

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

April 24, 2015

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED)

ROPER TECHNOLOGIES, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE

(STATE OR OTHER JURISDICTION OF INCORPORATION)

1-12273

51-0263969

(COMMISSION FILE NUMBER)

(IRS EMPLOYER IDENTIFICATION NO.)

**6901 PROFESSIONAL PKWY. EAST, SUITE 200, SARASOTA,
FLORIDA**

34240

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

(ZIP CODE)

(941) 556-2601

(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

ROPER INDUSTRIES, INC.

(FORMER NAME OR ADDRESS, IF CHANGED SINCE LAST REPORT)

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

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On January 15, 2015, the Board of Directors of Roper Industries, Inc. (the “Company”) approved an amendment to the Company’s amended and restated certificate of incorporation (the “Amendment”) changing the name of the Company to “Roper Technologies, Inc.” The Amendment was filed with the Secretary of State of Delaware, and became effective, on April 24, 2015. The Company’s common stock will continue to trade on the New York Stock Exchange, Inc. under the symbol “ROP.”

A copy of the Company’s amended and restated certificate of incorporation (the “Certificate of Incorporation”) is attached hereto as Exhibit 3.1 and a copy of the Company’s amended and restated by-laws (the “By-laws”) reflecting the name change is attached as Exhibit 3.2. The Certificate of Incorporation and Bylaws are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

The following exhibits are filed herewith:

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation
3.2	Amended and Restated By-Laws

Signatures

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

Roper Technologies, Inc.
(Registrant)

BY: /s/ John Humphrey

John Humphrey,
Executive Vice President and Chief Financial
Officer

Date: April 24, 2015

EXHIBIT INDEX

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation
3.2	Amended and Restated By-Laws

CERTIFICATE OF INCORPORATION
OF
ROPER TECHNOLOGIES, INC.

RESTATED AND FILED APRIL 11, 1996

AMENDED THROUGH APRIL 24, 2015

1. The name of the corporation is:

ROPER TECHNOLOGIES, INC.

2. The address of the corporation's registered office in the State of Delaware is 1013 Centre Road in the City of Wilmington, County of New Castle, and the name of the registered agent thereat is The Prentice-Hall Corporation System, Inc.

3. The nature of the business of the corporation and the purposes to be conducted or promoted by it are as follows:

(a) To design, manufacture, purchase, lease, distribute, install, repair, service, sell, import, export and otherwise deal in or with any and all kinds of positive displacement rotary and centrifugal pumps and industrial machinery, and all related supplies, components, equipment and products;

(b) To acquire all or any part of the stock or other securities, goodwill, rights, property or assets of any kind and to undertake or assume all or any part of the obligations or liabilities of any corporation, association, partnership, syndicate, entity, or person located in or organized under the laws of any state, territory or possession of the United States of America or any foreign country, and to pay for the same in cash, stock, bonds, debentures, notes, or other securities, secured or unsecured, of this or any other corporation or otherwise in any manner permitted by law, and to conduct in any lawful manner all or any part of any business so acquired; and

(c) To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

In addition to the general powers conferred by the laws of the State of Delaware and the purposes hereinbefore set forth, the corporation shall also have the following powers:

(d) To issue any of the shares of its capital stock of any class or series thereof now or hereafter authorized for such consideration as may be permitted by law and upon such terms and conditions as the Board of Directors may deem proper in its absolute discretion, and the stock so issued shall be fully paid and not liable to any further call or payment thereof; in the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the value of the property or other consideration received for the shares of capital stock shall be conclusive; and

(e) To borrow money, make, issue and sell, pledge, or otherwise dispose of checks, drafts, bills of exchange, documents of title, bonds, debentures, notes and other evidence of indebtedness of all kinds, whether unsecured or secured by mortgage, pledge or otherwise of any or all of the assets of the corporation, and without limit as to amount; and generally to mortgage, pledge or sell any stock or other securities or other property held by it, all on such terms and conditions as the Board of Directors.

4. A. The total number of shares of stock which the corporation shall have authority to issue is three hundred and fifty-one million (351,000,000) shares, divided into two (2) classes as follows:

(i) three hundred and fifty million (350,000,000) shares, each to be of the par value of one cent (\$0.01), and to be designated as Common Stock; and

(ii) one million (1,000,000) shares, each to be of the par value of one cent (\$0.01), and to be designated as Preferred Stock.

B. Each outstanding share of Common Stock shall entitle the holder thereof to one (1) vote on each matter properly submitted to the stockholders of the corporation for their vote, waiver, release or other action.

C. Authority is hereby granted to the Board of Directors of the corporation to adopt, from time to time, a resolution or resolutions providing for the issuance of shares of Preferred Stock in one or more series; and the Board of Directors is hereby expressly granted and vested with the authority to determine and to fix with respect to each series of Preferred Stock any or all of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of such Preferred Stock,

including, but not limited to, the determination of the following: (i) the distinctive designation of such series of Preferred Stock and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by the Board of Directors; (ii) the rate of dividends, if any, payable on the shares of such series of Preferred Stock, the conditions upon which and the dates when such dividends shall be payable, whether such dividends shall be cumulative (and, if so, from which date or dates), and whether payable in preference to dividends payable on any other class or classes of stock or on any other series of Preferred Stock; (iii) whether or not the shares or such series of Preferred Stock shall have voting powers, and, if voting powers are granted, the extent of such voting powers; (iv) whether or not the shares of such series of Preferred Stock shall be redeemable and, if so, the terms and conditions of such redemption, including, but not limited to, the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; (v) whether or not the shares of such series of Preferred Stock shall be entitled to the benefit of a retirement fund or sinking fund, and, if so, the terms and conditions of such fund; (vi) whether or not the shares of such series of Preferred Stock shall be convertible into or exchangeable for shares of any other class or classes of stock of the corporation or of any other series of Preferred Stock and, if made so convertible or exchangeable, the time or times, the conversion price or prices, or the rate or rates of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange; (vii) the rights of the holders of the shares of such series of Preferred Stock upon the voluntary or involuntary liquidation, dissolution or winding-up, or merger, consolidation or distribution or sales of assets of the corporation; (viii) the conditions and restrictions, if any, on the payment of dividends or on the making of other distributions on, or the purchase, redemption or other acquisition by the corporation of the Roper Industries, Inc. Common Stock or of any other class of stock or other series of Preferred Stock of the corporation ranking junior to the shares of such series of Preferred Stock as to dividends or on liquidation; (ix) the conditions and restrictions, if any, on the creation of indebtedness of the corporation or any subsidiary or on the authorization or issue of any additional stock of the corporation ranking on a parity with or prior to the shares of such series of Preferred Stock as to dividends or on liquidation; and, (x) any other preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof.

D. Subject to the foregoing, the authorized shares of stock of any class of the corporation may be issued by the corporation from time to time and for such consideration, not less than the par value thereof, and upon such terms as may be fixed from time to time by the Board of Directors, and any and all shares so issued, the full consideration for which shall have been paid or delivered, shall be deemed fully-paid and non-assessable stock and shall not be liable to any further call or assessment thereon.

E. The holders of stock, as such, of any class of the corporation shall have no preemptive or preferential right to purchase or subscribe for any part of the unissued capital stock of the corporation of any class or for any new issue of stock of any class, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of any class of the corporation, now or hereafter authorized or issued other than such, if any, as the Board of Directors of the corporation from time to time may fix pursuant to the authority hereby conferred by the Certificate of Incorporation of the corporation; and the Board of Directors may issue stock of the corporation, or securities or obligations convertible into stock, without offering such issue of stock or such securities or obligations, either in whole or in part, to the stockholders of the corporation.

F. Subject to any limitations contained in the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of Common Stock shall be entitled to receive, when and as declared by the Board of Directors out of the assets of the corporation which are by law available therefor, dividends payable in cash, in property or in shares of Common Stock. No dividends, other than dividends payable only in shares of Common Stock of the corporation, shall be paid on Common Stock if cash dividends in full to which all outstanding shares of Preferred Stock of all series shall then be entitled for the then current dividend period and (where such dividends are cumulative) for all past dividend periods shall not have been paid or declared and set apart in full.

G. In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the corporation, the holders of Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the corporation and of the amounts to which the holders of the Preferred Stock shall be entitled, to share ratably in the remaining net assets of the corporation. Neither a consolidation nor a merger of the corporation with or into any other corporation; nor a merger of any other corporation with or into the corporation; nor a reorganization of the corporation; nor the purchase or redemption of all or part of the outstanding shares of stock of any class or classes of the corporation; nor the sale or transfer of the property and business of the corporation as, or substantially as, an entity shall be considered a liquidation, dissolution or winding-up of the corporation for purposes of the preceding sentence.

5. The Board of Directors shall have the power (i) to make, alter or amend the By-laws, subject only to such limitations, if any, as the By-laws of the corporation may from time to time impose; (ii) from time to time to fix and determine and to vary the amount to be reserved as working capital of the corporation, and, before the payment of any dividends or making any distribution or profits, to set aside out of the surplus or net profits of the corporation such sum or sums as the Board may from time to time in its absolute discretion think proper either as additional working capital or as a reserve fund to meet contingencies, or for the repairing or

maintaining of any property of the corporation, or for such other corporate purposes as the Board of Directors shall think conducive to the interests of the corporation, subject only to such limitations, if any, as the By-laws of the corporation may from time to time impose; (iii) from time to time, to the extent now or hereafter permitted by the laws of Delaware, to sell, lease, exchange or otherwise dispose of any part of the property and assets of the corporation which the Board of Directors deems it expedient and for the best interests of the corporation to dispose of, or disadvantageous to continue to own, without assent of the stockholders by vote or otherwise; (iv) to issue or cause to be issued from time to time all or any part of the authorized capital stock of the corporation on such terms and for such consideration as the Board of Directors may determine in its discretion without obtaining the approval of the holders of any of the then outstanding capital stock; (v) pursuant to the affirmative vote of the holders of a majority of the shares of stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, to sell, lease, exchange, or otherwise dispose of all or substantially all of the property and assets of the corporation, including its goodwill and its corporate franchises, upon such terms and conditions as the Board of Directors deems expedient and for the best interest of the corporation; (vi) from time to time to authorize the corporation to borrow money or to pledge the credit of the corporation by guaranty or otherwise, and to issue, sell, pledge, or otherwise deliver or dispose of stock of this or any other corporation, bonds, debentures, notes or other evidences of indebtedness, whether unsecured or secured by mortgage, pledge or other lien of any or all of the assets of the corporation, all on such terms and conditions as the Board of Directors may determine or authorize in its discretion without obtaining the approval of any of the holders of any of the then outstanding capital stock of the corporation and; (vii) to exercise any and all other powers conferred by law or by this certificate or which may be conferred upon the Board of Directors by the corporation through appropriate By-law provisions or otherwise.

6. The Board of Directors, by resolution or resolutions duly adopted by it, may designate one or more committees, each committee to consist of one or more directors of the corporation, which, to the extent provided in the resolution or resolutions or in the By-laws of the corporation, but subject to any limitations specifically imposed by the laws of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it.

7. No contract, act or transaction of the corporation with any person, firm or corporation shall be affected or invalidated by reason of the fact that any director or officer of the corporation is a party to or is interested in such contract, act or transaction, or in any way connected with such person, firm or corporation, provided that such interest or connection shall have been disclosed or known to the corporation. Any director of the corporation having any such interest or connection may, nevertheless, be counted in determining the existence of a quorum at any meeting of the Board of Directors or a committee which shall authorize any such contract, act or transaction and may vote thereon with full force and effect. No such officer or director nor any such person, firm or corporation in or with which such director or officer is connected shall be liable to account to the corporation for any profit realized from or through any such contract, act or transaction.

8. (i) Except as otherwise provided in this Certificate of Incorporation or the General Corporation Law of the State of Delaware, the business and affairs of the corporation shall be managed by or under the direction of a Board of Directors consisting of such number of members as may be fixed, subject to the rights of the holders of any series of preferred stock then outstanding, from time to time, by the affirmative vote of the majority of the members of the Board of Directors of the corporation, but not less than the minimum number authorized by the State of Delaware.

(ii) Subject to the rights of the holders of any series of preferred stock then outstanding:

- a. Until the election of directors at the 2016 Annual Meeting of Stockholders, the Board of Directors shall be divided into three classes of directors, as nearly equal in number as possible. Subject to Sections (ii)(b)-(d) and (iii)-(iv) of this Article 8, each class of directors shall be elected for a three-year term and the terms of each class shall be staggered so that only one class of directors will be elected at each annual meeting of stockholders.
- b. Each director serving as a director immediately following the 2013 Annual Meeting of Stockholders, or elected or appointed thereafter, shall hold office until the term for which they were elected or appointed expires and their successor is duly elected and qualified, or until their earlier death, resignation or removal from office.
- c. At each annual meeting of stockholders commencing with the 2014 Annual Meeting of Stockholders, successors to the class of directors whose terms expire at that annual meeting of stockholders shall be elected for a one-year term.
- d. From and after the election of directors at the 2016 Annual Meeting of Stockholders, the Board of Directors shall cease to be classified and all directors shall be elected for one-year terms expiring at the next annual meeting of stockholders.

(iii) Subject to the rights of the holders of any series of preferred stock then outstanding:

- a. Until the 2016 Annual Meeting of Stockholders, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the shares of the corporation entitled to vote for the election of directors. For purposes of this Article 8, cause for removal shall be construed to exist only if the director whose removal is proposed has been convicted of a felony by a court of competent jurisdiction or has been adjudged by a court of competent jurisdiction to be liable for negligence or misconduct in the performance of his duty to the corporation in a matter of substantial importance to the corporation.
- b. From and after the 2016 Annual Meeting of Stockholders, any director, or the entire Board of Directors, may be removed from office at any time, with or without cause, only by the affirmative vote of the holders of at least a majority of the voting power of all of the shares of the corporation entitled to vote for the election of directors.

(iv) Subject to the rights of the holders of any series of preferred stock then outstanding:

- a. Newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the directors then in office.
- b. Until the election of directors at the 2016 Annual Meeting of Stockholders, each director chosen to fill a vacancy in the Board of Directors shall receive the classification of the vacant directorship to which he or she has been appointed or, if it is a newly created directorship, shall receive the classification that at least a majority of the directors then in office designate and shall hold office until the first meeting of stockholders held after his or her appointment for the purpose of electing directors of that classification, and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal from office.
- c. From and after the 2016 Annual Meeting of Stockholders, each director chosen to fill a vacancy in the Board of Directors shall hold office until the first meeting of stockholders held after his or her appointment for the purpose of electing directors and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal from office.

9. The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation or any amendment thereto in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred on the stockholders hereunder are granted subject to that reservation.

10. The duration of the corporation shall be perpetual.

11. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law as the same exists or hereafter may be amended or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then, in addition to the limitation on personal liability provided herein, the liability of a director of the corporation shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law. Any repeal or modification of this paragraph by the stockholders of the corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such repeal or modification.

12. No action required to be taken or which may be taken at any annual or special meeting of stockholders of the corporation may be taken without a meeting, and the power of stockholders of the corporation to take any such action by means of a consent or consents in writing, without a meeting, is specifically denied.

ROPER TECHNOLOGIES, INC. BY-LAWS

AMENDED AND RESTATED AS OF April 24, 2015

ARTICLE 1
STOCKHOLDERS' MEETINGS

SECTION 1.01. *Places of Meetings.* All meetings of stockholders shall be held at such place or places in or outside of Delaware as the board of directors may from time to time determine or as may be designated in the notice of meeting or waiver of notice thereof, subject to any provisions of the laws of Delaware.

SECTION 1.02. *Annual Meetings.* The annual meeting of the stockholders shall be held on such date as the board of directors may determine and at the time and place as shall be decided by the board of directors and indicated in the notice of the meeting. The board of directors shall be elected thereat and such other business transacted as may be specified in the notice of the meeting, or as may be properly brought before the meeting. Written notice of the time and place of the annual meeting shall be given by mail to each stockholder entitled to vote at his address as it appears on the records of the corporation not less than the minimum nor more than the maximum number of days permitted under the laws of Delaware prior to the scheduled date thereof, unless such notice is waived as provided by Article 8 of these By-laws.

SECTION 1.03. *Special Meetings.* A special meeting of stockholders may be called at any time by order of the board of directors or the executive committee. Written notice of the time, place and specific purposes of such meetings shall be given by mail to each stockholder entitled to vote thereat at his address as it appears on the records of the corporation not less than the minimum nor more than the maximum number of days prior to the scheduled date thereof permitted under the laws of Delaware, unless such notice is waived as provide by Article 8 of these By-laws.

SECTION 1.04. *Meetings without Notice.* Meetings of the stockholders may be held at any time without notice when all the stockholders entitled to vote thereat are present in person or by proxy.

SECTION 1.05. *Voting.* At all meetings of stockholders, each stockholder entitled to vote on the record date as determined under Section 5.03 of these By-laws or if not so determined as prescribed under the laws of Delaware shall be entitled to such number of votes for each share of stock standing on record in his name, as shall be determined in accordance with the provisions of Article 4 of the certificate of incorporation or any amendment thereto.

SECTION 1.06. *Quorum and Action.*

(a) At any stockholders' meeting, a majority of the number of shares of stock outstanding and entitled to vote thereat present in person or by proxy shall constitute a quorum. If, however, such quorum shall not be present or represented, the chairman of the meeting,

pursuant to Section 1.09 of these By-laws, or a majority in voting interest of the stockholders present in person or by proxy may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice, subject to such limitations as may be imposed under the laws of Delaware.

(b) When a quorum is present at any meeting, a majority of the voting power present in person or by proxy and entitled to vote on any question other than the election of directors shall decide any such question brought before such meeting unless the question is one upon which a different vote is required by express provision of the laws of Delaware, the certificate of incorporation or these By-laws, in which case such express provision shall govern.

(c) Subject to the rights of the holders of any series of preferred stock to elect additional directors under specific circumstances, a nominee for director shall be elected to the board of directors if the nominee receives a majority of the votes cast with respect to that nominee's election at any meeting for the election of directors at which a quorum is present; *provided, however*, that if as of the tenth (10th) day preceding the date the corporation first mails its notice of meeting for such meeting to the stockholders of the corporation, the number of nominees for director exceeds the number of directors to be elected (a "**contested election**"), the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section 1.06(c) of these By-laws, a majority of the votes cast shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election, with "abstentions" and "broker non votes" not counted as a vote cast either "for" or "against" that director's election (but counted for purposes of determining a quorum). If an incumbent director nominee fails to receive a majority of the votes cast in an election that is not a contested election, the director shall immediately tender his or her resignation to the board of directors, such resignation to become effective upon acceptance by the board of directors. The Nominating and Governance Committee of the board of directors, or such other committee designated by the board of directors, shall make a recommendation to the board of directors as to whether to accept or reject the resignation of such incumbent director, or whether other action should be taken. The board of directors shall make a determination regarding whether to accept or reject such resignation, taking into account the committee's recommendation, and publicly disclose (by a press release and filing an appropriate disclosure with the Securities and Exchange Commission) its decision regarding the resignation within 90 days following certification of the election results. The Nominating and Governance Committee (or other committee) in making its recommendation, and the board of directors in making its decision, each may consider any factors and other information that they consider relevant and appropriate. If the board of directors accepts a director's resignation pursuant to this Section 1.06(c), or if a nominee for director is not elected and the nominee is not an incumbent director, the remaining members of the board of directors may fill the resulting vacancy pursuant to Section 4.02(a) of these By-laws, or may decrease the size of the board of directors pursuant to Section 2.01 of these By-laws.

SECTION 1.07. List of Stockholders. At least ten days before every meeting a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of and the number of shares registered in the name of each stockholder, shall be prepared by the secretary or the transfer agent in charge of the stock ledger of the corporation. Such list shall be open for examination by any stockholder as required by the laws

of Delaware. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting.

SECTION 1.08. *Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals.*

(a) The matters to be considered and brought before any annual or special meeting of stockholders of the corporation shall be limited to only such matters, including the nomination and election of directors, as shall be brought properly before such meeting in compliance with the procedures set forth in this Section 1.08.

(b) For any matter to be properly brought before any annual meeting of stockholders, the matter must be (i) specified in the notice of annual meeting given by or at the direction of the board of directors, (ii) otherwise brought before the annual meeting by or at the direction of the board of directors or (iii) brought before the annual meeting in the manner specified in this Section 1.08(b) by a stockholder of record entitled to vote at the annual meeting of shareholders on such matter. In addition to any other requirements under applicable law and the certificate of incorporation and By-laws of the corporation, persons nominated by stockholders for election as directors of the corporation and any other proposals by stockholders shall be properly brought before the meeting only if notice of any such matter to be presented by a stockholder at such meeting of stockholders (the “**Stockholder Notice**”) shall be delivered to the secretary of the corporation at the principal executive office of the corporation not less than ninety (90) and not more than one hundred and twenty (120) days prior to the first anniversary date of the annual meeting for the preceding year; *provided, however*, if and only if the annual meeting is not scheduled to be held within a period that commences 30 days before such anniversary date and ends 30 days after such anniversary date (an annual meeting date outside such period being referred to herein as an “**Other Meeting Date**”), such Stockholder Notice shall be given in the manner provided herein by the later of the close of business on (x) the date ninety days (90) prior to such Other Meeting Date or (y) the tenth day following the date such Other Meeting Date is first publicly announced or disclosed. Any stockholder desiring to nominate any person or persons (as the case may be) for election as a director or directors of the corporation shall deliver, as part of such Stockholder Notice, a statement in writing setting forth 1. the name of the person or persons to be nominated, 2. the number and class of all shares of each class of stock of the corporation owned of record and beneficially by each such person, as reported to such stockholder by such nominee(s), 3. the information regarding each such person required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission (or the corresponding provisions of any regulation subsequently adopted by the Securities and Exchange Commission applicable to the corporation), 4. each such person’s signed consent to serve as a director of the corporation if elected, 5. such stockholder’s name and address, 6. the number and class of all shares of each class of stock of the corporation owned of record and beneficially by such stockholder (and any beneficial owner on whose behalf the nomination is made) and 7. a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to mitigate loss, to manage risk or benefit of share price changes

for, or increase or decrease the voting power of, such stockholder (and any beneficial owner on whose behalf the nomination is made) with respect to the corporation's securities. Any stockholder who gives a Stockholder Notice of any matter proposed to be brought before the meeting (other than to nominate a director or directors) shall deliver, as part of such Stockholder Notice, (1) the text of the proposal to be presented, (2) a brief written statement of the reasons why such stockholder favors the proposal and setting forth (3) such stockholder's name and address, (4) the number and class of all shares of each class of stock of the corporation owned of record and beneficially by such stockholder (and any beneficial owner on whose behalf the proposal is made), (5) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder (and any beneficial owner on whose behalf the proposal is made) with respect to the corporation's securities and (6) if applicable, any material interest of such stockholder and such beneficial owner in the matter proposed (other than as a stockholder). As used herein, shares "beneficially owned" shall mean all shares which such person is deemed to beneficially own pursuant to Rules 13d-3 and 13d-5 under the Securities and Exchange Act of 1934 (the "**Exchange Act**"). If a stockholder is entitled to vote only for a specific class or category of directors at a meeting (annual or special), such stockholder's right to nominate one or more individuals for election as a director at the meeting shall be limited to such class or category of directors.

Notwithstanding anything in this Section 1.08(b) to the contrary, in the event that the number of directors to be elected to the board of directors of the corporation at the next annual meeting is increased and either all of the nominees for director at the next annual meeting or the size of the increased board of directors is not publicly announced or disclosed by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a Stockholder Notice shall also be considered timely hereunder, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary of the corporation at the principal executive office of the corporation not later than the close of business on the tenth day following the first date all of such nominees or the size of the increased board of directors shall have been publicly announced or disclosed.

(c) Except as provided in the immediately following sentence, only such matters shall be properly brought before a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the board of directors, any stockholder 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 Stockholder Notice required by Section 1.08(b) hereof shall be delivered to the secretary of the corporation at the principal executive office of the corporation not later than the close of business on the tenth day following the day on which the date of the special meeting and either the names of the nominees proposed by the board of directors to be elected at such meeting or the number of directors to be elected is publicly announced or disclosed.

(d) For purposes of this Section 1.08, a matter shall be deemed to have been “publicly announced or disclosed” if such matter is disclosed in a press release reported by the Dow Jones News Service, Associated Press or comparable national news or wire service or in a document publicly filed by the corporation with the Securities and Exchange Commission.

(e) In no event shall the adjournment of an annual meeting or special meeting or the postponement of any meeting that does not require a change in the record date for such meeting, or any announcement thereof, commence a new period for the giving notice as provided in this Section 1.08. This Section 1.08 shall not apply to (i) shareholders proposals made pursuant to and in compliance with Rule 14a-8 under the Exchange Act or (ii) the election of directors selected by or pursuant to the provisions of Article 4 of the certificate of incorporation relating to the rights of the holders of any class or series of stock of the corporation having a preference over the common stock as to dividends or upon liquidation to elect directors under specified circumstances.

(f) The person presiding at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether notice of nominees and other matters proposed to be brought before a meeting has been duly given in the manner provided in this Section 1.08 and, if not so given, shall direct and declare at the meeting that such nominees and other matters are out of order and shall not be considered.

SECTION 1.09. *Conduct of Meetings.* The board of directors may adopt by resolution such rules, regulations and procedures for the conduct of meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent with applicable law and such rules and regulations adopted by the board of directors, the chairman of each meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts, including causing an adjournment of such meeting, as, in the judgment of such chairman, are appropriate. Such rules, regulations or procedures, whether adopted by the board of directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting, including fixing the time for opening and closing the polls for voting on each matter; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Company, their duly authorized and constituted proxies or such other persons as the chairman shall permit; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless, and to the extent determined by the board of directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

SECTION 1.10. *Organization of Meetings.* Meetings of stockholders shall be presided over by the chairman of the board of directors, or in his or her absence by the president, or in the absence of the foregoing persons by a chairman designated by the board of directors, or, in the absence of any such designation, by a chairman chosen at the meeting. The secretary, or in the absence of the secretary, an assistant secretary, shall act as the secretary of the meeting, but in the absence of the secretary or assistant secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE 2
BOARD OF DIRECTORS

SECTION 2.01. *Number and Qualification.* Subject to the rights of the holders of any series of preferred stock then outstanding, members of the board of directors shall be elected at each annual meeting of stockholders, in accordance with and subject to the provisions of the certificate of incorporation. Each director so elected shall serve until the election and qualification of his successor or until his earlier resignation or removal as provided in these Bylaws. The initial number of directors shall be such as may be determined by the incorporators unless the initial directors are named in the certificate of incorporation, and thereafter the number of directors shall be such as may be determined, subject to the rights of the holders of any series of preferred stock then outstanding, from time to time by the affirmative vote of the majority of the members of the board of directors, but in no event shall the number be less than the minimum authorized under the laws of Delaware. In case of any increase in the number of directors between elections by the stockholders, the additional directorships shall be considered vacancies and shall be filled in the manner prescribed in Article 4 of these By-laws. Directors need not be stockholders. The initial board of directors shall be elected by the incorporators, unless such directors are named in the certificate of incorporation.

SECTION 2.02. *Powers.* The business and affairs of the corporation shall be carried on by or under the direction of the board of directors, which shall have all the powers authorized by the laws of Delaware, subject to such limitations as may be provided by the certificate of incorporation or these By-laws.

SECTION 2.03. *Compensation.* The board of directors may from time to time by resolution authorize the payment of fees or other compensation to the directors for services as such to the corporation, including, but not limited to, fees for attendance at all meetings of the board or of the executive or other committees, and determine the amount of such fees and compensation. Directors shall in any event be paid their traveling expenses for attendance at all meetings of the board or of the executive or other committees. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor in amounts authorized or otherwise approved from time to time by the board or the executive committee.

SECTION 2.04. *Meetings and Quorum.* Meetings of the board of directors may be held either in or outside of Delaware. A quorum shall be a majority of the then authorized total number of directors. A director will be considered present at a meeting, even though not physically present, to the extent and in the manner authorized by the laws of Delaware.

The board of directors may from time to time provide for the holding of regular meetings with or without notice and may fix the times and places at which such meetings are to be held. Meetings other than regular meetings may be called at any time by the president or the chairman of the board and must be called by the president or by the secretary or an assistant secretary upon the written request of three (3) or more directors.

Notice of each meeting, other than a regular meeting (unless required by the board of directors), shall be given to each director by mailing the same to each director at his residence or

business address at least ten days before the meeting or by delivering the same to him personally or by telephone or telecopy at least two days before the meeting.

Notice of any meeting shall state the time and place of such meeting, but need not state the purposes thereof unless otherwise required by the laws of Delaware, the certificate of incorporation, the By-laws, or the board of directors.

SECTION 2.05. *Executive Committee.* The board of directors may by resolution passed by a majority of the whole board provide for an executive committee of two or more directors and shall elect the members thereof to serve at the pleasure of the board and may designate one of such members to act as chairman. The board may at any time change the membership of the committee, fill vacancies in it, designate alternate members to replace any absent or disqualified members at any meeting of the committee, or dissolve it.

During the intervals between the meetings of the board of directors, the executive committee shall possess and may exercise any or all of the powers of the board of directors in the management or direction of the business and affairs of the corporation and under the By-laws to the extent authorized by resolution adopted by a majority of the entire board of directors, subject to such limitations as may be imposed by the laws of Delaware.

The executive committee may determine its rules of procedure and the notice to be given of its meetings, and it may appoint such committees and assistants as it shall from time to time deem necessary. A majority of the members of the committee shall constitute a quorum.

SECTION 2.06. *Other Committees.* The board of directors may by resolution provide for such other committees as it deems desirable and may discontinue the same at its pleasure. Each such committee shall have the powers and perform such duties, not inconsistent with law, as may be assigned to it by the board.

SECTION 2.07. *Action without Meetings.* Any action required or permitted to be taken at any meeting of the board of directors or any committee thereof may be taken without meeting to the extent and in the manner authorized by the laws of Delaware.

ARTICLE 3 OFFICERS

SECTION 3.01. *Titles and Election.* The officers of the corporation shall be a president, a secretary and a treasurer, who shall initially be elected as soon as convenient by the board of directors and thereafter, in the absence of earlier resignations or removals, shall be elected at the first meeting of the board following any annual stockholders' meeting, each of whom shall hold office at the pleasure of the board except as may otherwise be approved by the board or executive committee, or until his or her successor shall have been duly elected and qualified, or until his earlier death, resignation, removal under these By-laws or other termination of his employment. Any person may hold more than one office if the duties can be consistently performed by the same person, and to the extent permitted by the laws of Delaware.

The board of directors, in its discretion, may also at any time elect or appoint a chairman of the board of directors who shall be a director, and one or more vice presidents, assistant secretaries and assistant treasurers and such other officers as it may deem advisable, each of whom shall hold office at the pleasure of the board, except as may otherwise be approved by the board or executive committee, or until his earlier resignation, removal or other termination of employment, and shall have such authority and shall perform such duties as may be prescribed or determined from time to time by the board or in case of officers other than the chairman of the board, if not so prescribed or determined by the board, as the president or the then senior executive officer may prescribe or determine.

The board of directors may require any officer or other employee or agent to give bond for the faithful performance of his duties in such form and with such sureties as the board may require.

SECTION 3.02. Duties. Subject to such extension, limitations, and other provisions as the board of directors or the By-laws may from time to time prescribe or determine, the following officers shall have the following powers and duties:

(a) Chairman of the Board. The chairman of the board, when present, shall preside at all meetings of the stockholders and of the board of directors and shall be charged with general supervision of the management and policy of the corporation, and shall have such other powers and perform such other duties as the board of directors may prescribe from time to time.

(b) President. Subject to the board of directors and the provisions of these By-laws, the president shall be the chief executive officer of the corporation, shall exercise the powers and authority and perform all of the duties commonly incident to his office, shall in the absence of the chairman of the board preside at all meetings of the stockholders and of the board of directors if he is a director, and shall perform such other duties as the board of directors or executive committee shall specify from time to time. The president or a vice president, unless some other person is thereunto specifically authorized by the board of directors or executive committee, shall sign all bonds, debentures, promissory notes, deeds and contracts of the corporation.

(c) Vice President. The vice president or vice presidents shall perform such duties as may be assigned to them from time to time by the board of directors or by the president if the board does not do so. In the absence or disability of the president, the vice presidents in order of seniority may, unless otherwise determined by the board, exercise the powers and perform the duties pertaining to the office of president, except that if one or more executive vice presidents has been elected or appointed, the person holding such office in order of seniority shall exercise the powers and perform the duties of the office of president.

(d) Secretary. The secretary or in his absence an assistant secretary shall keep the minutes of all meetings of stockholders and of the board of directors, give and serve all notices, attend to such correspondence as may be assigned to him, keep in safe custody the seal of the corporation, and affix such seal to all such instruments properly executed as may require it, and shall have such other duties and powers as may be prescribed or determined from time to time by the board of directors or by the president if the board does not do so.

(e) *Treasurer.* The treasurer, subject to the order of the board of directors, shall have the care and custody of the moneys, funds, valuable papers and documents of the corporation (other than his own bond, if any, which shall be in the custody of the president), and shall have, under the supervision of the board of directors, all the powers and duties commonly incident to his office. He shall deposit all funds of the corporation in such bank or banks, trust company or trust companies, or with such firm or firms doing a banking business as may be designated by the board of directors or by the president if the board does not do so. He may endorse for deposit or collection all checks, notes, etc., payable to the corporation or to its order. He shall keep accurate books of account of the corporation's transactions, which shall be the property of the corporation, and together with all its property in his possession, shall be subject at all times to the inspection and control of the board of directors. The treasurer shall be subject in every way to the order of the board of directors, and shall render to the board of directors and/or the president of the corporation, whenever they may require it, an account of all his transactions and of the financial condition of the corporation. In addition to the foregoing, the treasurer shall have such duties as may be prescribed or determined from time to time by the board of directors or by the president if the board does not do so.

SECTION 3.03. *Delegation of Authority.* The board of directors or the executive committee may at any time delegate the powers and duties of any officer for the time being to any other officer, director or employee.

SECTION 3.04. *Compensation.* The compensation of the Chairman of the Board, the president, all vice presidents, the secretary and the treasurer shall be fixed by the board of directors or the executive committee, and the fact that any officer is a director shall not preclude him from receiving compensation or from voting upon the resolution providing the same.

ARTICLE 4 **RESIGNATIONS, VACANCIES AND REMOVALS**

SECTION 4.01. *Resignations.* Any director or officer may resign at any time by giving written notice thereof to the board of directors, the president or the secretary. Except as provided in Section 1.06(c), any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein or in these Bylaws, the acceptance of any resignation shall not be necessary to make it effective.

SECTION 4.02. *Vacancies.*

(a) *Directors.* When the office of any director becomes vacant or unfilled whether by reason of death, resignation, removal, increase in the authorized number of directors or otherwise, such vacancy or vacancies may be filled, subject to the rights of the holders of any series of preferred stock then outstanding, by a majority vote of the directors then in office, although less than a quorum. Any director so elected by the board shall serve until the election and qualification of his successor or until his earlier resignation or removal as provided in these Bylaws. The directors may also reduce their authorized number by the number of vacancies in the board, in accordance with the provisions of the certificate of incorporation, provided such

reduction does not reduce the board to less than the minimum authorized by the laws of Delaware.

(b) Officers. The board of directors may at any time or from time to time fill any vacancy among the officers of the corporation.

SECTION 4.03. Removals.

(a) Directors. Except as may otherwise be prohibited or restricted under the laws of Delaware, the stockholders may, at any meeting called for such purpose, remove any director from office, but only for cause, as such term is defined in, and subject to the provisions of, Article 8 of the certificate of incorporation.

(b) Officers. Subject to the provisions of any validly existing agreement, the board of directors may at any meeting remove from office any officer, with or without cause, and may elect or appoint a successor; *provided* that if action is to be taken to remove the president the notice of meeting or waiver of notice thereof shall state that one of the purposes thereof is to consider and take action on his removal.

ARTICLE 5 CAPITAL STOCK

SECTION 5.01. Certificate of Stock. Every stockholder shall be entitled to a certificate or certificates for shares of the capital stock of the corporation in such form as may be prescribed or authorized by the board of directors, duly numbered and setting forth the number and kind of shares represented thereby. Such certificates shall be signed by the chairman of the board, the president or a vice president and by the treasurer or an assistant treasurer or by the secretary or an assistant secretary. Any or all of such signatures may be in facsimile if and to the extent authorized under the laws of Delaware.

In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate has ceased to be such officer, transfer agent or registrar before the certificate has been issued, such certificate may nevertheless be issued and delivered by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

SECTION 5.02. Transfer of Stock. Shares of the capital stock of the corporation shall be transferable only upon the books of the corporation upon the surrender of the certificate or certificates properly assigned and endorsed for transfer. If the corporation has a transfer agent or agents or transfer clerk and registrar of transfers acting on its behalf, the signature of any officer or representative thereof may be in facsimile.

The board of directors may appoint a transfer agent and one or more co-transfer agents and a registrar and one or more co-registrars of transfer and may make or authorize the transfer agents to make all such rules and regulations deemed expedient concerning the issue, transfer and registration of shares of stock.

SECTION 5.03. Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix in advance a record date which, in the case of a meeting, shall be not less than the minimum nor more than the maximum number of days prior to the scheduled date of such meeting permitted under the laws of Delaware and which, in the case of any other action, shall be not more than the maximum number of days prior to any such action permitted by the laws of Delaware.

(b) If no such record date is fixed by the board, the record date shall be that prescribed by the laws of Delaware.

(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the board of directors may fix a new record date for the adjourned meeting.

SECTION 5.04. Lost Certificates. In case of loss or mutilation or destruction of a stock certificate, a duplicate certificate may be issued upon such terms as may be determined or authorized by the board of directors or executive committee or by the president if the board or the executive committee does not do so.

ARTICLE 6

FISCAL YEAR, BANK DEPOSITS, CHECKS, ETC

SECTION 6.01. Fiscal Year. The fiscal year of the corporation shall commence or end at such time as the board of directors may designate.

SECTION 6.02. Bank Deposits, Checks, Etc. The funds of the corporation shall be deposited in the name of the corporation or of any division thereof in such banks or trust companies in the United States or elsewhere as may be designated from time to time by the board of directors or executive committee, or by such officer or officers as the board or executive committee may authorize to make such designations.

All checks, drafts or other orders for the withdrawal of funds from any bank account shall be signed by such person or persons as may be designated from time to time by the board of directors or executive committee or as may be designated by any officer or officers authorized by the board of directors or executive committee to make such designations. The signatures on checks, drafts or other orders for the withdrawal of funds may be in facsimile if authorized in the designation.

ARTICLE 7
BOOKS AND RECORDS

SECTION 7.01. *Place of Keeping Books.* Unless otherwise expressly required by the laws of Delaware, the books and records of the corporation may be kept outside of Delaware.

SECTION 7.02. *Examination of Books.* Except as may otherwise be provided by the laws of Delaware, the certificate of incorporation or these By-laws, the board of directors shall have power to determine from time to time whether and to what extent and at what times and places and under what conditions any of the accounts, records and books of the corporation are to be open to the inspection of any stockholder. No stockholder shall have any right to inspect any account or book or document of the corporation except as prescribed by statute or authorized by express resolution of the stockholders or of the board of directors.

ARTICLE 8
NOTICES

SECTION 8.01. *Requirements of Notice.* Whenever notice is required to be given by statute, the certificate of incorporation or these By-laws, it shall not mean personal notice unless so specified, but such notice may be given in writing by depositing the same in a post office, letter box, or mail chute, postpaid and addressed to the person to whom such notice is directed at the address of such person on the records of the corporation, or by any means of electronic communication, and such notice shall be deemed given at the time when the same shall be thus mailed or transmitted.

SECTION 8.02. *Waivers.* Any stockholder, director or officer entitled to notice pursuant to statute, the certificate of incorporation or these By-laws may, in writing, by cable, telegram or by any means of electronic communication, at any time waive any such notice. Such waiver of notice, whether given before or after any meeting or action, shall be deemed equivalent to notice. Presence of a stockholder either in person or by proxy at any stockholders' meeting and presence of any director at any meeting of the board of directors shall constitute a waiver of such notice as may be required by any statute, the certificate of incorporation or these By-laws.

ARTICLE 9
SEAL

The corporate seal of the corporation shall consist of two concentric circles between which shall be the name of the corporation and in the center of which shall be inscribed "Corporate Seal, Delaware".

ARTICLE 10
POWERS OF ATTORNEY

The board of directors or the executive committee may authorize one or more of the officers of the corporation to execute powers of attorney delegating to named representatives or agents power to represent or act on behalf of the corporation, with or without power of substitution.

In the absence of any action by the board or the executive committee, the president, any vice president, the secretary or the treasurer of the corporation may execute for and on behalf of the corporation waivers of notice of stockholders' meetings and proxies for such meetings in any company in which the corporation may hold voting securities.

ARTICLE 11
INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 11.01. Indemnification Granted. The corporation shall indemnify and hold harmless, to the full extent and under the circumstances permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended (but if permitted by applicable law, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), any person made or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer of the corporation or designated officer of an operating division or a subsidiary of the corporation, or is or was an employee or agent of the corporation, or is or was serving at the specific request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; *provided, however*, that the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors or is a proceeding to enforce such person's claim to indemnification pursuant to the rights granted by this By-law. The right to indemnification conferred in this Article 11 shall also include the right to be paid by the corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by the Delaware General Corporation Law ("**advancement of expenses**") upon receipt (unless the corporation upon authorization of the board of directors waives such requirement to the extent permitted by applicable law) of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this By-law or otherwise. The right to indemnification conferred in this Article 11 shall be a contract right.

The corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or a designated officer of an operating division or a subsidiary of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred

by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the laws of Delaware.

This right of indemnification, including the advancement of expenses, shall not be deemed exclusive of any other rights to which a person indemnified herein may be entitled by or under the certificate of incorporation, these By-laws, agreement, vote of stockholders or disinterested directors or otherwise, and shall continue as to a person who has ceased to be a director, officer, designated officer, employee or agent and shall inure to the benefit of the heirs, executors, administrators and other legal representatives of such person.

It is not intended that the provisions of this article be applicable to, and they are not to be construed as granting indemnity with respect to, matters as to which indemnification would be in contravention of the laws of Delaware or of the United States of America whether as a matter of public policy or pursuant to statutory provision.

Neither the amendment nor repeal of this Article 11, nor the adoption of any provision of the certificate of incorporation or these By-laws, nor, to the fullest extent permitted by the laws of Delaware, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

For purposes of these By-laws, "**subsidiary**" means any corporation, trust, limited liability company or other non-corporate business enterprise in which the corporation directly or indirectly holds ownership interests representing (A) more than 50% of the voting power of all outstanding ownership interests of such entity (other than directors' qualifying shares, in the case of a corporation) or (B) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of outstanding ownership interests upon a liquidation or dissolution of such entity.

SECTION 11.02. Miscellaneous. The board of directors may also on behalf of the corporation grant indemnification to any individual other than a person defined herein to such extent and in such manner as the board in its sole discretion may from time to time and at any time determine.

ARTICLE 12 **AMENDMENTS**

These By-laws may be amended or repealed either:

(a) at any meeting of stockholders at which a quorum is present by vote of at least sixty-six and two-thirds percent (66 - 2/3 %) of the number of shares of stock entitled to vote present in person or by proxy at such meeting as provided in Section 1.05 and Section 1.06 of these By-laws, or

(b) at any meeting of the board of directors by a majority vote of the directors then in office; *provided* the notice of such meeting of stockholders or directors or waiver of notice thereof contains a statement of the substance of the proposed amendment or repeal.