

# Delaware

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*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AMGEN INC.", FILED IN THIS OFFICE ON THE SIXTH DAY OF MARCH, A.D. 2013, AT 6:41 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

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130284714

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0264267

DATE: 03-06-13

RESTATED CERTIFICATE OF INCORPORATION  
OF  
AMGEN INC.

AMGEN INC., a corporation (the "Corporation") organized and existing under the General Corporation Law of the State of Delaware, HEREBY CERTIFIES:

FIRST: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on October 31, 1986.

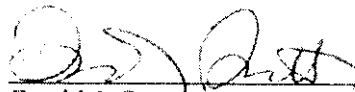
SECOND: The Restated Certificate of Incorporation of the Corporation in the form attached hereto as Exhibit A only restates and integrates, and does not further amend, the provisions of the Corporation's Certificate of Incorporation as heretofore amended or supplemented, and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

THIRD: This Restated Certificate of Incorporation has been duly adopted in accordance with Section 245 of the General Corporation Law of the State of Delaware.

FOURTH: The Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated by reference.

IN WITNESS WHEREOF, Amgen Inc. has caused this Restated Certificate of Incorporation to be signed by its duly authorized officer this 6 day of March, 2013.

AMGEN INC.



\_\_\_\_\_  
David J. Scott  
Senior Vice President, General Counsel and  
Secretary

AMGEN INC.

RESTATED CERTIFICATE OF INCORPORATION

FIRST: The name of this corporation is Amgen Inc.

SECOND: The address of the registered office of this corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle, and the name of its registered agent at that address is Corporation Service Company.

THIRD: The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the Delaware Corporations Code.

FOURTH: This corporation is authorized to issue two (2) classes of stock to be designated, respectively, "Preferred Stock" and "Common Stock." The total number of shares which this corporation is authorized to issue is Two Billion Seven Hundred and Fifty-Five Million (2,755,000,000) shares, of which Five Million (5,000,000) shares shall be Preferred Stock and Two Billion Seven Hundred and Fifty Million (2,750,000,000) shares shall be Common Stock, all with a par value of \$.0001.

The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is expressly authorized in the resolution or resolutions providing for the issue of any wholly unissued series of Preferred Stock, to fix, state and express the powers, rights, designations, preferences, qualifications, limitations and restrictions thereof, including, without limitation: the rate of dividends upon which and the time at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to other series of stock of this corporation, whether such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the voting rights, if any, to be provided for shares of such series; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of this corporation; the rights, if any, which the holders of shares of such series shall have to convert such shares into or exchange such shares for shares of stock of this corporation and the terms and conditions, including price and rate of exchange of such conversion or exchange; the redemption (including sinking fund provisions), if any, for shares of such series; and such other powers, rights, designations, preferences, qualifications, limitations and restrictions as the Board of Directors may desire to so fix. The Board of Directors is also expressly authorized to fix the number of shares constituting such series and to increase or decrease the number of shares of any series prior to the issue of shares of that series and to decrease, but not increase, the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding (in case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series).

FIFTH: (a) The number of directors which shall constitute the whole Board of Directors of this corporation shall be fixed by resolution of the Board of Directors from time to time, subject to the provisions of this Article FIFTH.

(b) At each annual meeting of stockholders of this corporation commencing at the annual meeting of stockholders next following the 2007 annual meeting of stockholders, all directors shall be elected for a term expiring at the next succeeding annual meeting of stockholders, by such stockholders having the right to vote on such election. The term of each director serving as of and immediately following the date of the 2007 annual meeting of stockholders shall expire at the next annual meeting of stockholders after such date, notwithstanding that such director may have been elected for a term that extended beyond the date of such annual meeting of stockholders. Each director shall serve until the director's term expires in accordance with the foregoing provisions or until the director's prior death, resignation, retirement, disqualification or removal from office; provided that each director shall serve notwithstanding the expiration of the director's term until the director's successor shall be duly elected and qualified.

(c) No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(d) Newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office (and not by stockholders), even though less than a quorum of the Board of Directors. The term of any director elected in accordance with the preceding sentence shall expire at the next annual meeting of the stockholders. Each such director shall serve until the director's term expires in accordance with the foregoing provision or until the director's prior death, resignation, retirement, disqualification or removal from office; provided that the director shall serve notwithstanding the expiration of the director's term until the director's successor shall be duly elected and qualified.

SIXTH: A director of this corporation shall not be personally liable to this 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 this 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 General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

SEVENTH: This corporation reserves the right at any time and from time to time to amend, alter, change, or repeal any provisions contained herein, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law, and all rights, preferences, and privileges of whatsoever nature conferred upon stockholders, directors, or any other persons whomsoever by or pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article.

EIGHTH: All the powers of this corporation, insofar as the same may be lawfully vested by this Certificate of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors, who shall have full control over the affairs of this corporation. In furtherance and not in limitation of the powers conferred by law and by this Certificate of Incorporation, the Board of Directors is hereby expressly authorized:

1. To make, amend, repeal, or otherwise alter the Bylaws of this corporation, without any action on the part of the stockholders; provided, however, that any Bylaws made by the directors and any and all powers conferred by any of said Bylaws may be amended, altered, or repealed by the stockholders.

2. To fix, determine, and vary the amount to be reserved or maintained for any proper purpose, and to fix the times for the declaration and payment of dividends.

3. To transfer all or any part of the assets of this corporation by way of mortgage, or in trust or in pledge, to secure indebtedness of this corporation, without any vote or consent of stockholders, and to authorize and to cause to be executed instruments evidencing any and all such transfers.

4. To sell, lease, or exchange any part less than all or less than substantially all of the property and assets, including good will and corporate franchises, of this corporation upon such terms and conditions as the Board of Directors may deem expedient for the best interests of this corporation, without any authorization, affirmative vote, or written consent or other action of the stockholders or any class thereof.

NINTH: (a) Vote Required for Certain Business Combinations.

(1) Vote for Certain Business Combinations. In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in paragraph (b) of this Article NINTH:

(i) any merger or consolidation of this corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder (as hereinafter defined) or (b) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition or security arrangement, investment, loan, advance, guarantee, agreement to purchase, agreement to pay, extension of credit, joint venture participation or other arrangement (in one transaction or a series of transactions) to, with or for the benefit of any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder involving any assets, securities or commitments of this corporation or any Subsidiary having an aggregate Fair Market Value equal to or greater than ten percent (10%) of the corporation's assets as set forth on the corporation's most recent audited, consolidated financial statements filed with the Securities and Exchange Commission; or

(iii) the adoption of any plan or proposal for the liquidation or dissolution of this corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholders; or

(iv) any reclassification of securities (including any reverse stock split) or recapitalization of this corporation, or any merger or consolidation of this corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of this corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder; or

(v) the issuance or transfer by this corporation or any Subsidiary (in a transaction or series of transactions) of any securities of this corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholders in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of Twenty Million Dollars (\$20,000,000) or more;

shall require the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors (the "Voting Stock") not then held by the Interested Stockholder, voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) Definition of "Business Combination." The term "Business Combination" as used in this Article NINTH shall mean any transaction which is referred to in any one or more clauses (i) through (v) of subparagraph (1) of this paragraph (a).

(b) When Subparagraph (a) Vote is Not Required. The provisions of paragraph (a) of this Article NINTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if all of the conditions specified in either of the following subparagraphs (b)(1) or (b)(2) are met:

(1) Approval by Disinterested Directors. The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).

(2) Price and Procedure Requirements. All of the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the higher of the following:

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested

Stockholder for any shares of Common Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher; and

(B) the Fair Market Value per share of Common Stock (1) on the Announcement Date or (2) on the date on which the Interested Stockholder became an Interested Stockholder (such latter date is referred to in this Article NINTH as the "Determination Date"), whichever is higher.

(ii) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any other class of outstanding Voting Stock shall be at least equal to the highest of the following (it being intended that the requirements of this subparagraph (b)(2)(ii) shall be required to be met with respect to every class of outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date, or (2) in the transaction in which it became an Interested Stockholder, whichever is higher;

(B) (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of this corporation; and

(C) the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(iii) The consideration to be received by holders of any particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it. The price determined in accordance with subparagraphs (b)(2)(i) and (b)(2)(ii) shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination of shares or similar event.

(iv) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder (or any subsequent provisions replacing the Exchange Act or such rules or regulations) shall be mailed to public stockholders of this corporation at least thirty (30) days prior to the consummation of such

Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

(v) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination:

(A) except as approved by a majority of the Board entitled to vote thereon (determined in a manner similar to that set forth in subparagraph (b)(1) above), there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock;

(B) there shall have been (I) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Board entitled to vote thereon (determined in a manner similar to that set forth in subparagraph (b)(1) above), and (II) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Board entitled to vote thereon (determined in a manner similar to that set forth in subparagraph (b)(1) above); and

(C) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(vi) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by this corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(c) Certain Definitions. For the purposes of this Article NINTH:

(1) A "person" shall mean any individual, firm, corporation or other entity.

(2) "Interested Stockholder" shall mean any person (other than this corporation or any Subsidiary) who or which:

(i) is the beneficial owner, directly or indirectly, of more than twenty percent (20%) of the voting power of the outstanding Voting Stock; or

(ii) is an Affiliate of this corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly of twenty percent (20%) or more of the voting power of then outstanding Voting Stock; or



(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock that were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933, as amended.

(3) A person shall be a "beneficial owner" of any Voting Stock:

(i) that such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(ii) that such person or any of its Affiliates or Associates has:

(A) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to an agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates or Associates until such tendered securities are accepted for purchase; or

(B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of any security if the agreement, arrangement or understanding to vote such security (I) arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the Exchange Act and (II) is not also then reportable on Schedule 13D under the Exchange Act (or a comparable or successor report); or

(iii) that is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except to the extent permitted by the provision of subparagraph (c)(3)(ii)(B) above) or disposing of any shares of Voting Stock.

(4) For the purposes of determining whether a person is an Interested Stockholder pursuant to subparagraph (c)(2), the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of subparagraph (c)(3), but shall not include any other shares of Voting Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(5) "Affiliate" or "Associates" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on January 1, 1988.

(6) "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by this corporation; provided, however,

that for the purposes of the definition of Interested Stockholder set forth in subparagraph (c)(2), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by this corporation.

(7) "Disinterested Director" means any member of the Board of Directors of this corporation (the "Board") who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board.

(8) "Majority of the Disinterested Directors" means a majority of the Disinterested Directors, whether or not the number of such Disinterested Directors then constitutes a quorum of the Board of Directors of this corporation.

(9) "Fair Market Value" means:

(i) in the case of stock, the average of the closing sale prices during the ten (10)-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such exchange, on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if the stock is not listed on any such exchange but is listed as a National Market System stock in the National Association of Securities Dealers, Inc. Automated Quotation System, as reported in that National Market System, if such stock is not listed on any such exchange or reported in such system the average of the closing bid quotations with respect to a share of such stock during the ten (10)-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board in good faith; and

(ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board in good faith.

(10) In the event of any Business Combination in which the corporation survives, the phrase "consideration other than cash to be received" as used in subparagraphs (b)(2)(i) and (ii) of this Article NINTH shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

(d) Powers of the Board of Directors. A majority of the Disinterested Directors of this corporation shall have the power and duty to determine for the purposes of this Article NINTH on the basis of information known to them after reasonable inquiry:

(i) whether a person is an Interested Stockholder;

(ii) the number of shares of Voting Stock beneficially owned  
by any person;

and (iii) whether a person is an Affiliate or Associate of another;

(iv) the Fair Market Value of the assets that are the subject of any Business Combination. A majority of the Disinterested Directors of this corporation shall have further power to interpret all of the terms and provisions of this Article NINTH. Any such determination made in good faith shall be binding and conclusive on all parties.

(e) No Effect on Fiduciary Obligations of Interested Stockholders or Directors.

(1) Nothing contained in this Article NINTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

(2) The fact that any Business Combination complies with the provisions of Section (b) of this Article NINTH shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the stockholders of the corporation, and such compliance shall not limit, prohibit or otherwise restrict in any manner the Board of Directors, or any members thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

(f) Amendment, Repeal, etc. Notwithstanding any other provisions of this Certificate of Incorporation or the bylaws of this corporation, the affirmative vote of the holders of at least a majority of the outstanding Voting Stock not then held by any Interested Stockholder, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with this Article NINTH.

TENTH: All actions required or permitted to be taken by stockholders at an annual or special meeting of stockholders of this corporation may be effected by the written consent of the holders of capital stock of this corporation entitled to vote; provided that no such action may be effected except in accordance with the provisions of this Article TENTH and applicable law.

(a) Request for Record Date. The record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be as fixed by the Board of Directors or as otherwise established under this Article TENTH. Any stockholder seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the secretary of this corporation and delivered to this corporation and signed by holders of record of at least fifteen percent (15%) in voting power of the then outstanding shares of capital stock of this corporation entitled to vote on the matter, request that a record date be fixed for such purpose. The written notice must contain the information set forth in paragraph (b) of this Article TENTH. Following delivery of the notice, the Board of Directors shall, by the later of (i) twenty (20) days after delivery of a valid request to set a record date and (ii) five (5) days after delivery of any information requested by this corporation to determine the validity of the request for a record date or to determine whether the action to which the request relates may be effected by written consent, determine the validity of the request and whether the request relates to an action that may be taken by written consent pursuant to this Article TENTH and, if appropriate, adopt a resolution fixing the record date for

such purpose. The record date for such purpose shall be no more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not precede the date such resolution is adopted. If the request has been determined to be valid and to relate to an action that may be effected by written consent pursuant to this Article TENTH or if no such determination shall have been made by the date required by this Article TENTH, and in either event no record date has been fixed by the Board of Directors, the record date shall be the first date on which a signed written consent relating to the action taken or proposed to be taken by written consent is delivered to this corporation in the manner described in paragraph (f) of this Article TENTH; provided that, if prior action by the Board of Directors is required under the provisions of Delaware law, the record date shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(b) Notice Requirements. Any notice required by paragraph (a) of this Article TENTH must be delivered by the holders of record of at least fifteen percent (15%) in voting power of the then outstanding shares of capital stock of this corporation entitled to vote on the matter (with evidence of such ownership attached to the notice), must describe the action proposed to be taken by written consent of stockholders and must contain (i) such information and representations, to the extent applicable, then required by this corporation's bylaws as though such stockholder was intending to make a nomination or to bring any other matter before a meeting of stockholders, other than as permitted to be included in this corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Securities Exchange Act of 1934 (the "Exchange Act") and (ii) the text of the proposal(s) (including the text of any resolutions to be adopted by written consent of stockholders and the language of any proposed amendment to the bylaws of this corporation). This corporation may require the stockholder(s) submitting such notice to furnish such other information as may be requested by this corporation to determine the validity of the request for a record date and to determine whether the request relates to an action that may be effected by written consent under this Article TENTH. In connection with an action or actions proposed to be taken by written consent in accordance with this Article TENTH, the stockholders seeking such action or actions shall further update and supplement the information previously provided to this corporation in connection therewith, if necessary, as required by Section 15 of this corporation's bylaws.

(c) Actions Which May Be Taken by Written Consent. Stockholders are not entitled to act by written consent if (i) the action relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) an identical or substantially similar item (a "Similar Item") is included in this corporation's notice as an item of business to be brought before a meeting of the stockholders that has been called but not yet held, and the date of which is within ninety (90) days of the delivery of a request to set a record date (and, for purposes of this clause (ii) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election of directors but the removal of directors without the election of any replacements shall not be deemed a "Similar Item" with respect to the election of directors) or (iii) such record date request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law.

(d) Manner of Consent Solicitation. Stockholders may take action by written consent only if consents are solicited by the stockholder or group of stockholders seeking to take action by written consent of stockholders from all holders of capital stock of this corporation

entitled to vote on the matter pursuant to and in accordance with this Article TENTH and applicable law.

(e) Date of Consent. Every written consent purporting to take or authorize the taking of corporate action (each such written consent is referred to in this paragraph and in paragraph (f) as a "Consent") must bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by paragraph (f) of this Article TENTH, Consents signed by a sufficient number of stockholders to take such action are so delivered to this corporation.

(f) Delivery of Consents. No Consents may be dated or delivered to this corporation or its registered office in the State of Delaware until 90 days after the delivery of a valid request to set a record date. Consents must be delivered to this corporation by delivery to its registered office in the State of Delaware or its principal place of business. Delivery must be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to this corporation of Consents, the secretary of this corporation, or such other officer of this corporation as the Board of Directors may designate, shall provide for the safe-keeping of such Consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all Consents and any related revocations and of the validity of the action to be taken by written consent as the secretary of this corporation, or such other officer of this corporation as the Board of Directors may designate, as the case may be, deems necessary or appropriate, including, without limitation, whether the stockholders of a number of shares having the requisite voting power to authorize or take the action specified in Consents have given consent; provided, however, that if the action to which the Consents relate is the removal or replacement of one or more members of the Board of Directors, the secretary of this corporation, or such other officer of this corporation as the Board of Directors may designate, as the case may be, shall promptly designate two persons, who shall not be members of the Board of Directors, to serve as inspectors ("Inspectors") with respect to such Consent and such Inspectors shall discharge the functions of the secretary of this corporation, or such other officer of this corporation as the Board of Directors may designate, as the case may be, under this Article TENTH. If after such investigation the secretary of this corporation, such other officer of this corporation as the Board of Directors may designate or the Inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the Consents, that fact shall be certified on the records of this corporation kept for the purpose of recording the proceedings of meetings of stockholders and the Consents shall be filed in such records. In conducting the investigation required by this section, the secretary of this corporation, such other officer of this corporation as the Board of Directors may designate or the Inspectors, as the case may be, may, at the expense of this corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(g) Effectiveness of Consent. Notwithstanding anything in this Certificate to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Article TENTH. If the Board of Directors shall determine that any request to fix a record date or to take stockholder action by written consent was not properly made in accordance

with, or relates to an action that may not be effected by written consent pursuant to, this Article TENTH, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Article TENTH, then the Board of Directors shall not be required to fix a record date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. No action by written consent without a meeting shall be effective until such date as the secretary of this corporation, such other officer of this corporation as the Board of Directors may designate, or the Inspectors, as applicable, certify to this corporation that the Consents delivered to this corporation in accordance with paragraph (f) of this section, represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with Delaware law and this Certificate of Incorporation.

(h) Challenge to Validity of Consent. Nothing contained in this Article TENTH shall in any way be construed to suggest or imply that the Board of Directors of this corporation or any stockholder shall not be entitled to contest the validity of any Consent or related revocations, whether before or after such certification by the secretary of this corporation, such other officer of this corporation as the Board of Directors may designate or the Inspectors, as the case may be, or to take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(i) Board-solicited Stockholder Action by Written Consent. Notwithstanding anything to the contrary set forth above, (x) none of the foregoing provisions of this Article TENTH shall apply to any solicitation of stockholder action by written consent by or at the direction of the Board of Directors and (y) the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.

**AMENDED AND RESTATED BYLAWS  
OF  
AMGEN INC.**

**(AS AMENDED and RESTATED February 15, 2016)**

**AMENDED AND RESTATED BYLAWS**

**OF**

**AMGEN INC.**

(a Delaware corporation)

**ARTICLE I**

**Offices**

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the place designated therefore in the Certificate of Incorporation.

Section 2. Other Offices. The corporation also shall have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and also may have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time designate or the business of the corporation may require.

**ARTICLE II**

**Corporate Seal**

Section 3. Corporate Seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III**

**Stockholders' Meetings**

Section 4. Place of Meetings. Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then in the manner provided in these Bylaws or, if not so provided, then at the office of the corporation required to be maintained pursuant to Section 2 hereof.

Section 5. Annual Meeting. The annual meeting of the stockholders of the corporation shall be held on any date and time which may from time to time be designated by the Board of Directors. At such annual meeting, Directors shall be elected and any other business may be transacted that may properly come before the meeting.



Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board of Directors (“Chairman of the Board”), the Chief Executive Officer, the President, or the Board of Directors at any time or, in accordance with subsection (b), by the Secretary at such place, date and time and for such purpose or purposes as shall be set forth in the notice of such meeting. At a special meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting pursuant to the corporation's notice of meeting.

(b) A special meeting of stockholders shall be called by the Secretary upon the written request of the holders of record of at least fifteen percent (15%) of the outstanding common stock of the corporation (the “Requisite Percent”), subject to the following:

(1) In order for a special meeting upon stockholder request (a “Stockholder Requested Special Meeting”) to be called, one or more requests for a special meeting (each, a “Special Meeting Request,” and collectively, the “Special Meeting Requests”) must be signed by the Requisite Percent of record holders of common stock (or their duly authorized agents) and must be delivered to the Secretary at the principal executive offices of the corporation by registered mail, return receipt requested; provided, however, that no Stockholder Requested Special Meeting shall be called pursuant to any Special Meeting Request unless one or more Special Meeting Requests relating to such meeting constituting the Requisite Percent have been delivered to the Secretary in compliance with all of the requirements of this Section 6 within forty-five (45) days of the earliest dated Special Meeting Request in respect of such Stockholder Requested Special Meeting. The Special Meeting Request(s) shall (i) set forth the name and address, as they appear on the corporation's books, of each stockholder of record signing such request (or on whose behalf such request is signed) and of the beneficial owner, if any, on whose behalf such request is made, a statement of the specific purpose or purposes of the special meeting, the matter or matters proposed to be acted on at the special meeting and the reasons for conducting such business at the special meeting, and the text of any proposal or business to be considered at the special meeting (including the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), (ii) bear the date of signature of each such stockholder (or duly authorized agent) signing the Special Meeting Request, and (iii) contain such other information and representations, to the extent applicable, regarding each stockholder submitting the Special Meeting Request, the beneficial owner, if any, at whose direction such request is being made, and the matters proposed to be acted on at the special meeting that would be required to be set forth in a stockholder's notice delivered pursuant to Section 15 hereof. Any requesting stockholder may revoke his Special Meeting Request at any time by written revocation delivered to the Secretary at the principal executive offices of the corporation. If a Special Meeting Request is made that complies with this Section 6 and all other applicable sections of these Bylaws, the Board of Directors may (in lieu of calling the Stockholder Requested Special Meeting) present a Similar Item (as defined below) for stockholder approval at any other meeting of stockholders that is held within one hundred twenty (120) days after the corporation receives such Special Meeting Request.

(2) The Secretary shall not be required to call a special meeting pursuant to a Special Meeting Request if (i) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) the Special Meeting Request is received by the corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of the next annual meeting of stockholders, (iii) an identical or substantially similar item (a “Similar Item”) was presented at any meeting of stockholders held within one hundred twenty (120) days prior to receipt by the corporation of such Special Meeting Request (and, for purposes of this clause (iii), the election of Directors shall be deemed a “Similar Item” with respect to all items of business involving the election or removal of Directors), (iv) the Board of Directors calls an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with the last sentence of clause (1) above, (v) a Similar Item is already included in the corporation's notice as an item of business to be brought before a meeting of the stockholders that has been called but not yet held, or (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or other applicable law.

(3) Except as provided in the next sentence, any special meeting shall be held at such date and time as may be fixed by the Board of Directors in accordance with these Bylaws and in compliance with Delaware General Corporation Law. In the case of a Stockholder Requested Special Meeting, such meeting shall be held at such date, time and place as shall be provided in the notice of such meeting, and the record date for stockholders entitled to notice of and to vote at such meeting shall be determined in accordance with Section 35 hereof; provided that, except as otherwise provided herein, the date of any Stockholder Requested Special Meeting shall be not more than 90 days after the Secretary's receipt of Special Meeting Request(s) constituting the Requisite Percent made in compliance with this Section 6 and all other applicable sections of these Bylaws.

(4) Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the valid Special Meeting Request(s) signed by the Requisite Percent of record holders of common stock; provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Stockholder Requested Special Meeting. If none of the stockholders who submitted the Special Meeting Request appears at or sends a qualified representative (as defined in Section 15) to the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request, the corporation need not present such matters for a vote at such meeting.

(5) Except as otherwise provided by law, in the case of a Stockholder Requested Special Meeting, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 6, and (ii) if any proposed nomination or business was not made or proposed in compliance with this Section 6, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

Section 7. Notice of Meetings. Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting, such notice to specify the place, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a 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. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum and Required Vote for Directors.

(a) At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Any shares, the voting of which at said meeting has been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at such meeting. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. All questions presented to the stockholders at a meeting at which a quorum is present, except for the election of Directors, shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange or securities market applicable to the corporation, or applicable law or pursuant to any regulation applicable to the corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

(b) Required Vote for Directors.

(1) Majority Vote. Each Director to be elected by stockholders shall be elected by the affirmative vote of a majority of the votes cast at any meeting for the election of Directors at which a quorum is present; provided, however, that if the Board of Directors determines that the number of nominees exceeds the number of Directors to be elected at such meeting (a "Contested Election") by the date that is ten (10) days prior to the date the corporation first mails its notice of meeting for such meeting as initially announced, each of the Directors to be elected at such meeting shall be elected by a plurality of the votes cast at any

meeting for the election of Directors at which a quorum is present. For purposes of this Section 8, 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. In a Contested Election, stockholders will be entitled to cast votes “for,” or to “withhold” votes from, the election of Directors but shall not be entitled to cast any other vote with respect to such election of Directors.

(2) Resignation. If a nominee for Director who is an incumbent Director is not elected at any meeting for the election of Directors at which a quorum is present and at which there was no Contested Election, the Director shall promptly tender his resignation to the Board of Directors after certification of the election results of the stockholder vote, which resignation shall be contingent upon the Board of Directors’ acceptance thereof. The Governance and Nominating Committee of the Board of Directors, or any successor committee thereto, shall make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors shall act on the tendered resignation, taking into account the Governance and Nominating Committee’s recommendation, and publicly disclose (by a press release, a filing with the Securities and Exchange Commission or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days after certification of the election results of the stockholder vote. The Governance and Nominating Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it deems appropriate and relevant, including, without limitation, the reasons that it believes are the reasons a majority of the votes cast at the meeting were voted “against” such Director’s election, the length of service and qualification of the Director whose resignation has been tendered, the Director’s contribution to the corporation, and the corporate governance guidelines of the Board of Directors.

(3) Acceptance/Rejection of Resignation. A Director who tenders his resignation in accordance with this Section 8 shall not participate in the recommendation of the Governance and Nominating Committee or the decision of the Board of Directors with respect to his resignation. If a majority of the members of the Governance and Nominating Committee have tendered their resignations, the Board of Directors shall appoint a committee of independent Directors who received the affirmative vote of a majority of the votes cast at the meeting for their election to consider the tendered resignations and make recommendations to the Board of Directors. If there are not two (2) such Directors, the entire Board of Directors shall act on the tendered resignations; provided, however, that no Director nominated for re-election who did not receive the affirmative vote of a majority of the votes cast at such meeting shall participate in or vote on the decision whether to accept or reject such Director’s tendered resignation. If an incumbent Director’s tendered resignation is not accepted by the Board of Directors, such Director shall continue to serve the full term for which he was nominated for re-election and until his successor is duly elected and qualified or until his earlier death, resignation, retirement, disqualification or removal from office. If an incumbent Director’s tendered resignation is accepted by the Board of Directors pursuant to this Section 8, or if a nominee for Director is not elected and the nominee is not an incumbent Director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the applicable provisions of the Certificate

of Incorporation or may decrease the size of the Board of Directors pursuant to the provisions of Section 16 of these Bylaws.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are present either in person or by proxy, or by the chairman of the meeting or the Board of Directors. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If the Board of Directors shall fix a new record date for determination of stockholders entitled to vote at an adjourned meeting, the Board of Directors shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as the record date determined for stockholders entitled to vote at the adjourned meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date fixed for stockholders entitled to vote at the meeting, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person so entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted on after three (3) years from its date of creation unless the proxy provides for a longer period. All elections of Directors shall be by written ballot, unless otherwise provided in the Certificate of Incorporation.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the Delaware General Corporation Law, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection (c) shall be a majority or even-split in interest.

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting (provided, however, if the record date for determining the stockholders

entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting, or (ii) during ordinary business hours at the principal place of business of the corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders referenced in this Section 12 or to vote in person or by proxy at any meeting of stockholders.

Section 13. Action Without Meeting. Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of such holders or may be effected by a consent in writing by stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation.

Section 14. Organization; Conduct of Meetings.

(a) At every meeting of stockholders, the Chairman of the Board, or, if the Chairman of the Board is absent, the Lead Director, or if the Lead Director is absent or one has not been appointed, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, the most senior Vice President present, or in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. 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: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if

the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such chairman should so determine, such chairman shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. 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 the rules of parliamentary procedure.

Section 15. Notifications of Nominations and Proposed Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) when specified in the corporation's proxy statement (or any supplement thereto), (B) when otherwise brought before the meeting by or at the direction of the Board of Directors or any committee thereof, (C) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 15 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 15 or (D) pursuant to Section 15A of these Bylaws.

(2) For any nominations or other business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely for nominations pursuant to clause (C) of paragraph (a)(1) of this Section 15, a stockholder's notice shall be delivered to the Secretary at the principal place of business of the corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the corporation). To be timely for nominations made pursuant to Section 15A of these Bylaws, such notice must be delivered in accordance with the requirements of Section 15A. In no event shall the postponement or adjournment of an annual meeting as to which the notice of meeting has been mailed commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice for nominations or other business pursuant to clause (C) of paragraph (a)(1) of this Section 15 shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election as a Director (i) the information regarding 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 rule or regulation subsequently adopted by the Securities and Exchange Commission applicable to the corporation), (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected, (iii)

whether such person, the stockholder or the beneficial owner, if any, on whose behalf the nomination is being made has received any financial assistance, funding or other consideration from any other person (a “Stockholder Associated Person”) in respect of the nomination (and the details thereof), and (iv) whether any nominee is eligible for consideration as an independent Director under the relevant standards contemplated by Item 407(a) of Regulation S-K adopted by the Securities and Exchange Commission (or the corresponding provisions of any rule or regulation subsequently adopted by the Securities and Exchange Commission applicable to the corporation);

(B) as to any other business that the stockholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the corporation, the language of the proposed amendment), (iii) the reasons why the stockholder favors the proposal, and (iv) whether the stockholder or the beneficial owner, if any, on whose behalf the proposal is being made has received any financial assistance, funding or other consideration from any other person (also a “Stockholder Associated Person”) in respect of the proposal (and the details thereof) and any material interest in such business of such stockholder, such beneficial owner and any Stockholder Associated Person; and

(C) as to the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, all nominees proposed by the stockholder giving the notice and any Stockholder Associated Persons (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, if any, (ii) a representation setting forth the class or series and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and any such beneficial owner, nominee and Stockholder Associated Person, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and any such beneficial owner, nominee and Stockholder Associated Person, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (iv) a representation whether and the extent to which any hedging, derivative or other transaction or agreement is in place or has been entered into with respect to the corporation or its securities (whether or not such transaction shall be subject to settlement in underlying shares of capital stock of the corporation), bank debt or credit ratings, within the past six months by, or for the benefit of, such stockholder and any such beneficial owner, nominee or Stockholder Associated Person, the effect or intent of which is to give rise to gain or loss as a result of changes in the trading price of the corporation's securities or bank debt or changes in the credit ratings for the corporation, its securities or bank debt (or, more generally, changes in the perceived creditworthiness of the corporation) or to increase or decrease the voting power of such stockholder and any such beneficial owner, nominee or Stockholder Associated Person, and if so, a summary of the material terms thereof, (v) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) 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 or adopt the proposal or elect the nominee and/or (B) otherwise to solicit proxies from stockholders in



support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of Directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act, and the rules and regulations promulgated thereunder. The foregoing notice requirements shall be deemed satisfied by a stockholder with respect to business other than nominations if the stockholder has notified the corporation of his intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act, and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting. The corporation may require any proposed nominee to furnish such other information, including completion of the corporation's Directors' questionnaire, as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Director of the corporation. Notwithstanding the foregoing, the information required by clauses (a)(2)(C)(ii), (a)(2)(C)(iii) and (a)(2)(C)(iv) of this Section 15 shall be updated by such stockholder and beneficial owner, if any, not later than ten (10) days after the record date for notice of the meeting at which the matter is to be presented (which record date shall be included in a public announcement released on or prior to the date thereof) to disclose such information as of such record date.

(3) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 15 to the contrary, in the event that the number of Directors to be elected to the Board of Directors is increased effective at the annual meeting and there is no public announcement by the corporation either disclosing the increased board size or naming all of the nominees at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 15 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal place of business of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(b) Special Meetings of Stockholders. 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. Nominations of persons for election to the Board of Directors may be made (i) by or at the direction of the Board of Directors or any committee thereof, (ii) in the case of a special meeting other than a Stockholder Requested Special Meeting, provided that the Board of Directors has determined that Directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 15 is delivered to the Secretary, who is entitled to vote at the meeting and upon such election and who complies with the notice requirements set forth in this Section 15, or (iii) in the case of a Stockholder Requested Special Meeting, as provided in Section 6 hereof. In the event the corporation calls a special meeting of stockholders as contemplated by the immediately preceding clause (ii) for the purpose of electing one or more Directors to the Board of Directors, any such stockholder entitled to vote in such election of Directors 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's notice required by paragraph (a)(2) of this Section 15 for nominations pursuant to clause (C) of paragraph (a)(1) of this Section 15 is delivered to the

Secretary at the principal place of business of the corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting as to which the notice of meeting has been mailed commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 15 or in Section 15A, as applicable (or, with respect to nominations at a Stockholder Requested Special Meeting, in accordance with the procedures set forth in Section 6 hereof) shall be eligible to be elected at an annual or (except with respect to Section 15A) a special meeting of stockholders of the corporation to serve as Directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 15 (or, with respect to business to be conducted at a Stockholder Requested Special Meeting, such business shall have been brought in accordance with Section 6 hereof). Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws (including whether the proposed business is a proper matter for stockholder action and whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(2)(C)(vi) of this Section 15) and (B) if any proposed nomination or business made or proposed pursuant to these Bylaws was not made or proposed in compliance with this Section 15 or Section 15A, as applicable, or upon a finding that proposed business is not a proper matter for stockholder action, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of these Bylaws, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of these Bylaws, to be considered a "qualified representative" of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 15 and Section 15A, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the corporation with the

Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) In making a nomination or proposing other business pursuant to clause (C) of paragraph (a)(1) of this Section 15, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 15. This Section 15 shall not apply to stockholder proposals (other than nominations) made pursuant to Rule 14a-8 under the Exchange Act (or any successor rule) and neither Section 15 nor Section 15A shall apply to the nomination of directors by the holders of any series of Preferred Stock pursuant to any applicable provisions of the Certificate of Incorporation.

Section 15A. Proxy Access for Director Nominations.

(a) Inclusion of Nominee in Proxy Statement. Subject to the provisions of this Section 15A, if expressly requested in the relevant Nomination Notice (as defined below), the corporation shall include in its proxy statement for any annual meeting of stockholders:

(1) the name of any person nominated for election to the Board of Directors (the “Nominee”), which shall also be included on the corporation’s form of proxy and ballot distributed at the corporation’s annual meeting, by any Eligible Holder (as defined below) or group of up to twenty (20) Eligible Holders that has (individually or collectively, in the case of a group) satisfied, as determined by the Board of Directors, all applicable conditions and complied with all applicable procedures set forth in this Section 15A (such Eligible Holder or group of Eligible Holders being a “Nominating Stockholder”);

(2) information about the Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement;

(3) a written statement included by the Nominating Stockholder (or, in the case of a group, a written statement of the group) in the Nomination Notice for inclusion in the proxy statement in support of the Nominee’s election to the Board of Directors (subject, without limitation, to clause (e)(2) of this Section 15A), if such statement does not exceed five hundred (500) words and shall fully comply with Section 14 of the Exchange Act and the rules and regulations thereunder including Rule 14a-9 (the “Statement”); and

(4) any other information that the corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of the Nominee, including, without limitation, any statement in opposition to the nomination and any of the information provided by the Nominating Stockholder pursuant to this Section 15A.

(b) Maximum Number of Nominees.

(1) The corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Nominees than that number of Directors constituting twenty percent (20%) of the total number of Directors on the last day on which a Nomination

Notice may be submitted pursuant to this Section 15A (rounded down to the nearest whole number, but not less than two) (the “Maximum Number”). The Maximum Number for a particular annual meeting shall be reduced by Nominees who are subsequently withdrawn or that the Board of Directors itself decides to nominate for election at such annual meeting. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline set forth in subsection (d) of this Section 15A but before the date of the annual meeting, and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of Directors in office as so reduced.

(2) Any Nominating Stockholder submitting more than one Nominee for inclusion in the proxy materials pursuant to this Section 15A shall rank such Nominees based on the order that the Nominating Stockholder desires such Nominees to be selected for inclusion in the proxy statement in the event that the number of Nominees pursuant to this Section 15A for any annual meeting of stockholders exceeds the Maximum Number. In the event that the number of Nominees submitted by a Nominating Stockholder exceeds the Maximum Number, the highest ranking Nominee submitted by a Nominating Stockholder pursuant to this Section 15A will be selected for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder’s Nomination Notice, with the process repeated if the Maximum Number is not reached after the highest ranking Nominee who meets the requirements of this Section 15A from each Nominating Stockholder has been selected. If, after the deadline for submitting a Nomination Notice as set forth in subsection (d) of this Section 15A, a Nominating Stockholder becomes ineligible or withdraws its nomination or a Nominee becomes unwilling or unable to serve on the Board of Directors, whether before or after the mailing of the definitive proxy statement, then the nomination shall be disregarded, and the corporation (A) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (B) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Nominee will not be included as a Nominee in the proxy statement or on any ballot or form of proxy and such Nominee’s election will not be voted on at the annual meeting.

(c) Eligibility of Nominating Stockholder.

(1) An “Eligible Holder” is a person who has either (A) been a record holder of the shares of common stock used to satisfy the eligibility requirements in this subsection (c) continuously for the three-year period specified in clause (c)(2) of this Section 15A below or (B) provided to the Secretary, within the time period referred to in subsection (d) of this Section 15A, evidence of such person’s continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board of Directors or its designee, acting in good faith, determines would be deemed acceptable for purposes of a stockholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule). Notwithstanding the foregoing, any otherwise Eligible Holder (including each fund that is a member of a group of funds as described in (c)(2) and/or beneficial owner whose stock ownership has been counted for the purposes of qualifying as an Eligible Holder) who nominates

a Nominee that is elected to the Board of Directors shall not be permitted to utilize the provisions set forth in this Section 15A during the following two annual meetings after such Nominee is elected to the Board of Directors.

(2) An Eligible Holder or group of up to twenty (20) Eligible Holders may submit a nomination in accordance with this Section 15A only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the common stock of the corporation throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of such shares through the date of the annual meeting. A group of funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer, or (C) a “group of investment companies,” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended (or any successor rule) shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the corporation that demonstrates that the funds are under common management and investment control. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 15A, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Holders shall only be deemed to own the shares held by the remaining members of the group.

(3) The “Minimum Number” means three percent (3%) of the shares of common stock of the corporation calculated as of the most recent date for which the total number of outstanding shares of common stock of the corporation is given in any filing by the corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(4) For purposes of this Section 15A, an Eligible Holder “owns” only those outstanding shares of the corporation as to which the Eligible Holder possesses both: (A) the full voting and investment rights pertaining to the shares; and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (i) sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, including any short sale that is not closed out, (ii) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell, or (iii) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder’s or any of its affiliates’ full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by

such Eligible Holder or any of its affiliates. An Eligible Holder “owns” shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of Directors and possesses the full economic interest in the shares. An Eligible Holder’s ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder’s ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five business days’ notice and has recalled such loaned shares as of the record date for determining the stockholders entitled to vote at the annual meeting and holds such shares through the date of the annual meeting. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of the corporation are “owned” for these purposes shall be determined by the Board of Directors. A Nominating Stockholder shall include in its Nomination Notice the number of shares it is deemed to “own” for purposes of this Section 15A.

(5) No person shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(d) Nomination Notice. To nominate a Nominee, the Nominating Stockholder must, no earlier than the close of business one hundred fifty (150) calendar days and no later than the close of business one hundred twenty (120) calendar days before the anniversary of the date that the corporation mailed its proxy statement for the prior year’s annual meeting of stockholders, submit to the Secretary at the principal executive office of the corporation in accordance with this subsection (d) of Section 15A all of the following information and documents (collectively, the “Nomination Notice”); provided, however, that if (and only if) the annual meeting is not scheduled to be held within a period that commences thirty (30) days before such anniversary date and ends seventy (70) days after such anniversary date (an annual meeting date outside such period being referred to herein as an “Other Meeting Date”), the Nomination Notice shall be given in the manner provided herein not earlier than the close of business on the 120th day prior to such Other Meeting Date and not later than the close of business on the later of the 90th day prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed:

(1) A copy of the Schedule 14N (or any successor form) relating to the Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with the Securities and Exchange Commission rules;

(2) A written notice of the nomination of such Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including, in the case of a group, each group member):

(A) the information, representations and agreements required with respect to the nomination of Directors pursuant to Section 15 of these Bylaws;

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

(C) a representation and warranty that the Nominating Stockholder did not acquire, and is not holding, securities of the corporation for the purpose or with the intent of influencing or changing control of the corporation;

(D) a representation and warranty that the Nominee (i) does not have any direct or indirect relationship with the corporation other than those relationships that have been deemed categorically immaterial pursuant to the corporation's publicly disclosed standards used by the Board of Directors as most recently published on the corporation's website in determining and disclosing the independence of the Directors and otherwise qualifies as independent under the rules of the primary stock exchange on which the corporation's securities are traded and any applicable rules of the Securities and Exchange Commission, (ii) meets the audit committee independence requirements under the rules of any stock exchange on which the corporation's securities are traded, (iii) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule), (iv) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision), (v) meets the director qualifications set forth in the corporation's Board of Directors Guidelines for Director Qualifications and Evaluations as most recently published on the corporation's website, and (vi) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Nominee;

(E) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in subsection (c) of this Section 15A;

(F) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in subsection (c) of this Section 15A through the date of the annual meeting;

(G) details of any position of the Nominee as an officer or director of any competitor (that is, any entity that produces products, is developing product candidates or provides services that compete with, or could compete with, or are alternatives, or could be alternatives, to the products produced, product candidates being developed or services provided by the corporation or its affiliates) of the corporation, within the three years preceding the submission of the Nomination Notice;

(H) a representation and warranty that the Nominating Stockholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(l)(2)(iv)) (or any successor rules) with respect to the annual meeting, other than with respect to the Nominee or any nominee of the Board of Directors;

(I) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the corporation's proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting;

(J) if desired, the Statement; and

(K) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(3) An executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, acting in good faith, pursuant to which the Nominating Stockholder (including each group member) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) to file any written solicitation or other communication with the corporation's stockholders relating to one or more of the Directors or director nominees or any Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder with the corporation, its stockholders or any other person in connection with the nomination or election of Directors, including, without limitation, the Nomination Notice;

(D) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the corporation and each of its Directors, officers and employees individually or jointly against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its Directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder to comply with, or any breach or alleged breach of, its obligations, agreements or representations under this Section 15A; and

(E) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any group member), with the corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or, due to a subsequent development, omits a material fact necessary to make the statements made not misleading), or that the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in subsection (c) of this Section 15A, to promptly (and in any event within forty eight (48) hours of discovering such misstatement or



omission) notify the corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission; and

(4) An executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, acting in good faith, by the Nominee:

(A) that the Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the corporation's Corporate Governance Principles, the Board of Directors Code of Conduct, these Bylaws and any other corporation policies and guidelines applicable to Directors as most recently published on the corporation's website;

(B) that the Nominee is not and will not become a party to (i) any compensatory payment or other financial agreement, arrangement or understanding with any person or entity in connection with service or action as a Nominee that has not been disclosed to the corporation and is not and will not become a party to any agreement, arrangement, or understanding with any person other than the corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a Director, (ii) any agreement, arrangement or understanding with any person or entity as to how the Nominee would vote or act on any issue or question as a Director (a "Voting Commitment") that has not been disclosed to the corporation, or (iii) any Voting Commitment that could limit or interfere with the Nominee's ability to comply, if elected as a Director, with its fiduciary duties under applicable law; and

(C) that the Nominee will provide facts, statements and other information in all communications with the corporation and its stockholders that are or will be true and correct in all material respects and shall not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

At the request of the corporation, the Nominee must submit all completed and signed questionnaires required of Directors of the corporation. The corporation may request such additional information as necessary to permit the Board of Directors to determine if the Nominee is independent under the listing standards of the principal U.S. exchange upon which the common stock of the corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's Directors.

The information and documents required by this subsection (d) to be provided by the Nominating Stockholder shall be (i) provided with respect to and executed by each group member, in the case of information applicable to group members and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this subsection (d) (other than such information and documents

contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary.

(e) Exceptions.

(1) Notwithstanding anything to the contrary contained in this Section 15A, the corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Nominee, if:

(A) the corporation receives a notice (whether or not subsequently withdrawn) pursuant to Section 15 that a stockholder intends to nominate a candidate for Director at the annual meeting;

(B) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 15A or the Nominating Stockholder withdraws its nomination;

(C) the Nominee's nomination or election to the Board of Directors would result in the corporation violating or failing to be in compliance with these Bylaws or the Certificate of Incorporation or any applicable law, rule or regulation to which the corporation is subject, including any rules or regulations of any stock exchange on which the corporation's securities are traded;

(D) the Nominee was nominated for election to the Board of Directors pursuant to this Section 15A at one of the corporation's two preceding annual meetings of stockholders and either withdrew or became ineligible or unavailable or received a vote of less than twenty percent (20%) of the shares of common stock entitled to vote for such Nominee;

(E) the Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or

(F) the Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in subsection (c) of this Section 15A, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statement not misleading), the Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Nominee under this Section 15A; and

(2) Notwithstanding anything to the contrary contained in this Section 15A, the corporation may omit from its proxy statement, or may supplement or correct, any

information, including all or any portion of the statement in support of the Nominee included in the Nomination Notice, if the Board of Directors in good faith determines that (A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading, (B) such information directly or indirectly impugns character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person, or (C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation.

The Company may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

This Section 15A shall be the exclusive method for stockholders to include nominees for director in the corporation's proxy materials.

The Board of Directors (and any other person or body authorized by the Board of Directors) shall have the power and authority to interpret this Section 15A and to make any and all determinations necessary or advisable to apply this Section 15A to any persons, facts or circumstances, including but not limited to the power to determine (i) whether one or more stockholders qualifies as an Eligible Holder, (ii) whether a Nomination Notice complies with this Section 15A and has otherwise met the requirements of this Section 15A, (iii) whether a Nominee satisfies the qualifications and requirements in this Section 15A, and (iv) whether any and all requirements of this Section 15A have been satisfied. Any such interpretation or determination adopted in good faith by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be binding on all persons, including the corporation and its stockholders (including any beneficial owners).

## **ARTICLE IV**

### **Directors**

Section 16. Number. The authorized number of Directors of the corporation shall be fixed from time to time by the Board of Directors. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause the Directors shall not have been elected at any annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 17. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 18. Resignation. Any Director may resign at any time by notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specified a later effective date or an effective date determined upon the happening of an event or events. When one or more Directors shall resign

from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 19. Meetings.

(a) Annual Meetings. The annual meeting of the Board of Directors shall be held on any date and time and at such place which may from time to time be designated by resolution of the Board of Directors. Such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Regular Meetings. Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 hereof. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors also may be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the unanimous consent of Directors.

(c) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Directors.

(d) Telephone Meetings. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) Notice of Meetings. Written notice of the time and place of all regular and special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director 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.

(f) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the Directors not present sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 20. Quorum and Voting.

(a) Quorum. Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of Directors fixed from time to time in accordance with Section 16 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum is present or otherwise, a majority of the Directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) Majority Vote. At each meeting of the Board of Directors at which a quorum is present all questions and business shall be determined by a vote of a majority of the Directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

Section 21. Action without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings (or electronic transmission or transmissions) are filed with the minutes of proceedings of the Board of Directors or committee in accordance with applicable law.

Section 22. Fees and Compensation. Directors shall not receive any stated salary for their services as Directors, but by resolution of the Board of Directors a fixed fee, with or without expense of attendance, may be allowed for serving on the Board of Directors and/or attendance at each meeting and at each meeting of any committee of the Board of Directors. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, consultant, employee, or otherwise and receiving compensation therefore.

Section 23. Committees.

(a) Executive Committee. The Board of Directors may by resolution passed by a majority of the whole Board of Directors, appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and specifically granted by the Board of Directors, shall have and may exercise when the Board of Directors is not in session all powers of the Board of Directors in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to amend the Certificate of Incorporation (except that the committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided by law, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale,

lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution or to amend these Bylaws.

(b) Other Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors, and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of subsections (a) or (b) of this Section 23, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. 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 the committee, and, in addition, in the absence or disqualification of any member of a committee, 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 such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 23 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at the principal place of business of the corporation required to be maintained pursuant to Section 2 hereof, or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any Director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director attends such special 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. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 24. Organization. At every meeting of the Directors, the Chairman of the Board, or, if the Chairman of the Board is absent, the Lead Director, or if the Lead Director is absent or one has not been appointed, the Chief Executive Officer, or if the Chief Executive Officer is absent, the President, or if the President is absent, the most senior Vice President, or, in the absence of any such officer, a chairman of the meeting chosen by a majority of the Directors present, shall preside over the meeting. The Secretary, or in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

## ARTICLE V

### Officers

#### Section 25. Officers.

(a) Officers Elected by the Board of Directors. The Board of Directors shall elect the Chairman of the Board, the Chief Executive Officer, the President and Chief Operating Officer, one or more Vice Presidents, the Chief Financial Officer and the Secretary of the corporation at each annual meeting of the Board of Directors. The Board of Directors also may appoint such other officers and agents with such powers and duties as it shall deem necessary. The order of the seniority of the Vice Presidents shall be in the order of their nomination, unless otherwise determined by the Board of Directors. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate.

(b) Other Officers. The Chief Executive Officer shall have the power to appoint in writing such additional vice presidents of the corporation as he shall deem necessary or appropriate, with such titles as appropriately reflect the authority and responsibility of such officers. Such appointment shall become effective upon the delivery of such writing to the Secretary. The Chief Executive Officer shall annually appoint officers on the date of the annual meeting of the Board of Directors.

(c) In General. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. For purposes of these Bylaws, unless specified otherwise herein, references to “officers” shall refer to both officers elected by the Board of Directors and officers appointed by the Chief Executive Officer.

#### Section 26. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, or until such officer’s earlier resignation or removal. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. In addition, each officer appointed by the Chief Executive Officer shall also hold office at the pleasure of the Board of Directors or the Chief Executive Officer and until his successor shall have been appointed by the Chief Executive Officer, or until such officer’s earlier resignation or removal. If the office of any officer

appointed by the Chief Executive Officer becomes vacant for any reason, the vacancy may also be filled by the Chief Executive Officer.

(b) Duties of Chairman of the Board. The Chairman of the Board, subject to the control of the Board of Directors, shall perform such duties and functions as are necessary to further the strategic direction of the corporation. Unless the Board of Directors designates another person, the Chairman of the Board shall preside at all meetings of the stockholders, the Board of Directors and of the Executive Committee.

(c) Duties of Chief Executive Officer. The Chief Executive Officer, upon the absence or disability of the Chairman of the Board and the Lead Director, or in the event of a vacancy in the office of Chairman of the Board, and if no Lead Director has been appointed, shall exercise all the powers of Chairman of the Board as provided in subsection 26(b). The Chief Executive Officer shall, subject to the control of the Board of Directors, exercise general management and supervision over the property, affairs and business of the corporation and shall authorize officers of the corporation, other than the Chairman of the Board, to exercise such powers as he, in his discretion, may deem to be in the best interests of the corporation. The Chief Executive Officer shall in general perform all duties incident to general management and supervision of the corporation and such other duties as the Board of Directors shall designate from time to time.

(d) Duties of President and Chief Operating Officer. The President and Chief Operating Officer, at the request of the Chief Executive Officer or upon his absence or disability, or in the event of a vacancy in the office of Chief Executive Officer, shall exercise all the powers of Chief Executive Officer as provided in subsection 26(c). The President and Chief Operating Officer shall, subject to the control of the Chief Executive Officer and the Board of Directors, exercise general management and supervision over the operating functions of the corporation, and shall authorize officers of the corporation, other than the Chairman of the Board and the Chief Executive Officer, to exercise such powers with respect to the operating function of the corporation as he, in his discretion, may deem to be in the best interests of the corporation. The President and Chief Operating Officer shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The offices of President and Chief Operating Officer may be held by either the same person or different persons. If held by different persons, each such officer shall perform the duties customarily incident to his office unless otherwise determined by the Board of Directors. In the event the offices of President and Chief Operating Officer are held by two different persons, the office of President shall rank superior to the office of Chief Operating Officer.

(e) Duties of Vice Presidents. The Vice Presidents, in the order of their seniority, may assume and perform the duties of the President and Chief Operating Officer in the absence or disability of the Chief Executive Officer and the President and Chief Operating Officer or whenever the offices of Chief Executive Officer and President and Chief Operating Officer are vacant. The Vice Presidents shall perform other duties commonly incident to their office and also shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the President and Chief Operating Officer shall designate from time to time.



(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time. The Chief Executive Officer may direct any Assistant Chief Financial Officer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Assistant Chief Financial Officer shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(g) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors, and shall record all acts and proceedings thereof in the minute books of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders, and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given to him in these Bylaws and other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(h) Duties of Other Officers. In addition to any other powers set forth in these Bylaws, officers elected or appointed by the Board of Directors or the Chief Executive Officer, respectively, shall perform the duties customarily incident to such officer's position and such other duties as may from time to time be assigned to such officer by the Board of Directors or the Chief Executive Officer, as applicable.

Section 27. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the Chief Executive Officer or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective.

Section 28. Removal. Any officer may be removed from office at any time, with or without cause, by the vote or written consent of a majority of the Directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors. In addition, any officer appointed by the Chief Executive

Officer may be removed from office at any time, with or without cause, by the Chief Executive Officer.

Section 29. Compensation. The compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a Director of the corporation. In addition, the compensation of officers appointed by the Chief Executive Officer may also be fixed from time to time by the Chief Executive Officer.

## ARTICLE VI

### **Execution of Corporate Instruments and Voting of Securities Owned by the Corporation**

Section 30. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board, or the Chief Executive Officer, or the President or any Vice President, and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Section 31. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations or entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized to do so by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

### Shares of Stock

Section 32. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman of the Board or any vice-chairman of the Board of Directors, or the President or any Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation representing the number of shares registered in certificate form. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 33. Lost Certificates. The corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the corporation alleged to have been lost, stolen or destroyed, and the corporation may require the owner of such lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against the corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 34. Transfers. Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

Section 35. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall, unless otherwise required by law, be not more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting, unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors in respect of a meeting, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next

preceding the day on which the meeting is held. 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 determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the corporation may determine the stockholders 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 a record date, which shall not be more than sixty (60) days prior to such action. If no such record date is so fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 36. Registered Stockholders. 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 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 the laws of Delaware.

Section 37. Issuance, Transfer and Resignation of Shares. The Board of Directors may make such rules and regulations, not inconsistent with law or with these Bylaws, as it may deem advisable concerning the issuance, transfer and registration of certificates for shares of the capital stock of the corporation. The Board of Directors may appoint a transfer agent or registrar of transfers, or both, and may require all certificates for shares of the corporation to bear the signature of either or both.

## ARTICLE VIII

### Other Securities of the Corporation

Section 38. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be

authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## **ARTICLE IX**

### **Dividends**

Section 39. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 40. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## **ARTICLE X**

### **Fiscal Year**

Section 41. Fiscal Year. Unless otherwise fixed by resolution of the Board of Directors, effective as of January 1, 1992, the fiscal year of the corporation shall end on the 31st day of the month of December in each calendar year.

## **ARTICLE XI**

### **Indemnification of Directors, Officers Employees and Other Agents**

Section 42. Indemnification of Directors, Officers, Employees and Other Agents.

(a) Directors and Officers. The corporation shall indemnify its Directors and officers to the full extent permitted 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 said Law

permitted the corporation to provide prior to such amendment); provided, however, that the corporation shall not be required to indemnify any Director or officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law, or (iv) such indemnification is required to be made under subsection (d) of this Article XI.

(b) Other Employees and Other Agents. The corporation shall have the power to indemnify its other employees and other agents as set forth in the Delaware General Corporation Law.

(c) Expenses. The corporation shall to the fullest extent not prohibited by applicable law advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of any such proceeding, promptly following request therefore, all expenses incurred by any Director or officer in connection with such proceeding upon receipt of any undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Section 42 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (d) of this Section 42, no advance shall be made by the corporation to an officer of the corporation in any action, suit or proceeding, whether civil, criminal, administrative or investigate, if a determination is reasonably and promptly made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion that, the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not reasonably believe to be in or not opposed to the best interests of the corporation, or, with respect to any criminal action or proceeding, such person believed or had reasonable cause to believe his conduct was unlawful, except by reason of the fact that such officer is or was a Director of the corporation or is or was serving at the request of the corporation as a Director of another corporation, joint venture, trust or other enterprise in which event this paragraph shall not apply.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances under this Section 42 shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the Director or officer who serves in such capacity at any time while this Section 42 and other relevant provisions of the Delaware General Corporation Law and other applicable law, if any, are in effect. Any right to indemnification or advances granted by this Section 42 to a

Director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefore. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a Director of the corporation or is or was serving at the request of the corporation as a Director of another corporation, partnership, joint venture, trust or other enterprise) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not reasonably believe to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, such person believed or had reasonable cause to believe his conduct was unlawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a Director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the Director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Section 42 shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, 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 office. The corporation is specifically authorized to enter into individual contracts with any or all of its Directors, officers, employees or agents respecting indemnification and advances, as provided by law.

(f) Survival of Rights. The rights conferred on any person by this Section 42 shall continue as to a person who has ceased to be a Director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 42.

(h) Amendments. Any repeal or modification of this Section 42 shall only be prospective and shall not affect the rights under this Section 42 in effect at the time of the alleged

occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Savings Clause. If this Section 42 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Director and officer to the full extent permitted by any applicable portion of this Section 42 that shall not have been invalidated, or by any other applicable law.

(j) Certain Definitions. For the purposes of this Section 42, the following definitions shall apply:

(i) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors, officers, and employees or agents, so that any person who is or was a Director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 42 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “Director,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a Director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a Director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such Director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed



to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Section 42.

## ARTICLE XII

### Notices

#### Section 43. Notices.

(a) Notice to Stockholders. Whenever under any provisions of these Bylaws notice is required to be given to any stockholder, it shall be given in writing or by a form of electronic transmission in accordance with applicable law. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the corporation.

(b) Notice to Directors. Any notice required to be given to any Director may be given by any method stated in subsection (a), if mailed, shall be sent to such address as such Director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such Director. Any notice may be given to a Director by telephone or in person, or by means of electronic transmission in accordance with applicable law.

(c) Address Unknown. If no address of a stockholder or Director be known, notice may be sent to the office of the corporation required to be maintained pursuant to Section 2 hereof.

(d) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or Director or Directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

(e) Time Notices Deemed Given. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by means of electronic transmission shall be deemed to have been given as at the sending time recorded by electronic device transmitting the notices. Notices given in person or by telephone shall be deemed given at the time provided.

(f) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all Directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(g) Failure to Receive Notice. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any Director may exercise any power or right, or enjoy any privilege,

pursuant to any notice sent to him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such Director to receive such notice.

(h) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

## **ARTICLE XIII**

### **Amendments**

Section 44. Amendments. These Bylaws may be repealed, altered or amended or new Bylaws adopted by the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock entitled to vote generally upon the election of Directors. The Board of Directors also shall have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaw setting forth the number of Directors who shall constitute the whole Board of Directors) subject to the foregoing power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, term of office or compensation of Directors.

## **ARTICLE XIV**

### **Loans of Officers and Others**

Section 45. Certain Corporate Loans and Guaranties. The corporation may to the fullest extent not prohibited by applicable law make loans of money or property to, or guarantee the obligations of, or otherwise assist any officer or other employee who is a Director of the corporation or its parent or any subsidiary, or adopt an employee benefit plan or plans authorizing such loans or guaranties, upon the approval of the Board of Directors alone if the Board of Directors determines that such a loan or guaranty or plan may reasonably be expected to benefit the corporation.

## ARTICLE XV

### Forum for Adjudication of Disputes

Section 46. Forum for Adjudication of Disputes. Unless the corporation consents in writing to the selection of an alternate forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine.