loss under this Article or the DGCL.

Section 6.17. Indemnification of Officers, Employees and Agents of the Corporation. Without in any way limiting its right, power or authority under Applicable Law to grant any indemnity, the Corporation may, to the extent authorized from time to time by the Board in its discretion, grant rights to defense, indemnification, reimbursement and the advancement of expenses by the Corporation to any Officer, employee or agent of the Corporation or other Entity up to the maximum extent permitted for any Indemnitee by this Article, the DGCL and other Applicable Law.

Section 6.18. Savings Clause. If this Article or any provision hereof shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to Applicable Law by a court having proper jurisdiction and venue, then the Corporation shall nevertheless, to the fullest extent permitted by the remaining provisions (if any) of this Article (i.e., those not so determined to be superseded, invalid, illegal or otherwise unenforceable) and (subject to such remaining provisions) the DGCL, indemnify, reimburse and hold harmless each Indemnitee from and against any and all Losses and Expenses actually and reasonably incurred or suffered by such Indemnitee in connection with any Proceeding or portion thereof by reason of the Indemnitee's position with the Corporation or with any other Entity at the request of the Corporation, except in each case to the extent determined in a Final Decision to be attributable to any action or conduct of the Indemnitee other than Proper Conduct.

Section 6.19. Changes in Indemnification Rights. The Indemnification Rights may be changed at any time and from time to time through a change in these By-Laws, all without notice to or the approval of any Indemnitee; provided that except as otherwise required by or reflecting a change in the DGCL, any change eliminating or diminishing any of the Indemnification Rights shall apply prospectively only, and no change shall eliminate or diminish any Indemnification Rights with respect to any Proceeding involving any Indemnitee: (a) threatened or commenced prior to such change; or (b) based on any event or circumstance that occurred prior to such change.

Section 6.20. Contractual and Beneficial Rights. The Indemnification Rights under this Article shall be deemed to be contractual rights for the benefit of, and are expressly intended to benefit, each the Indemnitee, each of whom may enforce any such provisions directly as provided in this Article.

ARTICLE VII.

SHARES

Section 7.01. Certificates. The shares of the Corporation shall be represented by certificates in such form as from time to time may be approved by the Board and signed by the Chairman, Chief Executive Officer, the President or any Vice President, and by the Secretary, Chief Financial Officer, Treasurer, and sealed with the seal of the Corporation, which signatures and seal, to the extent permitted by Applicable Law, may be facsimiles. The Board also may provide by resolution or resolutions that some or any or all classes or series of the Corporation's stock shall be uncertificated shares. However, any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation, and every holder of stock in the Corporation shall be entitled to have a certificate for shares of stock evidencing such holder's interest in the Corporation notwithstanding the applicability of any such resolution. Except as otherwise provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical. The certificates shall be numbered consecutively and in the order in which they are issued. Each certificate shall state the registered holder's name, the number and class of shares represented thereby, the date of issue, and the par value of such shares (or that they are without par value if such is the case).

Section 7.02. RESERVED.

Section 7.03. RESERVED.

Section 7.04. Transfer of Shares. Subject to applicable law and restrictions or limitations on the transfer, registration or ownership of any shares, the shares of the Corporation shall be assignable and transferable on the books and records of the Corporation only by the registered owner, or by his or her duly authorized attorney, and only upon surrender of the certificate for such shares duly and properly endorsed with proper evidence of authority to transfer and payment of all applicable transfer taxes thereon. The Corporation shall issue a new certificate or evidence of the issuance of uncertificated shares to the stockholder entitled thereto, cancel the old certificate and record the transaction upon the Corporation's books or, in the case of uncertificated shares, upon the receipt of proper transfer instructions of uncertificated shares and the payment of all applicable taxes thereon, such uncertificated shares shall be cancelled, issuance of new equivalent certificated shares or certificated shares shall be made to the stockholder entitled thereto and the transaction shall be recorded on the books of the Corporation; provided that the Board in its discretion may reasonably refuse to issue such new certificate or evidence of the issuance of uncertificated shares without the order of a Court having jurisdiction in such matters or suitable indemnification.

Section 7.05. RESERVED.

Section 7.06. Lost Stock Certificates. Any stockholder claiming that his or her certificate for shares of the Corporation has been lost, stolen, destroyed or mutilated (a "Lost Stock Certificate") may obtain a replacement certificate by: (i) submitting a sworn statement of that fact to the Board (together with any mutilated certificate); and (ii) giving to the Corporation such bond or indemnity as may be required by the Board (in such form, substance and amount and with such sureties as shall be satisfactory to the Board), if any, and taking such other reasonable action as the Board in its sole and absolute discretion may require; and if the stockholder shall have satisfied these conditions, the Board shall approve and the appropriate Officers shall effect the issuance of a replacement certificate in lieu of the Lost Stock Certificate.

Section 7.07. RESERVED.

Section 7.08. RESERVED.

ARTICLE VIII.

RECORD DATES AND DIVIDENDS

Section 8.01. Record Dates. 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 entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board from time to time may fix, in advance, a record date, which shall be not less than ten (10) days or more than sixty (60) days before the date of the proposed meeting or other action. Only those stockholders of record on the date so fixed shall be entitled to any of the foregoing rights, notwithstanding the transfer of any such stock on the books of the Corporation after such record date fixed by the Board. If no record date is fixed by the Board:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the date next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and

(b) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

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. Notwithstanding the foregoing, the record date for determining stockholders entitled to take action by consent in lieu of a meeting shall be determined in accordance with Section 213(b) of the DGCL.

Section 8.02. Dividends. Subject to Section 3.12, the Board at any regular or special meeting may declare dividends payable out of the surplus of the Corporation whenever in the exercise of its discretion they may deem such declaration advisable. Such dividends may be paid in cash, property, or shares of the Corporation.

ARTICLE IX.

MISCELLANEOUS CORPORATE POWERS AND RESTRICTIONS

Section 9.01. Execution of Instruments Generally. Subject to such approval of the Board as may be required under the circumstances (if any), and except as otherwise provided by the Certificate, these By-Laws or Applicable Law, the Chairman, Chief Executive Officer, Chief Financial Officer, President, Secretary or Treasurer from time to time may enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and may authorize and direct any other Officer(s) or agent(s) to do so. Except as otherwise provided by Applicable Law or the Certificate, the Board may authorize any Officer(s) or agent(s) to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization may be general or confined to specific instances and may be exclusive to one or more Officers or other persons.

Section 9.02. Transactions with Interested Parties. No contract or transaction between the Corporation and one (1) or more of its stockholders, directors, Officers or employees, or between the Corporation and any other corporation, partnership, association or other entity in which one (1) or more of the Corporation's stockholders, directors, Officers or employees are stockholders, directors, Officers or employees or otherwise have a financial interest, shall be void or voidable solely for this reason, or solely because the stockholder, director, Officer or employee is present at or participates in the meeting of the Board or a Committee thereof authorizing the contract or transaction, or solely because his or their votes are counted for such purpose, if:

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

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

(c) the contract or transaction is fair to the Corporation as of the time it is authorized, approved or ratified by the Board, a Committee thereof or the stockholders; or

(d) the contract or transaction is otherwise permissible under Applicable Law.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or a Committee thereof authorizing the contract or transaction.

Section 9.03. RESERVED.

Section 9.04. RESERVED.

Section 9.05. Proxies. Proxies to vote the shares of stock of other corporations owned of record or beneficially by the Corporation may be executed and delivered from time to time on behalf of the Corporation by any Executive or by any other person or persons thereunto authorized by the Board or any Executive. Any Executive may instruct any subordinate person or persons so appointed as to the manner of exercising such powers and rights, and may execute or cause to be executed in the name and on behalf of the Corporation and under its Corporate Seal or otherwise, all such written proxies, powers of attorney or other written instruments as he may deem necessary in order that the Corporation may exercise such powers and rights.

Section 9.06. Fiscal Year. The fiscal year of the Corporation shall be the twelve (12) month period ending December 31st of each year or such other period as shall be determined by the Board.

Section 9.07. Corporate Seal. The corporate seal shall be circular in form and shall bear the name of the Corporation and words and figures denoting its organization under the laws of the State of Delaware and the year thereof and otherwise shall be in such form as shall be approved from time to time by the Board.

ARTICLE X.

AMENDMENTS AND INTERPRETATION

Section 10.01. Amendments. These By-Laws may be amended, restated, replaced or repealed, and amended, restated or new By-Laws may be adopted, in whole or in part: (a) by the affirmative vote of at least 75% of the stockholders of the Corporation entitled to vote; or (b) by the affirmative action of the Board in accordance with Section 3.12(d) of these By-Laws. Any provision adopted by such stockholders or Board may be amended or repealed from time to time by the Board or stockholders, respectively.

Section 10.02. Notices, Electronic Messages, Copies, Etc. Any notice, proxy, request, demand or other document or communication required or permitted under these By-Laws may be sent by: (a) cable, email (including any attachment thereto), fax, internet, network posting, S.W.I.F.T. wire telex, tested telex, or other electronic transmission (each an "Electronic Delivery"), provided that an Electronic Delivery can only be used for a notice to a stockholder (in his or her capacity as stockholder) to the extent permitted by the DGCL (which among other things currently requires that such stockholder has consented to the specific contemplated form of Electronic Delivery in accordance with the DGCL); or (b) U.S. Mail, national overnight courier, messenger or other means of physical delivery ("Physical Delivery"). A copy (including, without limitation, the printout of any item retained in reproducible form in any computer or other technological storage) of any document or communication may be substituted for the original for any purpose for which the original document or communication could be used if on its face it appears to be a reasonably complete reproduction of the entire original document or communication.

Section 10.03. Number and Gender. Each definition in these By-Laws of a singular capitalized term or other word or phrase also shall apply to the plural form of such term, word or phrase, and vice versa, and all references in these By-Laws to the neuter gender shall be deemed to include reference to the feminine or masculine gender, and vice versa, and to a singular pronoun shall be deemed to include a reference to the plural variation thereof, and vice versa, in each case as the context may permit or require.

Section 10.04. Section and Other Headings. The table of contents (if any), section and other headings contained in these By-Laws are for reference purposes only and shall not affect the meaning or interpretation of these By-Laws.

Section 10.05. Severability. In case any one or more of the provisions contained in these By-Laws shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to Applicable Law by a court or other governmental authority having jurisdiction and venue, that determination shall not impair or otherwise affect the validity, legality or enforceability: (a) by or before that authority of the remaining terms and provisions of these By-Laws, which shall be enforced as if the unenforceable term or provision were deleted; or (b) by or before any other court or governmental authority of any of the terms and provisions of these By-Laws.

Section 10.06. Conflicting Provisions of the Certificate of Incorporation and Applicable Law. The terms and provisions of these By-Laws are each subject to the relevant terms and provisions of the Certificate and Applicable Law, and in the event that any term or provision of these By-Laws conflicts or is inconsistent with any term or provision of the Certificate or Applicable Law, the term or provision of the Certificate or Applicable Law shall control and be given effect.

Section 10.07. Applicable Law. These By-Laws shall be governed by and construed in accordance with: (a) the DGCL and any other applicable law of the State of Delaware or the United States of America, including (without limitation): (i) any state or other governmental law, statute, ordinance, rule, regulation, requirement or restriction applicable to these By-Laws or the Corporation's governance; (ii) any judicial, administrative or other governmental order, injunction, writ, judgment, decree, ruling, finding or other directive applicable to these By-Laws or binding upon the Corporation's governance; and (iii) common law or other legal precedent applicable to these By-Laws or binding upon the Corporation's governance; and (b) any charter, rule, regulation or other organizational or governance document of any national securities exchange or market in which the shares of the Corporation are traded or other self-regulatory or governing body or organization applicable to the Corporation; in each case as the same may be adopted, supplemented, modified, amended, restated or replaced from time to time or any corresponding or succeeding provisions thereof (all of the foregoing in this Section will be referred to collectively as "Applicable Law").

Section 10.08. Non-Exclusive Provisions. It is intended that the rights, powers, privileges and duties (if any) of the Corporation or the stockholders, directors or Officers of the Corporation set forth in the Certificate or these By-Laws are in addition to and shall not limit (except as otherwise expressly provided in the Certificate or these By-Laws) any other applicable right, power, privilege or duty (if any) under the Certificate, these By-Laws, any Committee Charter or Applicable Law.

Section 10.09. Forum Selection. Unless the Corporation (exclusively by the affirmative vote of 75% of the directors then in office) consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, all Internal Corporate Claims shall be brought solely and exclusively in the Court of Chancery of the State of Delaware (or, if such court does not have jurisdiction, the Superior Court of the State of Delaware, or, if such other court does not have jurisdiction, the United States District Court for the District of Delaware). "Internal Corporate Claims" means claims, including claims in the right of the Corporation: (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity; or (ii) as to which the DGCL confers jurisdiction upon the Court of Chancery of the State of Delaware. For the avoidance of doubt, this paragraph is subject to applicable personal jurisdiction requirements, and this paragraph does not confer upon any Delaware court personal jurisdiction over any person.