

**AMENDED & RESTATED
BY-LAWS
OF
EZENIA! INC.
(f/k/a VIDEOSERVER INC.)**

(hereinafter called the “**Corporation**”)

ARTICLE I

OFFICES

The registered office of the Corporation in the State of Delaware shall be located in the city of Wilmington, County of New Castle. The Corporation may establish or discontinue, from time to time, such other offices within or without the State of Delaware as may be deemed proper for the conduct of the Corporation’s business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

- 1 Place of Meetings. All meetings of stockholders shall be held at such place or places, within or without the State of Delaware, as may from time to time be fixed by the Board of Directors of the Corporation (the “**Board**” or “**Board of Directors**”), or as shall be specified in the respective notices, or waivers of notice, thereof.
- 2 Annual Meetings. The annual meeting of stockholders for the election of Directors and the transaction of other business shall be held on such date and at such place as may be designated by the Board of Directors. At each annual meeting the stockholders entitled to vote shall elect a Board of Directors and may transact such other proper business as may come before the meeting.
- 3 Special Meetings. A special meeting of the stockholders, or of any class thereof entitled to vote, for any purpose or purposes, may be called at any time by the Chairman of the Board, if any, or the President or by a majority of the Board of Directors pursuant to a resolution approved by the Board of Directors. Such written request shall state the purpose or purposes for which such meeting is to be called. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in a notice to be provided in accordance with Section 4 of this Article II.
- 4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, stating the place, date and hour of the meeting shall be given not less than ten (10) days or more than sixty (60) days before the date on

which the meeting is to be held to each stockholder of record entitled to vote thereat by delivering a notice thereof to him personally or by mailing such notice in a postage prepaid envelope, or by electronic transmission, directed to him as it appears on the records of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices intended for him be directed to another address, in which case such notice shall be directed to him at the address designated in such request. Notice shall not be required to be given to any stockholder who shall waive such notice in writing, whether prior to or after such meeting, or who shall attend such meeting in person or by proxy unless such attendance is for the express purpose of objecting, at the beginning of such meeting, to the transactions of any business because the meeting is not lawfully called or convened. Every notice of a special meeting of the stockholders, besides the time and place of the meeting, shall state briefly the objects or purposes thereof.

- 5 List of Stockholders. It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of the stock ledger and to prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in his name. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall be kept and produced at the time and place of the meeting during the whole time thereof and subject to the inspection of any stockholder who may be present. The original or duplicate 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.
- 6 Conduct of Meetings. Meetings of the stockholders shall be presided over by one of the following officers in the order of seniority and if present and acting – the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The Secretary of the Corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the Chairman of the meeting shall appoint a secretary of the meeting.
- 7 Quorum. At each meeting of the stockholders, the holders of record of one-third (1/3) of the issued and outstanding shares of common stock of the Corporation entitled to vote at such meeting, present in person or by proxy, shall constitute a quorum for the transaction of business, except where otherwise provided by law, the Certificate of Incorporation or these Amended and Restated By-laws (the “**By-laws**”). In the absence of a quorum, any officer entitled to preside at, or act as Secretary of, such meeting shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be constituted. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted at the meeting as

originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

- 8 Voting. Every stockholder of record who is entitled to vote shall at every meeting of the stockholders be entitled to one vote for each share of stock held by him on the record date; except, however, that shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held by the Corporation, shall neither be entitled to vote nor counted for quorum purposes. Nothing in this Section shall be construed as limiting the right of the Corporation to vote its own stock held by it in a fiduciary capacity. At all meetings of the stockholders, a quorum being present, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors, and any other action shall be decided by majority vote of the shares of stock entitled to vote held by stockholders present in person or by proxy, except as otherwise required by law or the Certificate of Incorporation. Unless demanded by a stockholder of the Corporation present in person or by proxy at any meeting of the stockholders and entitled to vote thereat or so directed by the chairman of the meeting or required by law, the vote thereat on any question need not be by written ballot. On a vote by written ballot, each ballot shall be signed by the stockholder voting, or in his name by his proxy, if there be such proxy, and shall state the number of shares voted by him and the number of votes to which each share is entitled.
- 9 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his or her attorney-in-fact. No proxy shall be voted or acted upon after three (3) years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.
- 10 Action Without A Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken only at such a meeting, and not by written consent of stockholders.

ARTICLE III

BOARD OF DIRECTORS

- 1 Powers. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors.
- 2 Election and Term. Except as otherwise provided by law, directors shall be elected at the annual meeting of stockholders and shall hold office until the next annual meeting of stockholders and until their successors are elected and qualify, or until they sooner die, are incapacitated, resign, retire are disqualified or are removed. At each annual meeting of the stockholders, at which a quorum is present, the persons receiving a plurality of the votes cast shall be the directors. Acceptance of the office of director may be expressed orally or in writing, and attendance at the organization meeting shall constitute such acceptance.
- 3 Number.
 - (a) The Board of Directors shall consist of not fewer than three (3) nor more than six (6) persons, as fixed by the Board of Directors from time to time; *provided, however*, that the number of director positions on the Board of Directors initially shall be three (3) and shall consist of the three (3) individuals (such individuals comprising the “**Initial Board**”) selected pursuant to the Joint Plan of Reorganization of Ezenia! Inc. Pursuant to Chapter 11 of the United States Bankruptcy Code which, pursuant to chapter 11 of the United States Code, 11 U.S.C. §§ 101-1532, was confirmed by an order dated June 2, 2015, of the United States Bankruptcy Court for the District of New Hampshire (including any supplements thereto, the “**Confirmed Plan**”).
 - (b) The Board of Directors, other than with respect to directors who may be elected by the holders of any class or series of stock have a preference over the Common Stock as to dividends or upon liquidation, shall be divided into three classes, designated as Class I, Class II and Class III, as nearly equal in number as possible, with the term of office of one class expiring each year; provided that (i) the initial term of the Class I Directors will expire at the first annual meeting of the Corporation’s stockholders following the effective date of the Confirmed Plan, (ii) the initial term of the Class II Directors will expire at the second annual meeting of the Corporation’s stockholders following the effective date of the Confirmed Plan and (iii) the initial term of the Class III Directors will expire at the third annual meeting of the Corporations stockholders following the effective date of the Confirmed Plan. Following the initial term of a particular class of Directors, such class of Directors will be elected to a three-year term. Members of the Board of Directors shall hold office until the annual meeting of stockholders at which their respective successors are elected and qualified or until their earlier death, incapacity, resignation, retirement, disqualification or removal. Any director may resign at any time upon written notice to the Corporation.
 - (c) Subject to the terms of any one or more classes or series of Preferred Stock, and except as the General Corporation Law of Delaware may otherwise require, in the interim

between annual meetings of stockholders or special meetings of stockholders called for the election of directors and/or for the removal of one or more directors and for the filling of any vacancy in that connection, any vacancies in the Board of Directors, including unfilled vacancies resulting from the increase in the number of directors or from the removal of directors for cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, filling of vacancies and other features of such directorships shall be governed by the terms of a certificate filed pursuant to the applicable law of the State of Delaware or the Second Amended and Restated Certificate of Incorporation of the Corporation applicable thereto.

4 Nomination of Directors.

(a) Nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, or (ii) by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 4 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 4 as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

(b) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 4. To be timely, a stockholder's notice for nominations to be made at a meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred fiftieth (150th) day prior to such meeting and not later than the one hundred twentieth (120th) day prior to such meeting or, if later, not earlier than ninety (90) days prior to such meeting and not later than the later of (i) sixty (60) days prior to the such meeting or (ii) ten (10) days following the date on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment of a meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 4 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as often (10) business days prior to the meeting or any adjournment or postponement thereof).

(d) Notwithstanding anything in these Amended and Restated Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 4. The chairman of the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 4, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded; *provided*, that any nominating person is informed of any deficiency in such nomination procedures as soon as practicable and given a reasonably opportunity to cure any such deficiency.

(e) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 4) to the Secretary at the principal executive offices of the Corporation a written consent to being named as a nominee and to serve as a director if elected.

(f) In addition to the requirements of this Section 4 with respect to any nomination proposed to be made at a meeting, each nominating person shall comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Securities and Exchange Commission thereunder with respect to any such nominations.

(g) The provisions set forth in this Section 4 may not be repealed or amended in any respect or in any manner, including by any merger or consolidation of the Corporation with any other corporation (other than a non-affiliated Transaction), unless the surviving corporation's certificate of incorporation or bylaws contains a provision to the same effect as this Section 4, except by the affirmative vote of the holders of a majority of the voting stock of the Corporation, subject to the terms of any series of preferred stock that may at the time be outstanding.

5 Quorum and Manner of Acting. Unless otherwise provided by law, the presence of 50% of the whole Board of Directors shall be necessary to constitute a quorum for the transaction of business; *provided*, that such percentage constitutes at least one-third of the whole Board. In the absence of a quorum, a majority of the directors present may

adjourn the meeting from time to time until a quorum shall be present. Notice of any adjournment meeting need not be given. At all meetings of directors, a quorum being present, all matters shall be decided by the affirmative vote of a majority of the directors present, except as otherwise required by law. The Board of Directors may hold its meetings at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine or as shall be specified in the respective notices, or waivers of notice, thereof.

- 6 Regular Meetings. Immediately after each annual meeting of stockholders for the election of the directors, the Board of Directors shall meet at such place within or without the State of Delaware as shall be fixed by the Board for the purpose of organization, the election of officers and the transaction of other business. Notice of such meeting need not be given.
- 7 Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, if any, the President or by a majority of the directors. Notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least two (2) days before the date on which the meeting is to be held, or shall be sent to him at such place by telex, electronic transmission or facsimile, or be delivered personally or by telephone, not later than the day before the day on which such meeting is to be held. Each such notice shall state the time and place of the meeting and, as may be required, the purposes thereof. Notice of any meeting of the Board of Directors need not be given to any director if he shall sign a written waiver thereof either before or after the time stated therein for such meeting, or if he shall be present at the meeting. Unless limited by law, the Certificate of Incorporation, these By-laws or the terms of the notice thereof, any and all business may be transacted at any meeting without the notice thereof having specifically identified the matters to be acted upon.
- 8 Removal of Directors. Except as otherwise required by law or the Certificate of Incorporation of the Corporation and subject to the rights, if any, of the holders of shares of preferred stock then outstanding, any director or the entire Board of Directors may be removed only for cause, at any time, by action of the holders of record of the majority of the issued and outstanding stock of the Corporation present in person or by proxy at a meeting of holders of such stock and entitled to vote thereon; *provided*, that whenever any director shall have been elected by the holders of any class or series of stock of the Corporation voting separately as a class or series under the terms of a certificate filed pursuant to the applicable law of the State of Delaware or the provisions of the Second Amended and Restated Certificate of Incorporation of the Corporation applicable thereto, such director may be removed and the vacancy filled only by the holders of that class or series of stock.
- 9 Resignations. Any Director of the Corporation may resign at any time by giving written notice to the Chairman of the Board, if any, the President, the Vice President or the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and,

unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

- 10 Vacancies. Subject to the terms of any one or more classes or series of preferred stock, and except as may be required by law or the Certificate of Incorporation of the Corporation, any newly created directorships and vacancies occurring in the Board by reason of death, resignation, retirement, disqualification or removal for cause, may be filled by the action of the holders of record of the majority of the issued and outstanding stock of the Corporation present in person or by proxy at a meeting of holders of such stock and entitled to vote thereon. Notwithstanding the foregoing, except as the GCL may otherwise require, in the interim between annual meetings of stockholders or special meetings of stockholders called for the election of directors and/or for the removal of one or more directors and for the filling of any vacancy in that connection, any vacancies in the Board of Directors, including unfilled vacancies resulting from the increase in the number of directors or from the removal of directors for cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director. Each director chosen to fill a vacancy shall hold office for the unexpired term in respect of which such vacancy has occurred and director chosen to fill a newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and, in each case, until his or her successor has been elected and qualifies, or until his or her sooner death, incapacitation, resignation, retirement, disqualification or removal for cause
- 11 Organization. The Chairman of the Board, if any, and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board, if any and if present and acting, or the President, if present and acting, or any other) director chosen by the Board shall preside.
- 12 Compensation of Directors. Directors, as such, shall not receive any stated salary for their services, but, by resolution of the Board, a specific sum fixed by the Board plus expenses may be allowed for attendance at each regular or special meeting of the Board; *provided, however,* that nothing herein contained shall be construed to preclude any director from serving the Corporation or any parent or subsidiary corporation thereof in any other capacity and receiving compensation therefor.
- 13 Delegation of Powers. Except as may otherwise be provided by the General Corporation Law of Delaware or the Corporation's Certificate of Incorporation, the Board of Directors may delegate any of its powers and authority to any committee of the Board of Directors.
- 14 Action Without a Meeting. Except as may otherwise be provided by the General Corporation Law of Delaware or the Corporation's Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the Board or committee, as the case may be, and such written consent is filed with the minutes or proceedings of the Board or committee.

- 15 Telephonic Participation in Meetings. Except as may otherwise be provided by the General Corporation Law of Delaware or the Corporation's Certificate of Incorporation, members of the Board of Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.
- 16 Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, 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. Each committee shall keep regular minutes and report to the Board of Directors when required.

ARTICLE IV

OFFICERS

- 1 Principal Officers. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary, and a Treasurer. The Board of Directors may also choose a Vice-Chairmen and/or one or more Vice-Presidents, Assistant Secretaries, and Assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these By-laws otherwise provide.
- 2 Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the organizational meeting thereof. Each such officer shall hold office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. All officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal.
- 3 Other Officers. In addition, the Board may elect, or the Chairman of the Board, if any, or the President may appoint, such other officers as they deem fit. Any such other officers chosen by the Board of Directors shall be subordinate officers and shall hold office for such period, have such authority and perform such duties as the Board of Directors, the Chairman of the Board, if any, or the President may from time to time determine.

- 4 Removal. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board of Directors.
- 5 Resignations. Any officer may resign at any time by giving written notice to the Chairman of the Board, if any, the President, the Secretary or the Board of Directors. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 6 Vacancies. A vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors in the manner prescribed in these By-laws for election or appointment to such office for such term.
- 7 Chairman of the Board. The Chairman of the Board of Directors, if one be elected, shall preside if present at all meetings of the Board of Directors. Except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board shall have and perform such other duties as from time to time may be assigned to him by the Board of Directors.
- 8 President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, be the chief executive officer of the Corporation, shall have general and active management of the business of the Corporation, and shall see that all orders and resolutions of the stockholders are carried into effect. The President may sign, with any other officer thereunto duly authorized, certificates representing stock of the Corporation, the issuance of which shall have been duly authorized (the signature to which may be a facsimile signature), and may sign and execute in the name of the Corporation, deeds, mortgages, bonds, agreements, other instruments duly authorized by the Board of Directors and other contracts requiring a seal, under the seal of the Corporation, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent, or shall be required by law to be otherwise executed.
- 9 Vice President. In the absence of the President or in the event of his inability or refusal to act, the Vice-President (or in the event there be more than one Vice-President, the Vice-Presidents in the order designated, or, in the absence of any designation, then, in the order of their election) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.
- 10 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to

the Corporation; shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors; shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements; shall render to the President and the Board of Directors at a regular meeting, or when the Board of Directors so require, an account of all of his transactions as Treasurer and of the financial condition of the Corporation; and, if required by the Board of Directors, shall give the Corporation a bond (which shall be renewed every six (6) years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

- 11 Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.
- 12 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required; shall give, or cause to be given, notice of all meetings of the stockholders; and shall perform such other duties as may be prescribed by the stockholders or President. The Secretary, or an Assistant Secretary, shall have custody of the corporate seal of the Corporation, and shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or such Assistant Secretary, as the case may be. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.
- 13 Assistant Secretary. The Assistant Secretary, or if there be more than one, the assistant secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.
- 14 Salaries. The salaries of the principal officers shall be fixed from time to time by the Board of Directors, and the salaries of any other officers may be fixed by the President.

ARTICLE V

SHARES AND THEIR TRANSFERS

- 1 Certificate for Stock. Every stockholder of the Corporation shall be entitled to a certificate or certificates, to be in such form as the Board of Directors shall prescribe, certifying the number of shares of the capital stock of the Corporation owned by him. No certificate shall be issued for partly paid shares.
- 2 Stock Certificate Signature. The certificates for such stock shall be numbered in the order in which they shall be issued and shall be signed by signed by, or in the name of the Corporation by, the President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, and its seal shall be affixed thereto. Any of or all the signatures on the certificate may be facsimile. In case any officer of the Corporation who has signed, or whose facsimile signature has been placed upon, any such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of issue.
- 3 Lost, Stolen, Destroyed or Mutilated Certificates. The Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.
- 4 Stock Ledger. A record shall be kept by the Secretary or by any other officer, employee or agent designated by the Board of Directors of the name of each person, firm or corporation holding capital stock of the Corporation, the number of shares represented by, and the respective dates of, each certificate for such capital stock, and in case of cancellation of any such certificate, the respective dates of cancellation.
- 5 Cancellation. Every certificate surrendered to the Corporation for exchange or registration of transfer shall be canceled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except, subject to Section 6 of this Article V, in cases provided for by applicable law.
- 6 Transfers of Stock. Subject to the limitations in the Certificate of Incorporation, stock of the Corporation shall be transferable in the manner prescribed by law and in these By-laws. Registrations of transfers of shares of the capital stock of the Corporation shall be made on the books of the Corporation by the registered holder thereof, or by his attorney

thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer clerk or a transfer agent appointed by the Board of Directors provided, and on surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation; *provided, however*, that whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

- 7 Regulations. The Board of Directors may make such rules and regulations as it may deem expedient, not inconsistent with the Certificate of Incorporation or these By-laws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any principal officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates of stock to bear the signature or signatures of any of them.
- 8 Record Dates. For the purpose of determining 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 date as a record date for any such determination of stockholders. Such record date shall not be more than sixty (60) or less than ten (10) days before the date of such meeting, or more than sixty (60) days prior to any other action. 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.
- 9 Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, 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, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

ARTICLE VI

NOTICES

- 1 Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-laws, to be given to any director, member of a committee or stockholder, such

notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally, by facsimile or by any other form of electronic transmission consented to by the director or stockholder to whom the notice is given, in accordance with applicable law. Notice to directors may also be given by telephone. Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice given by the Corporation under any provision of applicable law, the Certificate of Incorporation, or these By-laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 1 of Article VI, shall be deemed to have consented to receiving such single written notice.

2 Waivers of Notice.

(a) Except as otherwise specifically permitted by these By-laws, whenever any notice is required by law, the Certificate of Incorporation or these By-laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting, present by person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

(b) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-laws.

ARTICLE VII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

1 Right of Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), by reason of being or having been a director, manager or officer of the Corporation or any of its subsidiaries, or serving or having served at the request of the Corporation or any of its subsidiaries as a director, trustee, officer, manager, employee, or agent of another corporation or of a partnership, limited liability company, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan (an

“**Indemnitee**”), whether the basis of such proceeding is alleged action or failure to act in an official capacity as a director, trustee, officer, employee, or agent or in any other capacity while serving as a director, trustee, officer, manager, employee, or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto) (as used in this Article VII, the “**Delaware Law**”), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) incurred or suffered by such Indemnitee in connection therewith and such indemnification shall continue as to an Indemnitee who has ceased to be a director, trustee, officer, employee, or agent and shall inure to the benefit of the Indemnitee’s heirs, executors and administrators. The right to indemnification conferred in this Article VII shall be a contract right and shall include the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any such Proceeding in advance of its final disposition (an “**Advancement of Expenses**”); *provided, further, however*, that, if the Delaware Law so requires, an Advancement of Expenses incurred by an Indemnitee shall be made only upon delivery to the Corporation of an undertaking (an “**Undertaking**”), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a “**Final Adjudication**”) that such Indemnitee is not entitled to be indemnified for such expenses under this Article VII or otherwise.

- 2 Enforcement. If a claim under Section 1 of this Article VII is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be ten (10) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit.
- 3 Other Rights of Indemnification. The right of indemnification herein provided shall not be deemed exclusive of any other rights to which any such director or officer may now or hereafter be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person. Further, the Corporation hereby acknowledges that certain Indemnitees may have rights to indemnification and advancement of expenses provided by a stockholder of the Corporation or its affiliates (other than the Corporation and its subsidiaries) (directly or through insurance obtained by any such entity (collectively, the “**Stockholder Indemnitors**”). The Corporation hereby agrees and acknowledges that (i) it is the indemnitor of first resort with respect to the Indemnitees, (ii) subject to the other provisions of these By-Laws, it shall be required to advance the full amount of expenses incurred by Indemnitees, as required and to the extent permitted by law, the terms of the

Certificate of Incorporation, these By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise, without regard to any rights the Indemnitees may have against the Stockholder Indemnitors and (iii) to the extent permitted by law, except in the case of fraud by the Stockholder Indemnitors, the Corporation irrevocably waives, relinquishes and releases the Stockholder Indemnitors from any and all claims against the Stockholder Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Stockholder Indemnitors on behalf of the Corporation with respect to any claim for which the Indemnitees have sought indemnification from the Corporation shall affect the foregoing and the Stockholder Indemnitors shall have the right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Indemnitees against the Corporation. These rights shall be a contract.

- 4 Insurance. The Board of Directors of the Corporation may in its discretion authorize the Corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under this Article VII or under the Delaware Law.
- 5 Indemnification of Employees or Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the Advancement of Expenses, to any employee or agent of the Corporation or its subsidiaries to the fullest extent of the provisions of this Article VII with respect to the indemnification and Advancement of Expenses of directors and officers of the Corporation.
- 6 No Retroactive Effect. Notwithstanding anything to the contrary herein, any repeal or modification of any provision of these By-Laws, or any new provision added to these By-Laws, including this Article VII, shall not adversely affect any right or protection hereunder of any person in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed and even if such proceeding is not commenced or completed until after such repeal, modification or addition) arising out of, or related to, any act or omission occurring prior to the time of such repeal, modification or addition.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

- 1 Dividends. Subject to the provisions of the Certificate of Incorporation, the Board of Directors may, out of funds legally available therefor, at any regular or special meeting declare dividends upon the capital stock of the Corporation as and when they deem expedient. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from

time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the Board of Directors shall deem conducive to the interests of the Corporation.

- 2 Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.
- 3 Fiscal Year. The fiscal year of the Corporation shall end on the 31st day of December or such other date as shall be fixed by resolution of the Board of Directors.
- 4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware.” The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.
- 5 Records. The original, or attested copies, of the Certificate of Incorporation, By-Laws and records of all meetings of incorporators and stockholders, and the stock and transfer records, which shall contain the names of all stockholders and the record address and the amount of stock held by each, shall be kept at the principal office of the Corporation or at an office of its transfer agent or of the Secretary or any Assistant Secretary or of its resident agent or of its legal counsel. Such copies and records need not all be kept in the same office. They shall be available at all reasonable times to the inspection of any stockholder for any proper purpose but not to secure a list of stockholders or other information for the purpose of selling the same or information or copies thereof or of using the same for a purpose other than in the interest of the applicant, or a stockholder, relative to the affairs of the Corporation.

ARTICLE IX

AMENDMENTS

Subject always to any limitations imposed by the Corporation’s Certificate of Incorporation, these By-laws may be altered, amended, or repealed, or new by-laws may be adopted, only by (i) the affirmative vote of the holders of at least a majority of the outstanding voting stock of the Corporation; *provided*, that the affirmative vote of the holders of at least 67% of the outstanding voting stock of the Corporation shall be required for any such alteration, amendment, repeal, or adoption that would affect or be inconsistent with the provisions of Sections 3, 4 or 10 of Article II, Section 3(a), Section 3(b), Section 4(b), Section 8 and Section 14 of Article III, Article VII, Article X or this Article IX (in each case, in addition to any separate class vote that may be required pursuant to the terms of any then outstanding preferred stock of the Corporation), or (ii) resolution of the Board of Directors duly adopted by not less than a majority of the directors then constituting the full Board of Directors.

ARTICLE X

ADDITIONAL ADVANCE NOTICE REQUIREMENTS

1 Annual Meetings.

(a) At a meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, such business, other than director nominations, which are governed by Article III, Section 4, must be: (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or otherwise in accordance with Article II, Section 3, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before an annual meeting by a stockholder who is a stockholder of record of the Corporation at the time such notice of meeting is delivered, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1. In addition, any proposal of business must be a proper matter for stockholder action as a matter of Delaware law. For business to be properly brought before an annual meeting by a stockholder, the stockholder or stockholders of record intending to propose the business (the "**Proposing Stockholder**") must have given timely notice thereof pursuant to this Section 1(a), in writing to the secretary of the Corporation, even if such matter is already the subject of any notice to the stockholders or public disclosure from the Board of Directors. To be timely, a Proposing Stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not earlier than ninety (90) days prior to such meeting and not later than the later of (i) sixty (60) days prior to such meeting or (ii) ten (10) days following the date on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment of a meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(b) A Proposing Stockholder's notice to the secretary of the Corporation required by Section 1(a) must set forth as to each matter the Proposing Stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, and (ii) (A) the name and address of the Proposing Stockholder as they

appear on the Corporation's books and of the beneficial owner, if any, on whose behalf the nomination is being made, (B) the class and number of shares of the Corporation which are owned by the Proposing Stockholder (beneficially and of record) and owned by the beneficial owner, if any, on whose behalf the nomination is being made, as of the date of the Proposing Stockholder's notice, and a representation that the Proposing Stockholder will notify the Corporation in writing of the class and number of such shares owned of record and beneficially as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (C) a description of any agreement, arrangement or understanding with respect to such proposal between or among the Proposing Stockholder and any of its affiliates or associates, and any others (including their names) acting in concert with any of the foregoing, and a representation that the Proposing Stockholder will notify the Corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (D) a description of any agreement, arrangement or understanding (including 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 Stockholder's notice by, or on behalf of, the Proposing Stockholder or any of its affiliates or associates, the effect or intent of which is to mitigate loss, to manage risk or to benefit from share price changes, or increase or decrease the voting power of, the Proposing Stockholder or any of its affiliates or associates with respect to, shares of stock of the Corporation, and a representation that the Proposing Stockholder will notify the Corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (E) a representation that the Proposing Stockholder is 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 proposed the business specified in the notice, and (F) a representation whether the Proposing Stockholder intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve the proposal and/or otherwise to solicit proxies from stockholders in support of the proposal.

- 2 Special Meetings. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting or is otherwise properly brought before the meeting by or at the direction of the Board of Directors.
- 3 Effect of Noncompliance. Notwithstanding anything in these By-laws to the contrary, unless otherwise required by law, if a Proposing Stockholder intending to propose business at an annual meeting pursuant to this Article X does not provide the information

required under this Article X to the Corporation, as and when required, or the Proposing Stockholder (or a qualified representative of the Proposing Stockholder) does not appear at the meeting to present the proposed business, such business shall not be considered, notwithstanding that proxies in respect of such business may have been received by the Corporation. The requirements of this Article X shall apply to any business to be brought before an annual meeting by a stockholder whether or not such business is to be included in the Corporation's proxy statement for the meeting, if any.

- 4 Repeal or Amendment. Except as set forth in Article IX, the provisions set forth in this Article X may not be repealed or amended in any respect or in any manner, including by any merger or consolidation of the Corporation with any other corporation, unless the surviving corporation's certificate of incorporation or bylaws contain a provision to the same effect as this Article X.