

**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): **August 6, 2021**

**CANTALOUPE, INC.**

(Exact name of registrant as specified in its charter)

**Pennsylvania**

(State or other jurisdiction of  
incorporation  
or organization)

**001-33365**

(Commission  
File Number)

**23-2679963**

(IRS employer  
identification number)

**100 Deerfield Lane, Suite 300  
Malvern, Pennsylvania**

(Address of principal executive offices)

**19355**

(Zip code)

Registrant's telephone number, including area code: **610-989-0340**

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, no par value	CTLP	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.

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

On and effective August 6, 2021, the Board of Directors of Cantaloupe, Inc. (the "Company") approved the Company's Second Amended and Restated Bylaws (the "Amended Bylaws"). The Amended Bylaws include a new Article III, Section 3.04 to permit a shareholder, or a group of up to twenty shareholders, owning three percent (3%) or more of the outstanding shares of the Company's common stock continuously for at least three years, to nominate and include in the Company's annual meeting proxy materials director nominees constituting up to the greater of two nominees or twenty percent (20%) of the Board, subject to certain limitations and provided that the requirements set forth in the Amended Bylaws are satisfied. The Amended Bylaws also remove certain limitations on shareholders' ability to call a special meeting and clarify that, consistent with the Company's Articles of Incorporation, shareholder action by written consent must be unanimous. The Amended Bylaws also include certain technical, ministerial and clarifying changes.

The foregoing summary of the Amended Bylaws is qualified in its entirety by reference to, and should be read in conjunction with, the complete text of the Amended Bylaws filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits**

*(d) Exhibits.*

**Exhibit****No.            Description**

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[3.1](#)            [Second Amended and Restated Bylaws of Cantaloupe, Inc.](#)

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## SIGNATURES

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

### CANTALOUPE, INC.

By: /s/ Davina Furnish \_\_\_\_\_

Name: Davina Furnish

Title: General Counsel and Secretary

Dated: August 10, 2021

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## SECOND AMENDED AND RESTATED BYLAWS

OF

CANTALOUPE, INC.

(a Pennsylvania corporation)

(as amended August 6, 2021)

Cantaloupe, Inc., pursuant to the applicable provisions of the Pennsylvania Business Corporation Law, hereby adopts these Second Amended and Restated Bylaws, which restate, amend and supersede the bylaws of the Corporation, as previously amended and restated, in their entirety as described below:

**ARTICLE I****OFFICES AND FISCAL YEAR**

Section 1.01 Registered Office. The registered office of the corporation in the Commonwealth of Pennsylvania shall be 100 Deerfield Lane, Suite 300, Malvern, Pennsylvania 19355, until otherwise established by an amendment of the articles of incorporation (the "articles") or by the board of directors and a record of such change is filed with the Department of State in the manner provided by law.

Section 1.02 Other offices. The corporation may also have offices at such other places within or without the Commonwealth of Pennsylvania as the board of directors may from time to time appoint or the business of the corporation may require.

Section 1.03 Fiscal Year. The fiscal year of the corporation shall begin on the first day of July in each year.

**ARTICLE II****NOTICE – WAIVERS – MEETINGS GENERALLY**

Section 2.01 Manner of Giving Notice.

(a) General Rule. Whenever written notice is required to be given to any person under the provisions of the Business Corporation Law or by the articles or these bylaws, it may be given to the person either personally or by sending a copy thereof by first class or express mail, postage prepaid, or by courier service, charges prepaid, or by facsimile transmission, or by electronic mail or other electronic communication, to the address (or to the facsimile or telephone number or the electronic mail address, as applicable) of the person appearing on the books of the corporation or, in the case of directors, supplied by the director to the corporation for the purpose of notice. If the notice is sent by mail or courier service, it shall be deemed to have been given to

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the person entitled thereto when deposited in the United States mail or courier service for delivery to that person or, in the case of facsimile transmission when received or, in the case of electronic mail or other electronic communication, when sent. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by any other provision of the Business Corporation Law, the articles or these bylaws.

(b) Adjourned Shareholder Meetings. When a meeting of shareholders is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the board fixes a new record date for the adjourned meeting in which event notice shall be given in accordance with Section 2.03.

Section 2.02 Notice of Meetings of Board of Directors. Notice of a regular meeting of the board of directors need not be given. Notice of every special meeting of the board of directors shall be given to each director by telephone or in writing at least 24 hours (in the case of notice by telephone, facsimile transmission or electronic mail or other electronic communication) or 48 hours (in the case of notice by courier service or express mail) or five days (in the case of notice by first class mail) before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board need be specified in a notice of the meeting.

Section 2.03 Notice of Meetings of Shareholders.

(a) General Rule. Written notice of every meeting of the shareholders shall be given by, or at the direction of, the secretary or other authorized person to each shareholder of record entitled to vote at the meeting at least (1) ten days prior to the day named for a meeting (and, in case of a meeting called to consider a merger, consolidation, share exchange or division, to each shareholder of record not entitled to vote at the meeting) called to consider a fundamental change under 15 Pa.C.S. Chapter 19 or (2) five days prior to the day named for the meeting in any other case. If the secretary neglects or refuses to give notice of a meeting, the person or persons calling the meeting may do so. In the case of a special meeting of shareholders, the notice shall specify the general nature of the business to be transacted.

(b) Notice of Action by Shareholders on Bylaws. In the case of a meeting of shareholders that has as one of its purposes action on the bylaws, written notice shall be given to each shareholder that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment or repeal of the bylaws. There shall be included in, or enclosed with, the notice a copy of the proposed amendment or a summary of the changes to be affected thereby.

(c) Notice of Action by Shareholders on Fundamental Change. In the case of a meeting of the shareholders that has as one of its purposes action with respect to any fundamental change under 15 Pa.C.S. Chapter 19, each shareholder shall be given, together with written notice of the meeting, a copy or summary of the amendment or plan to be considered at the meeting in compliance with the provisions of Chapter 19.

(d) Notice of Action by Shareholders Giving Rise to Dissenters Rights. In the case of a meeting of the shareholders that has as one of its purposes action that would give rise to dissenters rights under the provisions of 15 Pa.C.S. Subchapter 15D, each shareholder shall be given, together with written notice of the meeting:

- (1) a statement that the shareholders have a right to dissent and obtain payment of the fair value of their shares by complying with the provisions of Subchapter 15D (relating to dissenters rights); and
- (2) a copy of Subchapter 15D.

Section 2.04 Waiver of Notice.

(a) Written Waiver. Whenever any written notice is required to be given under the provisions of the Business Corporation Law, the articles or these bylaws, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Waiver by Attendance. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

Section 2.05 Modification of Proposal Contained in Notice. Whenever the language of a proposed resolution is included in a written notice of a meeting required to be given under the provisions of the Business Corporation Law or the articles or these bylaws, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

Section 2.06 Exception to Requirement of Notice.

(a) General Rule. Whenever any notice or communication is required to be given to any person under the provisions of the Business Corporation Law or by the articles or these bylaws or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action and communication with that person is then unlawful, the giving of the notice or communication to that person shall not be required.

(b) Shareholders Without Forwarding Addresses. Notice or other communications need not be sent to any shareholder with whom the corporation has been unable to communicate for more than 24 consecutive months because communications to the shareholder are returned unclaimed or the shareholder has otherwise failed to provide the corporation with a current address. Whenever the shareholder provides the corporation with a current address, the corporation shall commence sending notices and other communications to the shareholder in the same manner as to other shareholders.

Section 2.07 Use of Conference Telephone and Similar Equipment. Any director may participate in any meeting of the board of directors, and the board of directors may provide

by resolution with respect to a specific meeting or with respect to a class of meetings that one or more persons may participate in a meeting of the shareholders of the corporation, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at the meeting.

### ARTICLE III

#### SHAREHOLDERS

Section 3.01 Place of Meeting. All meetings of the shareholders of the corporation shall be held at the registered office of the corporation or such other place as may be designated by the board of directors in the notice of a meeting. The Board of Directors may determine that the meeting shall not be held at anyplace, but may instead be held solely by means of remote communication as provided under the Pennsylvania Business Corporation Law.

Section 3.02 Annual Meeting. (a) All meetings of the shareholders of the corporation shall be held at the registered office of the corporation or such other place as may be designated by the board of directors in the notice of a meeting, including by means of remote communication.

(b) Nominations of persons for election to the board of directors of the corporation at an annual meeting of shareholders, or the proposal of business to be considered by the shareholders at an annual meeting of shareholders, shall only be made:

(1) pursuant to the corporation's notice of the annual meeting (or any supplement thereto) given by or at the direction of the board of directors; or

(2) if otherwise properly brought before the annual meeting by or at the direction of the board of directors; or

(3) if brought before the annual meeting by any shareholder of the corporation who was a shareholder of record at the time of giving of notice provided for in this Section 3.02, who is entitled to vote at the annual meeting, and who complies with the notice procedures set forth in this Section 3.02.

(c) For nominations or other business to be properly brought before an annual meeting by a shareholder pursuant to clause (3) of paragraph (b) of this Section 3.02, the shareholder must have given timely notice thereof in writing to the secretary of the corporation and such other business must otherwise be a proper matter for shareholder action under these bylaws and Pennsylvania law. To be timely, a shareholder's notice must be received by the secretary at the principal executive offices of the corporation not later than the close of business on the 60th day nor earlier than the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder must be so received not earlier than the 90th day prior to the annual meeting and not later than the close of business on the later of (i) the 60th day prior to the annual meeting, or (ii) the 10th day

following the date on which public announcement of the date of the meeting is first made by the corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above. Only such persons who are nominated by a shareholder in accordance with the procedures set forth in this Section 3.02 shall be eligible to be elected as a director at any annual meeting. Notwithstanding the foregoing, if the corporation is required under Rule 14a-8 under the Securities Exchange Act of 1934 ("Exchange Act") to include a shareholder's proposal in its proxy statement, such shareholder shall be deemed to have given timely notice for purposes of this paragraph (c) of Section 3.02 with respect to such proposal.

(d) A shareholder's notice to the secretary of the corporation relating to the nomination of directors shall set forth:

(1) as to each person whom the shareholder proposes to nominate for election or reelection as a director: (i) the name and address of such person and all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to be named as a nominee and to serve as a director if elected); (ii) all completed and signed questionnaires prepared by the corporation (including those questionnaires required of the corporation's directors and any other questionnaire the corporation determines is necessary or advisable to assess whether a nominee will satisfy any qualifications or requirements imposed by any law, rule, regulation or listing standard that may be applicable to the corporation, and the corporation's corporate governance policies and guidelines) (all of which will be promptly provided by the corporation to any requesting shareholder following a request therefor); and (iii) such other information that the corporation may deem to be necessary to permit the corporation to determine the eligibility of such person as serve as a director of the corporation, including information relevant to a determination whether such person can be considered an independent director.

(2) as to the shareholder giving notice (i) the name and address of such shareholder, as it appears on the corporation's share transfer books who intends to make the nomination ("Nominating Shareholder"); (ii) the name and address of the beneficial owner, if different than the Nominating Shareholder, of any of the shares owned of record by the Nominating Shareholder ("Beneficial Owner"); (iii) the number of shares of each class and series of shares of the corporation which are owned of record and beneficially by the Nominating Shareholder and the number which are owned beneficially by any Beneficial Owner; (iv) a description of any arrangements or understandings between the Nominating Shareholder and any Beneficial Owner and any other person or persons (naming such person or persons) pursuant to which the nomination is being made; (v) a representation that the Nominating Shareholder is at the time of giving the notice, was or will be on the record date for the meeting, and will be on the meeting date a holder of record of shares of the corporation entitled to vote at the meeting, and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (vi) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the Nominating



Shareholder's notice by, or on behalf of, such Nominating Shareholder or Beneficial Owner, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the corporation's stock, or maintain, increase or decrease the voting power of the Nominating Shareholder or Beneficial Owner with respect to securities of the corporation; and (vii) such other information related to such Nominating Shareholder that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required to be disclosed by such Nominating Shareholder in a proxy statement, in each case pursuant to Regulation 14A under the Exchange Act.

(e) A shareholder's notice to the secretary of the corporation relating to other business shall set forth as to each matter the shareholder proposes to bring before the annual meeting: (i) the name and address of such shareholder, as it appears on the corporation's share transfer books who intends to bring the business before the annual meeting ("Proposing Shareholder"); (ii) the name and address of the beneficial owner, if different than the Proposing Shareholder, of any of the shares owned of record by the Proposing Shareholder ("Beneficial Owner"); (iii) the number of shares of each class and series of shares of the corporation which are owned of record and beneficially by the Proposing Shareholder and the number which are owned beneficially by any Beneficial Owner; (iv) any interest which the Proposing Shareholder or a Beneficial Owner has in the business being proposed by the Proposing Shareholder; (v) a description of any arrangements or understandings between the Proposing Shareholder and any Beneficial Owner and any other person or persons (naming such person or persons) pursuant to which the proposal in the notice is being made; (vi) a description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting, and if a specific action is to be proposed, the text of the resolution or resolutions which the Proposing Shareholder proposes that the corporation adopt; (vii) a representation that the Proposing Shareholder is at the time of giving the notice, was or will be on the record date for the annual meeting, and will be on the annual meeting date a holder of record of shares of the corporation entitled to vote at the annual meeting, and intends to appear in person or by proxy at the annual meeting to bring the business specified in the notice before the annual meeting; (viii) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the Proposing Shareholder's notice by, or on behalf of, such Proposing Shareholder or Beneficial Owner, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the corporation's stock, or maintain, increase or decrease the voting power of the Proposing Shareholder or Beneficial Owner with respect to securities of the corporation; and (ix) such other information related to such Proposing Shareholder that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required to be disclosed by such Proposing Shareholder in a proxy statement, in each case pursuant to Regulation 14A under the Exchange Act.

(f) The chairman of the annual meeting shall if the facts warrant, determine and declare to the meeting that the proposed business or nomination, as the case may be, was not properly brought before the meeting in compliance with the provisions of this Section 3.02, and if he shall so determine, he shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted, and any defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section, a shareholder shall also

comply with the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 3.02.

Section 3.03 Special Meetings. (a) A special meeting of the shareholders for any purpose or purposes shall be called only by the chairman of the board of directors, the chief executive officer, or the board of directors. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Special meetings of the shareholders may also be called by the holders of at least 20% of the combined voting power of the then outstanding shares entitled to vote at the particular meeting. Upon request in writing sent by registered mail to the chairman of the board of directors or chief executive officer of the corporation by any shareholder or shareholders entitled to call a special meeting of the shareholders pursuant to this Section 3.03(a), the board of directors shall determine a place and time for such meeting, which time shall not be less than ninety (90) nor more than one hundred and twenty (120) days after the receipt of such request, and a record date for the determination of shareholders entitled to vote at such meeting in the manner set forth in Section 3.13 hereof. Following such receipt, it shall be the duty of the secretary of the corporation to cause notice to be given to the shareholders entitled to vote at such meeting, in the manner set forth in Section 2.03 hereof, that a meeting will be held at the time and place so determined.

(b) Nominations of persons for election to the board of directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the corporation's notice of meeting (1) by or at the direction of the board of directors, or (2) by any shareholder of the corporation who is a shareholder of record at the time of giving of notice provided for in this Section 3.03, who shall be entitled to vote at the meeting, and who complies with the notice procedures set forth in this Section 3.03(b). In the event the corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the board, any such shareholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the shareholder's notice in the form required by paragraph (d) of Section 3.02 of these bylaws shall be received by the secretary at the principal executive offices of the corporation not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of (i) the 60th day prior to such special meeting, or (ii) the 10th day following the date on which public announcement is first made of the date of the special meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above. Only such persons who are nominated by a shareholder in accordance with the procedures set forth in this Section 3.03 shall be eligible to be elected as a director at any special meeting.

(c) The chairman of the special meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in this Section 3.03 and, if any proposed nomination is not in compliance with this Section 3.03, to declare that such defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section, a shareholder shall also comply with the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 3.03.

### Section 3.04 Proxy Access.

(a) Whenever the board of directors solicits proxies with respect to the election of directors at an annual meeting of shareholders of the corporation, subject to the provisions of this Section 3.04, the corporation will include in its proxy statement and form of proxy for an annual meeting of shareholders, in addition to any persons nominated for election by the board of directors or any committee thereof, the name, together with the Required Information (as defined below), of any person nominated for election (the "Shareholder Nominee") to the board of directors by an Eligible Shareholder (as defined below) or group of up to 20 Eligible Shareholders that, as determined by the board of directors or its designee acting in good faith, has (individually and collectively, in the case of a group) satisfied all the requirements of, and procedures set forth in, this Section 3.04 (such Eligible Shareholder or a group of Eligible Shareholders, a "Nominating Shareholder"), and that expressly elects at the time of providing the notice required by this Section 3.04, including all of the information in Section 3.04(e) (the "Notice of Proxy Access Nomination"), to have its nominee included in the corporation's proxy materials pursuant to this Section 3.04. For the avoidance of doubt, in the event that a Nominating Shareholder consists of a group of Eligible Shareholders, any and all requirements and obligations applicable to an Eligible Shareholder or a Nominating Shareholder set forth in this Section 3.04 shall apply to each member of such group; provided, however, that the Required Shares provision shall apply to such group in the aggregate. Should any Eligible Shareholder withdraw from a group of Eligible Shareholders constituting a Nominating Shareholder at any time prior to the annual meeting of shareholders, the Nominating Shareholder shall be deemed to own only the shares held by the remaining Eligible Shareholders. Nothing in this Section 3.04 shall limit the corporation's ability to solicit against and include in its proxy materials its own statements relating to any Shareholder Nominee or Nominating Shareholder.

(1) For purposes of this Section 3.04, the following shall be treated as one Eligible Shareholder if such Eligible Shareholder provides, together with the Notice of Proxy Access Nomination, documentation satisfactory to the board of directors or its designee, acting in good faith, that demonstrates that it is (i) a group of funds under common management and investment control or (ii) a "family of investment companies" or a "group of investment companies" (each as defined in the Investment Company Act of 1940, as amended). No Eligible Shareholder may be a member of more than one group of persons constituting a Nominating Shareholder under this Section 3.04 and, if any Eligible Shareholder appears as a member of more than one group, such Eligible Shareholder will be deemed to be a member of the group that has the largest ownership position as reflected in the Notice of Proxy Access Nomination.

(2) For purposes of this Section 3.04, the "Required Information" that the corporation will include in its proxy statement is (A) the information concerning the Shareholder Nominee and the Nominating Shareholder that is required to be disclosed in the corporation's proxy statement by the regulations promulgated under the Exchange Act and, (B) if the Nominating Shareholder so elects, a Statement (as defined below).

(3) To be timely, the Required Information and Notice of Proxy Access Nomination must be received by the secretary of the corporation by the close of business at the principal executive offices of the corporation no earlier than 150 days and no later

than 120 days before the anniversary of the date that the corporation mailed its definitive proxy statement for the previous year's annual meeting of shareholders; provided, however, that in the event the annual meeting of shareholders is not scheduled to be held within a period that commences 30 days before and ends 60 days after the first anniversary date of the previous year's annual meeting of shareholders (such meeting date referred to herein as an "Outside Meeting Date"), the Required Information and Notice of Proxy Access Nomination must be so delivered to and received by the secretary of the corporation no earlier than 180 days prior to and no later than the tenth day following the date such Outside Meeting Date is first publicly announced or disclosed. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of the Notice of Proxy Access Nomination and the Required Information as described above.

(b) The maximum number of Shareholder Nominees (including Shareholder Nominees that were submitted by a Nominating Shareholder for inclusion in the corporation's proxy materials pursuant to this Section 3.04 that are either subsequently withdrawn or that the board of directors decides to nominate as director nominees) appearing in the corporation's proxy materials with respect to an annual meeting of shareholders shall not exceed the greater of (i) 2 nominees or (ii) 20% of the directors in office as of the last day on which the Notice of Proxy Access Nomination may be delivered pursuant to, and in accordance with, this Section 3.04 (the "Final Proxy Access Nomination Date"), or, if such percentage is not a whole number, the closest whole number, rounding down, below 20% (such greater number, the "Permitted Number"); provided, however, that the Permitted Number shall be reduced by:

(1) the number of director candidates for which the corporation shall have received one or more valid shareholder notices nominating director candidates pursuant to the procedures set forth in Section 3.02 (but not this Section 3.04) of these bylaws;

(2) the number of directors in office or director candidates that, in either case, will be included in the corporation's proxy materials with respect to such annual meeting as an unopposed (by the corporation) nominee pursuant to any agreement, arrangement or other understanding with any shareholder or group of shareholders, other than any such director referred to in this clause (2) who at the time of such annual meeting will have served as a director continuously, as a nominee of the board of directors, for at least two annual terms, but only to the extent the Permitted Number after such reduction with respect to this clause (2) equals or exceeds one; and

(3) the number of directors in office that will be included in the corporation's proxy materials with respect to such annual meeting for whom access to the corporation's proxy materials was previously provided pursuant to this Section 3.04, other than any such director referred to in this clause (3) who at the time of such annual meeting will have served as a director continuously, as a nominee of the board of directors, for at least two annual terms.

In the event that one or more vacancies for any reason occurs on the board of directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the board of directors resolves to reduce the size of the board of directors in connection

therewith, the Permitted Number of Shareholder Nominees included in the corporation's proxy materials shall be calculated based on the number of directors in office as so reduced. In the event that the number of Shareholder Nominees submitted by Nominating Shareholders pursuant to this Section 3.04 exceeds the Permitted Number, each Nominating Shareholder will select one Shareholder Nominee for inclusion in the corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of capital stock of the corporation each Nominating Shareholder disclosed as owned in the Notice of Proxy Access Nomination submitted to the corporation. If the Permitted Number is not reached after each Nominating Shareholder has selected one Shareholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(c) For purposes of this Section 3.04, an Eligible Shareholder shall be deemed to "own" only those outstanding capital stock of the corporation as to which the shareholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (A) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed, (B) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell, or (C) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding stock of the corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such shareholder's or affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting, or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or affiliate. An Eligible Shareholder shall "own" shares held in the name of a nominee or other intermediary so long as the Eligible Shareholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Shareholder's ownership of shares shall be deemed to continue during any period in which the Eligible Shareholder has (i) delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement which is revocable at any time by the shareholder or (ii) loaned such shares, provided the shareholder has the power to recall such loaned shares on five (5) business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding capital stock of the corporation is "owned" for these purposes shall be determined by the board of directors or its designee.

(d) An "Eligible Shareholder" is a person who has either (1) been the record holder of the number of capital stock of the corporation used to satisfy the eligibility requirements in this Section 3.04 continuously for at least 3 years (the "Minimum Holding Period") as of the date the Notice of Proxy Access Nomination is received by the corporation in accordance with this Section 3.04 or (2) provides to the secretary of the corporation evidence of continuous ownership of such shares for the Minimum Holding Period in a form that the board of directors or its designee, acting in good faith, determines acceptable. In order to make a nomination pursuant to this Section 3.04, a Nominating Shareholder must have owned (as defined above) at least 3% or more of the

corporation's outstanding capital stock (the "Required Shares") continuously for at least the Minimum Holding Period, and the Nominating Shareholder must continue to own the Required Shares through the date of the annual meeting. For the avoidance of doubt, each Eligible Shareholder whose shares are aggregated for purposes of constituting a Nominating Shareholder must comply with the Minimum Holding Period.

(e) Within the time period specified in this Section 3.04 for delivering the Notice of Proxy Access Nomination, a Nominating Shareholder (including, for the avoidance of doubt, each Eligible Shareholder whose shares are aggregated for purposes of constituting a Nominating Shareholder) must provide the following information in writing to the secretary of the corporation: (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite Minimum Holding Period) verifying that, as of a date within 7 calendar days prior to the date of the Notice of Proxy Access Nomination, the Nominating Shareholder owns, and has owned continuously, the Required Shares for the Minimum Holding Period, and the Nominating Shareholder's agreement to provide, within 5 business days after (A) the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Nominating Shareholder's continuous ownership of the Required Shares through the record date for the annual meeting and (B) the date of the annual meeting, written statements from the record holder and intermediaries verifying the Nominating Shareholder's continuous ownership of the Required Shares through the date of the annual meeting; (ii) an agreement to provide immediate notice if the Nominating Shareholder ceases to own the Required Shares at any time prior to the date of the annual meeting of shareholders; (iii) the information, representations, and agreements that would be required to be set forth in a shareholder's notice of nomination pursuant to the procedures set forth in Section 3.02 of these bylaws (but without regard to the time periods set forth in such Section); (iii) a copy of the Schedule 14N (or any successor form) relating to the Shareholder Nominee that has been completed and filed by the Nominating Shareholder with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act, as may be amended; (iv) the written consent of each Shareholder Nominee to being named in the corporation's proxy statement, form of proxy and ballot as a nominee and to serving as a director if elected; (v) a representation that the Nominating Shareholder (including, for the avoidance of doubt, each Eligible Shareholder whose shares are aggregated for purposes of constituting a Nominating Shareholder): (A) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the corporation, and does not presently have such intent, (B) presently intends to maintain qualifying ownership of the Required Shares through the date of the annual meeting, (C) has not designated or nominated and will not designate or nominate for election to the board of directors at the annual meeting any person other than the Shareholder Nominee(s) being nominated pursuant to this Section 3.04, (D) has not engaged and will not engage in, and has not been and will not be a "participant" in another person's "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the corporation's annual meeting other than its Shareholder Nominee or a nominee of the board of directors, and (E) will not distribute to any shareholder or use any form of proxy for the annual meeting other than the form distributed by the corporation; (vi) an undertaking that the Nominating Shareholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Nominating Shareholder's communications with the shareholders of the corporation or out of the information that the Eligible Shareholder provided to the corporation, (B) comply with all other laws and regulations applicable to any solicitation in connection with the

annual meeting, (C) provide facts, statements, and other information in all communications with the corporation and its shareholders that are or will be true and correct in all material respects and does not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, (D) promptly provide the corporation with copies of any solicitation or other communication with the corporation's shareholders relating to the annual meeting at which the Shareholder Nominee will be nominated that is exempt from filing with the Securities and Exchange Commission pursuant to applicable laws and regulations of the Securities and Exchange Commission and (E) indemnify and hold harmless the corporation and each of its directors, officers, or employees arising out of the nomination process pursuant to this Section 3.04; and (vii) in the case of a Nominating Shareholder that consists of a group of Eligible Shareholders, the designation by all group members as evidenced by a written agreement provided to the corporation signed by all group members of one Eligible Shareholder that is authorized to act on behalf of all members of the Nominating Shareholder with respect to the nomination and matters related thereto, including withdrawal of the nomination.

(f) The Nominating Shareholder may provide to the secretary, at the time the information required by this Section 3.04 is provided, a written statement for inclusion in the corporation's proxy statement for the annual meeting, not to exceed 500 words, in support of the Shareholder Nominee's candidacy (the "Statement"). Notwithstanding anything to the contrary contained in this Section 3.04, the corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law or regulation.

(g) Within the time period specified in this Section 3.04 for providing a Notice of Proxy Access Nomination in accordance with the procedures set forth in this Section 3.04, a Shareholder Nominee must deliver to the secretary of the corporation at the principal executive offices of the corporation, a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the secretary upon written request) and a written representation and executed agreement (in the form provided by the secretary upon written request) that such person (i) is not and will not become a party to (A) any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed in such questionnaire or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected and serving as a director of the corporation, with such person's fiduciary duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, payment or other financial agreement, reimbursement, or indemnification in connection with such person's nomination, service or action as a director that has not been disclosed in such questionnaire; and (iii) in such person's individual capacity and on behalf of any person on whose behalf the nomination is being made, would be in compliance, if elected as a director, and will comply with, applicable law and all conflict of interest, confidentiality, and other policies and guidelines of the corporation applicable to directors generally and publicly available (whether on the corporation's website or otherwise) as of the date of such representation and agreement. The

corporation may request such additional information as necessary to permit the board of directors to determine if each Shareholder Nominee is independent under the listing standards of The Nasdaq Stock Market LLC, any applicable rules of the Securities and Exchange Commission, and any publicly disclosed standards used by the board of directors in determining and disclosing the independence of the corporation's directors.

(h) In the event that any information or communications provided by the Nominating Shareholder or the Shareholder Nominee to the corporation or its shareholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Nominating Shareholder or Shareholder Nominee, as the case may be, shall promptly notify the secretary of the corporation of any defect in such previously provided information and of the information that is required to correct any such defect.

(i) The corporation shall not be required to include, pursuant to this Section 3.04, a Shareholder Nominee in its proxy materials for any annual meeting of shareholders (i) for which the secretary of the corporation receives a notice that any shareholder has nominated any person for election to the board of directors pursuant to the advance notice requirements for shareholder nominees for director set forth in Section 3.02 of these bylaws; (ii) if the Nominating Shareholder who has nominated such Shareholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a nominee of the board of directors; (iii) who is not independent under the listing standards of The Nasdaq Stock Market LLC, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the board of directors in determining and disclosing independence of the corporation's directors, in each case as determined by the board of directors; (iv) whose election as a member of the board of directors would cause the corporation to be in violation of these bylaws, the articles, the rules and listing standards of The Nasdaq Stock Market LLC, or any applicable state or federal law, rule, or regulation; (v) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914; (vi) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past 10 years; (vii) who is subject to any order of the type specified in Rule 506(d) of Regulation D under the Securities Act of 1933, as amended; (viii) if such Shareholder Nominee or the applicable Eligible Shareholder shall have provided information to the corporation in respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading, as determined by the board of directors or any committee thereof; or (ix) the Nominating Shareholder or applicable Shareholder Nominee fails to comply with its obligations pursuant to this Section 3.04.

(j) Notwithstanding anything to the contrary set forth herein, the board of directors or the chairman of the meeting of shareholders shall declare a nomination by a Nominating Shareholder to be invalid, and such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation, if (i) the Shareholder Nominee(s) and/or the applicable Nominating Shareholder shall have breached any of its or their obligations, agreements, or representations under this Section 3.04, as determined by



the board of directors or the chairman of the meeting or (ii) the Nominating Shareholder (or a qualified representative thereof) does not appear at the meeting of shareholders to present any nomination pursuant to this Section 3.04.

Section 3.05 Quorum and Adjournment.

(a) General Rule. A meeting of shareholders of the corporation duly called shall not be organized for the transaction of business unless a quorum is present. The presence of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action on the matter. Shares of the corporation owned, directly or indirectly, by it and controlled, directly or indirectly, by the board of directors of this corporation, as such, shall not be counted in determining the total number of outstanding shares for quorum purposes at any given time.

(b) Withdrawal of a Quorum. The shareholders present at a duly organized meeting can continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) Adjournments Generally. Any regular or special meeting of the shareholders, including one at which directors are to be elected and one which cannot be organized because a quorum has not attended, may be adjourned for such period and to such place as the shareholders present and entitled to vote shall direct, except that any meeting at which directors are to be elected shall be adjourned only from day to day or for such longer periods not exceeding 15 days each as the shareholders present and entitled to vote shall direct.

(d) Election of Directors at Adjourned Meeting. Those shareholders entitled to vote who attend a meeting called for the election of directors that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in this section, shall nevertheless constitute a quorum for the purpose of electing directors.

(e) Other Action in Absence of Quorum. Those shareholders entitled to vote who attend a meeting of shareholders that has been previously adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum as fixed in this section, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those shareholders who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

Section 3.06 Action by Shareholders. Except as otherwise provided in the Business Corporation Law or the articles or these bylaws, whenever any corporate action is to be taken by vote of the shareholders of the corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon and, if any shareholders are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the shareholders entitled to vote as a class.

Section 3.07 Organization. There shall be a chairman at every meeting of the shareholders. The chairman shall be selected and appointed for each meeting of the shareholders

by the board of directors. The chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting. The secretary or, in the absence of the secretary, an assistant secretary, or, in the absence of both the secretary and assistant secretaries, a person appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 3.08 Voting Rights of Shareholders. Unless otherwise provided in the articles, every shareholder of the corporation shall be entitled to one vote for every share standing in the name of the shareholder on the books of the corporation.

Section 3.09 Voting and Other Action by Proxy.

(a) General Rule.

(1) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person to act for the shareholder by proxy.

(2) The presence of, or vote or other action at a meeting of shareholders, or the expression of consent or dissent to corporate action in writing, by a proxy of a shareholder shall constitute the presence of, or vote or action by, or written consent or dissent of, the shareholder.

(3) Where two or more proxies of a shareholder are present, the corporation shall, unless otherwise expressly provided in the proxy, accept as the vote of all shares represented thereby the vote cast by a majority of them and, if a majority of the proxies cannot agree whether the shares represented shall be voted or upon the manner of voting the shares, the voting of the shares shall be divided equally among those persons.

(4) Any shareholder directly or indirectly soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the board of directors of the corporation.

(b) Execution and Filing. Every proxy shall be executed in writing by the shareholder or by the duly authorized attorney-in-fact of the shareholder and filed with the secretary of the corporation. A telegram, telex, cablegram, datagram or similar transmission from a shareholder or attorney-in-fact, or a photographic, facsimile or similar reproduction of a writing executed by a shareholder or attorney-in-fact:

(1) may be treated as properly executed for purposes of this subsection; and

(2) shall be so treated if it sets forth a confidential and unique identification number or other mark furnished by the corporation to the shareholder for the purposes of a particular meeting or transaction.

(c) Revocation. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until written notice thereof has been given to the secretary of the corporation. An unrevoked proxy shall not be valid after three years from the date

of its execution unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the secretary of the corporation.

(d) Expenses. The corporation shall pay the reasonable expenses of solicitation of votes, proxies or consents of shareholders by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise.

Section 3.10 Voting by Fiduciaries and Pledges. Shares of the corporation standing in the name of a trustee or other fiduciary and shares held by an assignee for the benefit of creditors or by a receiver may be voted by the trustee, fiduciary, assignee or receiver. A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee, but nothing in this section shall affect the validity of a proxy given to a pledgee or nominee.

Section 3.11 Voting by Joint Holders of Shares.

(a) General Rule. Where shares of the corporation are held jointly or as tenants in common by two or more persons, as fiduciaries or otherwise:

(1) if only one or more of such persons is present in person or by proxy, all of the shares standing in the names of such persons shall be deemed to be represented for the purpose of determining a quorum and the corporation shall accept as the vote of all the shares the vote cast by a joint owner or a majority of them; and

(2) if the persons are equally divided upon whether the shares held by them shall be voted or upon the manner of voting the shares, the voting of the shares shall be divided equally among the persons without prejudice to the rights of the joint owners or the beneficial owners thereof among themselves.

(b) Exception. If there has been filed with the secretary of the corporation a copy, certified by an attorney at law to be correct, of the relevant portions of the agreement, under which the shares are held or the instrument by which the trust or estate was created or the order of court appointing them or of an order of court directing the voting of the shares, the persons specified as having such voting power in the document latest in date of operative effect so filed, and only those persons, shall be entitled to vote the shares but only in accordance therewith.

Section 3.12 Voting by Corporations.

(a) Voting by Corporate Shareholders. Any corporation that is a shareholder of this corporation may vote at meetings of shareholders of this corporation by any of its officers or agents, or by proxy appointed by any officer or agent, unless some other person, by resolution of the board of directors of the other corporation or a provision of its articles or bylaws, a copy of which resolution or provision certified to be correct by one of its officers has been filed with the secretary of this corporation, is appointed its general or special proxy in which case that person shall be entitled to vote the shares.

(b) Controlled Shares. Shares of this corporation owned, directly or indirectly, by it and controlled, directly or indirectly, by the board of directors of this corporation, as such, shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares for voting purposes at any given time.

Section 3.13 Determination of Shareholders of Record.

(a) Fixing Record Date. The board of directors may fix a time prior to the date of any meeting of shareholders as a record date for the determination of the shareholders entitled to notice of, or to vote at, the meeting, which time, except in the case of an adjourned meeting, shall be not more than 90 days prior to the date of the meeting of shareholders. Only shareholders of record on the date fixed shall be so entitled notwithstanding any transfer of shares on the books of the corporation after any record date fixed as provided in this subsection. The board of directors may similarly fix a record date for the determination of shareholders of record for any other purpose. When a determination of shareholders of record has been made as provided in this section for purposes of a meeting, the determination shall apply to any adjournment thereof unless the board fixes a new record date for the adjourned meeting.

(b) Determination When a Record Date is Not Fixed. If a record date is not fixed:

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

(2) The record date for determining shareholders entitled to express consent or dissent to corporate action in writing without a meeting, when prior action by the board of directors is not necessary, to call a special meeting or to propose an amendment of the articles shall be the close of business on the day on which the first written consent or dissent, request for a special meeting or petition proposing an amendment of the articles is filed with the secretary of the corporation.

(3) The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

(c) Certification by Nominee. The board of directors may adopt a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of a specified parson or persons. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

Section 3.14 Voting Lists.

(a) General Rule. The officer or agent having charge of the transfer books for shares of the corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. The list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

(b) Effect of List. Failure to comply with the requirements of this section shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list. The original share register or transfer book, or a duplicate thereof kept in the Commonwealth of Pennsylvania, shall be prima facie evidence as to who are the shareholders entitled to examine the list or share register or transfer book or to vote at any meeting of shareholders.

Section 3.15 Judges of Election.

(a) Appointment. In advance of any meeting of shareholders of the corporation, the board of directors may appoint judges of election, who need not be shareholders, to act at the meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of the meeting may, and on the request of any shareholder shall, appoint judges of election at the meeting. The number of judges shall be one or three. A person who is a candidate for an office to be filled at the meeting shall not act as a judge.

(b) Vacancies. In case any person appointed as a judge fails to appear or fails or refuses to act, the vacancy may be filled by appointment made by the board of directors in advance of the convening of the meeting or at the meeting by the presiding officer thereof.

(c) Duties. The judges of election 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 authenticity, validity and effect of proxies, receive votes or ballots, hear and determine all challenges and questions in any way arising in connection with nominations by shareholders or the right to vote, count and tabulate all votes, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all shareholders. The judges of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three judges of election, the decision, act or certificate of a majority shall be effective in all respects as the decision, act or certificate of all.

(d) Report. On request of the presiding officer of the meeting or of any shareholder, the judges shall make a report in writing of any challenge or 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 therein.

Section 3.16 Consent of Shareholders in Lieu of Meeting. Any action required or permitted to be taken at a meeting of the shareholders or of a class of shareholders may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the

shareholders who would be entitled to vote at a meeting for such purpose shall be filed with the secretary of the corporation.

Section 3.17 Minors as Securityholders. The corporation may treat a minor who holds shares or obligations of the corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments or distributions, to vote or express consent or dissent and to make elections and exercise rights relating to such shares or obligations unless, in the case of payments or distributions on shares, the corporate officer responsible for maintaining the list of shareholders or the transfer agent of the corporation or, in the case of payments or distributions on obligations, the treasurer or paying officer or agent has received written notice that the holder is a minor.

## ARTICLE IV

### BOARD OF DIRECTORS

#### Section 4.01 Powers; Personal Liability.

(a) General Rule. Unless otherwise provided by statute, all powers vested by law in the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors.

(b) Fundamental Transactions. Where any provision of 15 Pa.C.S. Ch. 19 requires that an amendment of the articles or a plan be proposed by action of the board of directors, that requirement shall be construed to authorize and be satisfied by the written agreement of all of the shareholders of a business corporation.

#### (c) Personal Liability of Directors.

(1) A director shall not be personally liable, as such, for monetary damages (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expense of any nature (including, without limitation, attorneys fees and disbursements)) for any action taken, or any failure to take any action, unless:

(i) the director has breached or failed to perform the duties of his or her office under subchapter 17B of the Business Corporation Law (or any successor provision); and

(ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(2) The provisions of paragraph (1) shall not apply to the responsibility or liability of a director pursuant to any criminal statute, or the liability of a director for the payment of taxes pursuant to local, state or federal law.

(d) Notation of Dissent. A director who is present at a meeting of the board of directors, or of a committee of the board, at which action on any corporate matter is taken on which

the director is generally competent to act, shall be presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the secretary of the meeting before the adjournment thereof or transmits the dissent in writing to the secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action. Nothing in this section shall bar a director from asserting that minutes of the meeting incorrectly omitted his or her dissent if, promptly upon receipt of a copy of such minutes, the director notifies the secretary, in writing, of the asserted omission or inaccuracy.

#### Section 4.02 Qualifications and Selection of Directors.

(a) Qualifications. Each director of the corporation shall be a natural person of full age who need not be a resident of the Commonwealth of Pennsylvania or a shareholder of the corporation.

(b) Power to Select Directors. Except as otherwise provided in these bylaws, directors of the corporation shall be elected by the shareholders.

(c) Nominations of Directors. Nominees for election to the board of directors at any special or annual meeting of the shareholders shall be selected by the board of directors or a committee of the board of directors to which the board of directors has delegated the authority to make such selections pursuant to Section 4.11 of these bylaws. Nominees for election to the board of directors at any special or annual meeting of the shareholders may also be selected by shareholders, provided that such nominations are made in accordance with, and accompanied by the information required by, Section 3.02 (relating to annual meetings of shareholders), Section 3.03 (relating to special meetings of shareholders) or Section 3.04 (proxy access), as applicable. If the board of directors is classified with respect to the terms of directors, and if, due to a vacancy or vacancies, or otherwise, directors of more than one class are to be elected, each class of directors to be elected at the meeting shall be nominated and elected separately. Subject to the limitations set forth in Section 3.04, any shareholder may nominate as many persons for the office of director as there are positions to be filled.

#### (d) Election of Directors.

(1) In elections for directors, voting need not be by ballot, unless required by vote of the shareholders before the voting for the election of directors begins. Directors shall be elected by a majority of the votes cast at a meeting at which a quorum is present. For purposes of this bylaw, a majority of the votes cast shall mean that the number of votes "for" a director's election exceeds the number of votes "against" that director's election. Votes cast shall exclude abstentions with respect to that director's election. Notwithstanding the foregoing, in the event of an election of directors in which the number of nominees for election as directors at the meeting exceeds the number of directors to be elected, then directors shall be elected by the vote of a plurality of the votes cast at the meeting at which a quorum is present. If at any meeting of shareholders, directors of more than one class are to be elected, each class of directors shall be elected in a separate election.

(2) In order for any person to be nominated as a director of the corporation, such person must have submitted to the board of directors prior to the shareholder meeting for which the person is nominated an irrevocable conditional resignation from the board of directors, to take effect upon the occurrence of all of the following conditions: (i) such person stood for election to the board of directors at a shareholder meeting where the number of nominees did not exceed the number of directors to be elected; (ii) at such shareholder meeting the votes by the shareholders entitled to vote in the election cast against such person's reelection (excluding abstentions) exceeded the votes cast for such person's reelection; and (iii) such resignation having been accepted by the board of directors. Not later than ninety (90) days after the certification of an election by shareholders satisfying clauses (i) and (ii) the board of directors will decide, after receipt of a recommendation of the Nominating and Corporate Governance Committee, whether to accept such conditional resignation. The director whose conditional resignation is being considered shall not participate in the recommendation of the Nominating and Corporate Governance Committee or the decision of the board of directors with respect to his or her conditional resignation. If there are not sufficient unaffected members of the Nominating and Corporate Governance Committee to form a quorum, the unaffected independent directors shall name a committee made up solely of unaffected independent directors to make recommendations to the board of directors as to the acceptance of tendered resignation(s). If the number of unaffected independent directors is three (3) or fewer, all directors may participate, with or without the naming of such committee as the directors may deem appropriate, in the decision as to whether to accept the tendered resignations. If the incumbent director's resignation is not accepted by the board of directors, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected, or his or her earlier resignation or removal.

#### Section 4.03 Number and Term of Office.

(a) Number. The board of directors shall consist of not less than five members, nor more than eleven members, with the exact number within said limits to be fixed from time to time solely by resolution of the board of directors.

(b) Term of Office. The term of office of each director shall be one year. Each director shall hold office until the expiration of the term for which he or she was selected and until a successor has been selected and qualified or until his or her earlier death, resignation or removal. A decrease in the number of directors shall not have the effect of shortening the term of any incumbent director.

(c) Resignation. Any director may resign at any time upon written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as shall be specified in the notice of resignation.

(d) Chairman. The board of directors shall annually elect from among the members of the board a chairman of the board who may, but shall not be required to, qualify as independent under the applicable listing standards of The Nasdaq Stock Market LLC or such other securities market on which the corporation's securities are listed. Any vacancy in the position of the chairman shall be filled at such time and in such manner as the board of directors shall



determine. The chairman of the board may also serve as the chief executive officer and/or as another officer of the corporation.

Section 4.04 Vacancies.

(a) General Rule. Vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, may be filled by a majority vote of the remaining members of the board though less than a quorum, or by a sole remaining director, and each person so selected shall be a director to serve until the next selection of the class for which such director has been chosen, and until a successor has been selected and qualified or until his or her earlier death, resignation or removal.

(b) Action by Resigned Directors. When one or more directors resign from the board effective at a future date, the directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancies, the vote thereon to take effect when the resignations become effective.

Section 4.05 Removal of Directors.

(a) Removal by the Shareholders. The entire board of directors, or any class of the board, or any individual director may be removed from office by vote of the shareholders entitled to vote thereon without assigning any cause. In case the board or a class of the board or any one or more directors are so removed, new directors may be elected at the same meeting.

(b) Removal by the Board. The board of directors may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year or if, within 60 days after notice of his or her selection, the director does not accept the office either in writing or by attending a meeting of the board of directors.

Section 4.06 Place of Meeting. Meetings of the board of directors may be held at such place within or without the Commonwealth of Pennsylvania as the board of directors may from time to time appoint or as may be designated in the notice of the meeting. The Board of Directors may permit any or all directors to participate in any meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

Section 4.07 Organization of Meetings. At every meeting of the board of directors, the chairman of the board, if there be one, or, in the case of a vacancy in the office or absence of the Chairman of the board, one of the following officers present in the order stated: the vice chairman of the board, if there be one, the chief executive officer, the president, the vice presidents in their order of rank and seniority, or a person chosen by a majority of the directors present, shall act as chairman of the meeting. The secretary or, in the absence of the secretary, an assistant secretary, or, in the absence of the secretary and the assistant secretaries, any person appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 4.08 Regular Meetings. Regular meetings of the board of directors shall be held at such time and place as shall be designated from time to time by resolution of the board of directors.

Section 4.09 Special Meetings. Special meetings of the board of directors shall be held whenever called by the chairman or by two or more of the directors.

Section 4.10 Quorum of and Action by Directors.

(a) General Rule. A majority of the directors in office of the corporation shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the board of directors.

(b) Action by Written Consent. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the directors in office is filed with the secretary of the corporation.

Section 4.11 Executive and other Committees.

(a) Establishment and Powers. The board of directors may, by resolution adopted by a majority of the directors in office, establish one or more committees to consist of one or more directors of the corporation. Any committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all of the powers and authority of the board of directors except that a committee shall not have any power or authority as to the following:

- (1) The submission to shareholders of any action requiring approval of shareholders under the Business Corporation Law.
- (2) The creation or filling of vacancies in the board of directors.
- (3) The adoption, amendment or repeal of these bylaws.
- (4) The amendment or repeal of any resolution of the board that by its terms is amendable or repealable only by the board.
- (5) Action on matters committed by a resolution of the board of directors to another committee of the board.

(b) Alternate Committee Members. The board may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purposes of any written action by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another director to act at the meeting in the place of the absent or disqualified member.

(c) Term. Each committee of the board shall serve at the pleasure of the board.

(d) Committee Procedures. The term “board of directors” or “board,” when used in any provision of these bylaws relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board.

Section 4.12 Compensation. The board of directors shall have the authority to fix the compensation of directors for their services as directors and a director may be a salaried officer of the corporation.

## ARTICLE V

### OFFICERS

#### Section 5.01 Officers Generally.

(a) Number, Qualifications and Designation. The officers of the corporation shall be a chief executive officer, president, one or more vice presidents, a secretary, a treasurer, and such other officers as may be elected in accordance with the provisions of Section 5.03. Officers may but need not be directors or shareholders of the corporation. The chief executive officer, president and secretary shall be natural persons of full age. The treasurer may be a corporation, but if a natural person shall be of full age. Any number of offices may be held by the same person.

(b) Bonding. The corporation may secure the fidelity of any or all of its officers by bond or otherwise.

(c) Standard of Care. In lieu of the standards of conduct otherwise provided by law, officers of the corporation shall be subject to the same standards of conduct, including standards of care and loyalty and rights of justifiable reliance, as shall at the time be applicable to directors of the corporation. An officer of the corporation shall not be personally liable, as such, to the corporation or its shareholders for monetary damages (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expense of any nature (including, without limitation, attorneys’ fees and disbursements)) for any action taken, or any failure to take any action, unless the officer has breached or failed to perform the duties of his or her office under the articles of incorporation, these bylaws, or the applicable provisions of law and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. The provisions of this subsection shall not apply to the responsibility or liability of an officer pursuant to any criminal statute or for the payment of taxes pursuant to local, state or federal law.

#### Section 5.02 Election, Term of Office and Resignations.

(a) Election and Term of office. The officers of the corporation, except those elected by delegated authority pursuant to section 5.03, shall be elected annually by the board of directors, and each such officer shall hold office for a term of one year and until a successor has been selected and qualified or until his or her earlier death, resignation or removal.

(b) Resignations. Any officer may resign at any time upon written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as may be specified in the notice of resignation.

Section 5.03 Subordinate Officers, Committees and Agents. The board of directors may from time to time elect such other officers and appoint such committees, employees or other agents as the business of the corporation may require, including one or more assistant secretaries, and one or more assistant treasurers, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws, or as the board of directors may from time to time determine. The board of directors may delegate to any officer or committee the power to elect subordinate officers and to retain or appoint employees or other agents, or committees thereof, and to prescribe the authority and duties of such subordinate officers, committees, employees or other agents.

Section 5.04 Removal of Officers and Agents. Any officer or agent of the corporation may be removed by the board of directors with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 5.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, may be filled by the board of directors or by the officer or committee to which the power to fill such office has been delegated pursuant to section 5.03, as the case may be, and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

Section 5.06 Authority. All officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided by or pursuant to resolutions or orders of the board of directors or, in the absence of controlling provisions in the resolutions or orders of the board of directors, as may be determined by or pursuant to these bylaws.

Section 5.07 The Chief Executive Officer. The chief executive officer shall have general supervision over the affairs of the corporation, shall perform such other duties as may from time to time be requested by the board of directors, and, subject to the policies and directives of the board of directors, shall supervise and direct all officers and employees of the corporation, but may delegate in his discretion any of his powers as chief executive officer to any officer or such other executives as he may designate.

Section 5.08 The President. The president shall be the chief operating officer of the corporation and shall perform such other duties as may, from time to time be requested by the board of directors, the chairman of the board, or the chief executive officer. As chief operating officer, he shall have general supervision over the operations of the corporation, subject however, to the supervision and control of the board of directors, and the chief executive officer, and shall supervise and direct all operating officers and employees of the corporation, but may delegate in his discretion any of his powers as chief operating officer to any officer or such other executives as he may designate.

Section 5.09 Execution of Documents. Either the chief executive officer or the president shall sign, execute, and acknowledge, in the name of the corporation, deeds, mortgages, bonds, contracts or other instruments, except in cases where required or permitted by law to be otherwise signed and executed and in cases where the signing and execution thereof shall be expressly delegated by the board of directors, or by these bylaws, to some other officer or agent of the corporation.

Section 5.10 The Vice President. The vice presidents shall perform the duties of the president in the absence of the president and such other duties as may from time to time be assigned to them by the board of directors, the chief executive officer or the president.

Section 5.11 The Secretary. The secretary or an assistant secretary shall attend all meetings of the shareholders and of the board of directors and all committees thereof and shall record all the votes of the shareholders and of the directors and the minutes of the meetings of the shareholders and of the board of directors and of committees of the board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the corporation as required by law; shall be the custodian of the seal of the corporation and see that it is affixed to all documents to be executed on behalf of the corporation under its seal; and, in general, shall perform all duties incident to the office of secretary, and such other duties as may from time to time be assigned by the board of directors, the chief executive officer or the president.

Section 5.12 The Treasurer. The treasurer or an assistant treasurer shall have or provide for the custody of the funds or other property of the corporation; shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner due to or received by the corporation; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the board of directors may from time to time designate; shall, whenever so required by the board of directors, render an account showing all transactions as treasurer, and the financial condition of the corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the board of directors, the chief executive officer or the president.

Section 5.13 Salaries. The salaries of the officers elected by the board of directors shall be fixed from time to time by the board of directors or by such officer as may be designated by resolution of the board. The salaries or other compensation of any other officers, employees and other agents shall be fixed from time to time by the officer or committee to which the power to elect such officers or to retain or appoint such employees or other agents has been delegated pursuant to Section 5.03. No officer shall be prevented from receiving such salary or other compensation by reason of the fact that the officer is also a director of the corporation.

Section 5.14 Authority. All officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided by or pursuant to resolutions or orders of the board of directors or, in the absence of controlling provisions in the resolutions or orders of the board of directors, as may be determined by or pursuant to these bylaws.

## ARTICLE VI

### CERTIFICATES OF STOCK, TRANSFER, ETC.

#### Section 6.01 Share Certificates.

(a) Form of Certificates. Shares of the corporation's capital stock may be represented by certificates or may be uncertificated, to the extent determined by the board of directors. To the extent they are issued, certificates of stock shall be issued in numerical order, registered in the share register or transfer books of the corporation as they are issued, and shall be signed by the chief executive officer, the President or a Vice President, and the Secretary or the Treasurer, or in such other manner as the corporation may determine, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of such officers may be facsimiles if the certificate is manually signed on behalf of a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. If an officer who has signed or whose facsimile signature has been placed upon such certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if the person were an officer on the date of issue. Each certificate of stock shall state: (i) that the corporation is incorporated under the laws of the Commonwealth of Pennsylvania; (ii) the name of the person to whom issued; (iii) the number and class of shares and the designation of the series, if any, which such certificate represents; and (iv) the par value of each share represented by such certificate, or a statement that such shares are without par value. If the corporation is authorized to issue shares of more than one class or series, certificates for shares of the corporation, if any, shall set forth upon the face or back of the certificate (or shall state on the face or back of the certificate that the corporation will furnish to any shareholder upon request and without charge), a full or summary statement of the designations, voting rights, preferences, limitations and special rights of the shares of each class or series authorized to be issued so far as they have been fixed and determined and the authority of the board of directors to fix and determine the designations, voting rights, preferences, limitations and special rights of the classes and series of shares of the corporation.

(b) Share Register. The share register or transfer books and blank share certificates, if any, shall be kept by the secretary or by any transfer agent or registrar designated by the board of directors for that purpose.

Section 6.02 Transfer. Transfers of shares shall be made on the share register or transfer books of the corporation. Stock certificates, if any, shall be surrendered and endorsed by the person named in the certificate or by an attorney lawfully constituted in writing. No transfer shall be made inconsistent with the provisions of the Uniform Commercial Code, 13 Pa.C.S. § 8101 *et seq.*, and its amendments and supplements.

Section 6.03 Record Holder of Shares. The corporation shall be entitled to treat the person in whose name any share or shares of the corporation stand on the books of the corporation as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such share or shares on the part of any other person.

Section 6.04 Lost, Destroyed or Mutilated Certificates. The holder of any certificate of shares of the corporation shall immediately notify the corporation of any loss, destruction or mutilation of the certificate therefore, and the board of directors may, in its discretion, direct that the shares shall be uncertificated or cause a new certificate or certificates to be issued to such holder, in case of mutilation of the certificate, upon surrender of the mutilated certificate or, in case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction and, if the board of directors shall so determine, the deposit of a bond in such form and in such sum, and with such surety or sureties, as it may direct.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER AUTHORIZED REPRESENTATIVES

#### Section 7.01 Scope of Indemnification.

(a) General Rule. The corporation shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an indemnified capacity, including, without limitation, liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:

(1) where such indemnification is expressly prohibited by applicable law:

(2) where the conduct of the indemnified representative has been finally determined pursuant to Section 7.06 or otherwise:

(i) to constitute willful misconduct or recklessness within the meaning of 15 Pa.C.S. § 1746(b) or any superseding provision of law sufficient in the circumstances to bar indemnification against liabilities arising from the conduct; or

(ii) to be based upon or attributable to the receipt by the indemnified representative from the corporation of a personal benefit to which the indemnified representative is not legally entitled; or

(3) to the extent such indemnification has been finally determined in a final adjudication pursuant to Section 7.06 to be otherwise unlawful.

(b) Partial Payment. If an indemnified representative is entitled to indemnification in respect of a portion, but not all, of any liabilities to which such person may be subject, the corporation shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.

(c) Presumption. The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the indemnified representative is not entitled to indemnification.

(d) Definitions. For purposes of this Article:

(1) “indemnified capacity” means any and all past, present and future service by an indemnified representative in one or more capacities as a director, officer, employee or agent of the corporation, or, at the request of the corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise;

(2) “indemnified representative” means any and all directors and officers of the corporation and any other person designated as an indemnified representative by the board of directors of the corporation (which may, but need not, include any person serving at the request of the corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise);

(3) “liability” means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense of any nature (including, without limitation, attorneys’ fees and disbursements); and

(4) “proceeding” means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the corporation, a class of its security holders or otherwise.

Section 7.02 Proceedings Initiated by Indemnified Representatives. Notwithstanding any other provision of this Article, the corporation shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counterclaims or affirmative defenses) or participated in as an intervenor or *amicus curiae* by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the directors in office. This section does not apply to reimbursement of expenses incurred in successfully prosecuting or defending arbitration under Section 7.06 or otherwise successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this Article.

Section 7.03 Advancing Expenses. The corporation shall pay the expenses (including attorneys’ fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Section 7.01 or the



initiation of or participation in which is authorized pursuant to section 7.02 upon receipt of an undertaking by or on behalf of the indemnified representative to repay the amount if it is ultimately determined pursuant to Section 7.06 that such person is not entitled to be indemnified by the corporation pursuant to this Article. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.

Section 7.04 Securing of Indemnification Obligations. To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the corporation may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the board of directors shall deem appropriate. Absent fraud, the determination of the board of directors with respect to such amounts, costs, terms and conditions shall be conclusive against all security holders, officers and directors and shall not be subject to voidability.

Section 7.05 Payment of Indemnification. An indemnified representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the secretary of the corporation.

Section 7.06 Arbitration.

(a) General Rule. Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article, except with respect to indemnification for liabilities arising under the Securities Act of 1933 that the corporation has undertaken to submit to a court for adjudication, shall be decided only by arbitration in the metropolitan area in which the principal executive offices of the corporation are located at the time, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the corporation, the second of whom shall be selected by the indemnified representative and the third of whom shall be selected by the other two arbitrators. In the absence of the American Arbitration Association, or if for any reason arbitration under the arbitration rules of the American Arbitration Association cannot be initiated, and if one of the parties fails or refuses to select an arbitrator or the arbitrators selected by the corporation and the indemnified representative cannot agree on the selection of the third arbitrator within 30 days after such time as the corporation and the indemnified representative have each been notified of the selection of the other's arbitrator, the necessary arbitrator or arbitrators shall be selected by the presiding judge of the court of general jurisdiction in such metropolitan area.

(b) Burden of Proof. The party or parties challenging the right of an indemnified representative to the benefits of this Article shall have the burden of proof.

(c) Expenses. The corporation shall reimburse an indemnified representative for the expenses (including attorneys' fees and disbursements) incurred in successfully prosecuting or defending such arbitration.

(d) Effect. Any award entered by the arbitrators shall be final, binding and nonappealable and judgment may be entered thereon by any party in accordance with applicable law in any court of competent jurisdiction, except that the corporation shall be entitled to interpose as a defense in any such judicial enforcement proceeding any prior final judicial determination adverse to the indemnified representative under Section 7.01(a)(2) in a proceeding not directly involving indemnification, under this Article. This arbitration provision shall be specifically enforceable.

Section 7.07 Contribution. If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the corporation shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

Section 7.08 Mandatory Indemnification of Directors, Officers, etc. To the extent that an authorized representative of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in sections 1741 or 1742 of the Business Corporation Law or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection therewith.

Section 7.09 Contract Rights; Amendment or Repeal. All rights under this Article shall be deemed a contract between the corporation and the indemnified representative pursuant to which the corporation and each indemnified representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.

Section 7.10 Scope of Article. The rights granted by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an indemnified capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this Article shall continue as to a person who has ceased to be an indemnified representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person.

Section 7.11 Reliance on Provisions. Each person who shall act as an indemnified representative of the corporation shall be deemed to be doing so in reliance upon the rights of indemnification, contribution and advancement of expenses provided by this Article.

Section 7.12 Interpretation. The provisions of this Article are intended to constitute bylaws authorized by 15 Pa.C.S. § 1746.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01 Corporate Seal. The corporation shall have a corporate seal in the form of a circle containing the name of the corporation, the year of incorporation and such other details as may be approved by the board of directors. The affixation of the corporate seal shall not be necessary to the valid execution, assignment or endorsement by the corporation of any instrument or other document.

Section 8.02 Checks. All checks, notes, bills of exchange or other similar orders in writing shall be signed by such one or more officers or employees of the corporation as the board of directors may from time to time designate.

Section 8.03 Contracts. Except as otherwise provided in the Business Corporation Law in the case of transactions that require action by the shareholders, the board of directors may authorize any officer or agent to enter into any contract or to execute or deliver any instrument on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 8.04 Interested Directors or Officers; Quorum.

(a) General Rule. A contract or transaction between the corporation and one or more of its directors or officers or between the corporation and another corporation, partnership, joint venture, trust or other enterprise in which one or more of its directors or officers are directors or officers or have a financial or other interest, shall not be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because his, her or their votes are counted for that purpose, if:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(2) 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 shareholders entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those shareholders; or

(3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the shareholders.

(b) Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes a contract or transaction specified in subsection (a).

Section 8.05 Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may approve or designate, and all such funds shall be withdrawn only upon checks signed by such one or more officers or employees of the corporation as the board of directors shall from time to time designate.

Section 8.06 Corporate Records.

(a) Required Records. The corporation shall keep complete and accurate books and records of account, minutes of the proceedings of the incorporators, shareholders and directors and a share register giving the names and addresses of all shareholders and the number and class of shares held by each. The share register shall be kept at either the registered office of the corporation in the Commonwealth of Pennsylvania or at its principal place of business wherever situated or at the office of its registrar or transfer agent. Any books, minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time.

(b) Right of Inspection. Every shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a shareholder. In every instance where an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a verified power of attorney or other writing that authorizes the attorney or other agent to so act on behalf of the shareholder. The demand shall be directed to the corporation at its registered office in the Commonwealth of Pennsylvania or at its principal place of business wherever situated.

Section 8.07 Amendment of Bylaws. These bylaws may be amended or repealed, or new bylaws may be adopted, either (i) by vote of the shareholders at any duly organized annual or special meeting of shareholders, or (ii) with respect to those matters that are not by statute committed expressly to the shareholders and regardless of whether the shareholders have previously adopted or approved the bylaw being amended or repealed, by vote of a majority of the board of directors of the corporation in office at any regular or special meeting of directors. Any change in these bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change. See Section 2.03(b) (relating to notice of action by shareholders on bylaws).

## ARTICLE IX

### FORUM FOR ADJUDICATION OF DISPUTES

Section 9.01 Forum. Unless the corporation, in writing, selects or consents to the selection of an alternative forum, the sole and exclusive forum for any internal corporate claims (as defined below), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Common Pleas of Chester County, Pennsylvania (or, if that forum is not available for any jurisdictional reason, the United States District Court for the Eastern District of Pennsylvania or, if that forum is not available, any other federal or state court within

the Commonwealth of Pennsylvania). For purposes of this Article IX, internal corporate claims means claims, including claims in the right of the corporation: (a) that are based upon a violation of a duty by a current or former director, officer, employee or shareholder in such capacity; (b) that arise pursuant to any provision of the Business Corporation Law or as to which the Business Corporation Law confers jurisdiction upon any court; or (c) that are governed by the internal affairs doctrine.

Dated: August 6, 2021