

## **EXHIBIT XIV**

### **Reorganized Parent Certificate of Incorporation**

**DRAFT**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
[BHM TECHNOLOGIES HOLDINGS, INC.]**

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**ARTICLE ONE  
NAME**

The name of the corporation is [BHM Technologies Holdings, Inc.] (the "Corporation").

**ARTICLE TWO  
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the state of Delaware is [2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company].

**ARTICLE THREE  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**ARTICLE FOUR  
CAPITAL STOCK**

The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is \_\_\_\_\_ shares, consisting of:

\_\_\_\_\_ shares of Voting Common Stock, par value \$0.01 per share (the "Voting Common Stock");

\_\_\_\_\_ shares of Non-Voting Common Stock, par value \$0.01 per share (the "Non-Voting Common Stock", and together with the Voting Common Stock, the "Common Stock"); and

\_\_\_\_\_ shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock").

*A. Common Stock*

Except as (i) otherwise required by law, or (ii) expressly provided in this Amended and Restated Certificate of Incorporation, each share of Common Stock shall have the same powers,

rights, and privileges and shall rank equally, share ratably, and be identical in all respects as to all matters.

(1) Dividends. Subject to the rights of the holders of Preferred Stock, and to the other provisions of this Amended and Restated Certificate of Incorporation, holders of Common Stock shall be entitled to receive equally, on a per share basis, such dividends and other distributions in cash, securities, or other property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(2) Voting Rights.

(a) On all matters to be voted on by the Corporation's stockholders, except as otherwise required by applicable law and the provisions of this Amended and Restated Certificate of Incorporation, the holders of Voting Common Stock shall vote together as a single class with each stockholder entitled to one (1) vote per share of Voting Common Stock.

(b) The holders of the Non-Voting Common Stock shall be entitled to notice of all stockholders meetings in accordance with the Corporation's bylaws, and shall further be entitled to written notice at least thirty (30) days prior to any Liquidation, Organic Change or any stock split, reverse stock split, recapitalization, reorganization, stock dividend or any other similar action. The holders of the Non-Voting Common stock shall not be entitled to vote on any matters.

(c) Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, so long as Atlantic Equity Partners IV, L.P. and its Affiliates ("AEP") collectively and beneficially own at least: (i) the number of shares of Common Stock issued to AEP on the Effective Date; or (ii) twenty percent (20%) of the shares of Common Stock from time to time outstanding, the following actions shall require approval by at least eighty percent (80%) of the outstanding shares of Voting Common Stock: (a) an Organic Change with respect to Morton Welding Holdings, Inc. on or prior to the eighteen (18) month anniversary of the Effective Date, (b) an Organic Change with respect to the Corporation, The Brown Corporation of America or BHM Technologies LLC on or prior to the twenty-four (24) month anniversary of the Effective Date, (c) adopting or effecting any plan for the Liquidation of the Corporation, (d) amend the foregoing provisions or provisions of the Corporation's bylaws relating to the designation of members of the Board of Directors by AEP, (e) on or prior to the eighteen (18) month anniversary date of the Effective Date, effecting an issuance of equity or equity-linked securities by the Corporation (i) for consideration that is less than the fair market value thereof or (ii) that dilutes the voting power of holders of shares of Common Stock, (f) on or prior to the eighteen (18) month anniversary of the Effective Date, reclassifying any equity or equity-linked securities, or (g) amending any provision relating to the foregoing clauses (a) through (f) during the relevant period stated therein. The voting rights set forth in clauses (a) through (g) above shall terminate in the event that the Corporation or BHM Technologies LLC shall fail to make any interest payments on the Exit Facility or Term Loan, when due or within a thirty (30) day cure period.

(3) Conversion Rights.

At any time and from time to time, any holder of Non-Voting Common Stock may convert all or any of its shares (including fractional shares) of Non-Voting Common Stock into an identical number of shares of Voting Common Stock by delivering to the Corporation (a) written notice of its desire for such conversion, and (b) the certificate or certificates representing the Non-Voting Common Stock to be converted ("Delivery").

Except as otherwise provided herein, each conversion of Non-Voting Common Stock shall be deemed to have been effected as of the close of business on the date of the Delivery. At the time any such conversion has been effected, the rights of the holder of the shares converted as a holder of Non-Voting Common Stock shall cease and such person shall be deemed to be the holder of record of the shares of Voting Common Stock into which the Non-Voting Common Stock has been converted ("Conversion Stock").

Notwithstanding any other provision hereof, if a conversion of Non-Voting Common Stock is to be made in connection with a public offering or other transaction affecting the Corporation, the conversion may, at the election of the holder thereof, be conditioned upon the consummation of such event or transaction, in which case such conversion shall not be deemed to be effective until such event or transaction has been consummated.

As soon as possible after a conversion has been effected (but in any event within five (5) business days after delivery), the Corporation shall deliver to the converting holder:

- (i) A certificate or certificates representing the number of shares of Conversion Stock issuable by reason of such conversion in such name or names and such denomination or denominations as the converting holder has specified; and
- (ii) A certificate representing any shares of Non-Voting Common Stock which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

The issuance of certificates for shares of Conversion Stock upon conversion of Non-Voting Common Stock shall be made without charge to the holders of such Non-Voting Common Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock. Upon conversion of any Non-Voting Common Stock, the Corporation shall take all such actions as are necessary in order to insure that the Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

The Corporation shall not close its books against the transfer of Non-Voting Common Stock or of Conversion Stock issued or issuable upon conversion of Non-Voting Common Stock in any manner that interferes with the timely conversion of Non-Voting Common Stock. The Corporation shall assist and cooperate with any holder of shares of Non-Voting Common Stock

required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of shares hereunder (including, without limitation, making any filings required to be made by the Corporation).

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Voting Common Stock, solely for the purpose of issuance upon the conversion of the Non-Voting Common Stock, such number of shares of Voting Common Stock issuable upon the conversion of all outstanding Non-Voting Common Stock. All shares of Voting Common Stock so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Voting Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Voting Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Voting Common Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Non-Voting Common Stock. If at any time the number of authorized but unissued shares of Conversion Stock shall not be sufficient to effect the conversion of all then outstanding shares of Non-Voting Common Stock, in addition to such other remedies as shall be available to any holder of such Non-Voting Common Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, using its best efforts to obtain the requisite stockholder approval of any necessary amendment to the Corporation's Amended and Restated Certificate of Incorporation.

(4) Liquidation Rights. Subject to the provisions of the Series A Preferred Stock, the holders of the Common Stock (including both Voting Common Stock and Non-Voting Common Stock) shall be entitled to participate ratably on a per share basis in all amounts available to be distributed to the holders of the Common Stock in any Liquidation.

*B. Provisions Relating to Preferred Stock*

The Preferred Stock may be divided into series. [1,000,000] shares of Preferred Stock shall initially be designated as Series A Preferred Stock (the "Series A Preferred Stock").

Subject to the voting rights of the Series A Preferred Stock in Section 5 of Part C hereof, the remaining shares of Preferred Stock may be issued from time to time in one or more series, and the Board of Directors of the Corporation (the "Board of Directors") is expressly authorized to provide for the issuance of all or any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter, for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the Delaware General Corporation Law ("DGCL"). The Board of Directors is also expressly

authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

*C. Provisions Relating to Series A Preferred Stock*

(1) Dividends.

(a) General Obligation. When and as declared by the Corporation's Board of Directors and to the extent permitted under the DGCL, the Corporation shall pay preferential dividends in cash to the holders of the Series A Preferred Stock. Dividends on a share of Series A Preferred Stock shall accrue from and including the Date of Issuance of such share to each anniversary of the Date of Issuance of such share. Such dividends shall accrue at a rate of 10% per annum of the Issue Price of each share of Series A Preferred Stock through the fourth anniversary of the Date of Issuance of such share and thereafter at a rate of 13% per annum of the Issue Price of such share. Such dividends shall be fully cumulative and accumulate and accrue on a daily basis (calculated on the basis of a 360-day year of twelve 30-day months) and compound quarterly in arrears on, \_\_\_\_\_ of each year, beginning \_\_\_\_\_, 2008 (each a "Quarterly Interest Date") at the rate described above whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Any dividends which accrue but are not paid in cash on the relevant Quarterly Interest Date for any reason shall automatically accrue and be added to the Liquidation Value on the relevant Quarterly Interest Date. The Corporation shall not pay any dividends on any Junior Securities without first paying all accrued and unpaid dividends on all outstanding shares of Series A Preferred Stock.

(b) Distribution of Partial Dividend Payments. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series A Preferred Stock, such payment shall be distributed *pro rata* among the holders thereof based upon the number of shares of Series A Preferred Stock held by each such holder.

(2) Liquidation.

(a) Upon any Liquidation, each holder of Series A Preferred Stock shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities, an amount in cash equal to the aggregate Liquidation Value of all shares of Series A Preferred Stock held by such holder, and the holders of Series A Preferred Stock shall, after such payment has been made, not be entitled to any further rights with respect to their Series A Preferred Stock and such Series A Preferred Stock shall be deemed to be cancelled. If upon any such Liquidation, the Corporation's assets to be distributed among the holders of the Series A Preferred Stock are insufficient to permit payment to such holders of the aggregate amount which they are entitled to be paid under

this Section 2, then the entire assets available to be distributed to the Corporation's stockholders shall be distributed *pro rata* among such holders based upon the aggregate Liquidation Value of the shares of Series A Preferred Stock held by each such holder. Not less than thirty (30) days prior to any Liquidation, the Corporation shall deliver written notice of such Liquidation to each record holder of Series A Preferred Stock, setting forth in reasonable detail the amount of proceeds to be paid with respect to each share of Series A Preferred Stock and each share of Common Stock in connection with such Liquidation.

(b) Organic Change. Upon the election of any holder of Series A Preferred Stock delivered to the Corporation within thirty (30) days after receipt of the Corporation's notice of the Organic Change to the holders of Series A Preferred Stock as provided below, any Organic Change shall be deemed to be a Liquidation for purposes of this Section 2 for purposes of that stockholder only, and that holder of Series A Preferred Stock shall be entitled to receive an amount equal to the aggregate Liquidation Value of all shares of Series A Preferred Stock held by such holder upon a Liquidation in cancellation of its shares of Series A Preferred Stock upon the consummation of any such transaction. The Corporation shall provide written notice to each holder of Series A Preferred Stock at least thirty (30) days before any Organic Change.

(3) Redemptions.

(a) Corporate Redemption. Subject to Section 3(e) of this Part C, the Corporation may at any time and from time to time redeem all or any portion of the shares of Series A Preferred Stock then outstanding at a price per share equal to the Liquidation Value.

(b) Right to Redemption. Upon the election of any holder of Series A Preferred Stock delivered to the Corporation at any time after the seventh anniversary of the Date of Issuance, the Corporation shall redeem all or any portion of the Series A Preferred Stock (as designated by the holder) of such holder at a price per share equal to the Liquidation Value.

(c) Redemption Payments. For each share of Series A Preferred Stock which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date to pay to the holder of each share (upon surrender by such holder at the Corporation's principal office of the certificate representing such share) an amount in cash equal to the Liquidation Value of such share of Series A Preferred Stock. If the Corporation does not have sufficient funds or capital and surplus legally available to discharge a Redemption Obligation (or is otherwise prohibited from effecting such redemption), the Corporation shall take all actions reasonably required or permitted under the DGCL to permit such redemption of the Series A Preferred Stock, and the Corporation shall redeem as many shares of the Series A Preferred Stock as it may legally redeem *pro rata* from the holders of Series A Preferred Stock to be redeemed, and shall thereafter from time to time, as soon as it shall have funds available therefor, redeem as many shares of the Series A

Preferred Stock as it legally may redeem *pro rata* until it has fully discharged all Redemption Obligations.

(d) Notice of Redemption. Except as otherwise provided herein, the Corporation shall mail written notice of each redemption of any Series A Preferred Stock to each record holder thereof not less than thirty (30) days prior to the date on which such redemption is to be made. In case fewer than the total number of shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within five (5) business days after surrender of the certificate representing the redeemed shares.

(e) Redemption Determination of the Number of Each Holder's Shares to be Redeemed. The Corporation shall not redeem any outstanding shares of Series A Preferred Stock unless the Corporation (i) offers to redeem all of the then outstanding shares of Series A Preferred Stock, or (ii) offers to redeem shares of Series A Preferred Stock from the holders in proportion to the respective number of shares of Series A Preferred Stock held by each holder. The number of shares of Series A Preferred Stock to be redeemed from each holder thereof in redemptions hereunder shall be the number of shares determined by multiplying the total number of shares of Series A Preferred Stock to be redeemed times a fraction, the numerator of which shall be the total number of shares of Series A Preferred Stock then held by such holder and the denominator of which shall be the total number of shares of Series A Preferred Stock then outstanding.

(f) Dividends After Redemption. No share of Series A Preferred Stock shall be entitled to any dividends accruing after the date on which the Liquidation of such share is paid to the holder of such share. On such date, all rights of the holder of such share of Series A Preferred Stock shall cease, and such share shall no longer be deemed to be issued and outstanding.

(g) Redeemed or Otherwise Acquired Shares. Any shares of Series A Preferred Stock which are redeemed or otherwise acquired by the Corporation shall be canceled and retired and upon the filing of a certificate of decrease or elimination, as applicable, returned to the status of undesignated Series A Preferred Stock.

(4) Priority of Series A Preferred Stock on Dividends. So long as any Series A Preferred Stock remains outstanding, unless approved by a majority of the outstanding Series A Preferred Stock voting as a separate class, the Corporation shall not directly or indirectly, nor shall it permit any of its Subsidiaries to, redeem, purchase or otherwise acquire directly or indirectly any Junior Securities, nor shall the Corporation directly or indirectly, nor shall it permit any of its Subsidiaries to, pay or declare any dividend or make any distribution upon any Junior Securities; provided that the Corporation may (pursuant to its rights or obligations) repurchase shares of Capital Stock from present or former employees of the Corporation and its Subsidiaries in accordance with the provisions of any executive employment agreements, stockholder agreements, employee or director subscription agreements, stock option agreements, and employee or director incentive or equity plans.

(5) Voting Rights. The holders of the Series A Preferred Stock shall be entitled to notice of all stockholders meetings in accordance with the Corporation's bylaws. The holders of the Series A Preferred Stock shall not be entitled to vote on any matters submitted to the stockholders; provided, however, that approval of holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class, shall be required for any action which: (i) alters or changes the rights, preferences or privileges of the Series A Preferred Stock in a manner adverse to Series A Preferred Stock, (ii) creates any new class or series of shares of capital stock having a preference over or on parity with Series A Preferred Stock, (iii) reclassifies shares of Capital Stock into shares having a preference over or on parity with Series A Preferred Stock, (iv) authorizes any action which any other provision hereof provides may not be taken without the approval of the Series A Preferred Stock, (v) increases or decreases the authorized number of shares of Series A Preferred Stock, (vi) effects an Organic Change or a Liquidation, (vii) increases the funded debt of the Corporation and its consolidated Subsidiaries (excluding the Exit Facility) above the amount that is, at the time of any incurrence of funded debt, four times the consolidated EBITDA of the Corporation and its consolidated Subsidiaries for the twelve (12) fiscal months most recently ended prior to such incurrence, or (viii) effects a bankruptcy, insolvency or similar proceeding of the Corporation.

(6) Conversion. The Series A Preferred Stock shall not be convertible.

*D. Provisions Relating to Capital Stock*

(1) Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of its Capital Stock. Upon the surrender of any certificate representing its Capital Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares as is requested by the holder of the surrendered certificate.

(2) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of its capital stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(3) Rights Under New Certificates. Upon the issuance of a new certificate(s) to replace another certificate, the rights of the holder of the new certificate(s) with respect to the shares of Capital Stock shall not be impacted by the act that a new certificate(s) has been issued. Without limitation to the foregoing, Dividends shall accrue on the Series A Preferred Stock

represented by any new certificate(s) from the date to which dividends have been fully paid on any Series A Preferred Stock represented by certificate(s) being replaced.

(4) Definitions:

"Affiliate" with respect to any Person, means any other Person controlling, controlled by or under common control with such person.

"Date of Issuance" means the date on which the Corporation initially issues any share, regardless of the number of times transfer of such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

"EBITDA" means earnings before interest, taxes, depreciation and amortization, determined in accordance with United States generally accepted accounting principles.

"Effective Date" means \_\_\_\_\_, 2008.

"Exit Facility" means [\_\_\_\_\_].

"Issue Price" with respect to all shares of Series A Preferred Stock means \$78,750,000, and with respect to any one share of Series A Preferred Stock means \$78.75. **[NOTE TO DRAFT: THIS ASSUMES 1,000,000 SHARES OF SERIES A PREFERRED STOCK.]**

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Series A Preferred Stock.

"Liquidation" means any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), and upon the election of any holder of Series A Preferred Stock in accordance with the terms of Section 2(b) of Part C hereof, shall also include any Organic Change for purposes of the electing stockholder only. Except as otherwise specifically provided herein, an Organic Change, the reduction of the capital stock of the Corporation, or any other form of recapitalization or reorganization affecting the Corporation shall not be deemed a voluntary or involuntary liquidation, dissolution, or winding-up of the Corporation.

"Liquidation Value" with respect to any share(s) of Series A Preferred Stock means the Issue Price of such share(s) plus all accrued and unpaid dividends related to such share(s).

"Organic Change" means any (i) consolidation or merger of the Corporation with or into another entity or entities (whether or not the Corporation is the surviving entity) as a result of which the holders of the Corporation's outstanding capital stock possessing the voting power to elect a majority of the Corporation's Board of Directors immediately prior to such consolidation or merger do not own capital stock or other equity of the surviving entity possessing the voting power to elect a majority of the surviving entity's board of directors or similar governing body, (ii) sale or transfer by the Corporation of all or substantially all of its assets (determined with the Corporation's Subsidiaries on a consolidated basis), or (iii) sale, transfer or issuance or series of

sales, transfers and/or issuances of shares of the Corporation's capital stock by the Corporation or the holders thereof as a result of which the holders of the Corporation's outstanding capital stock possessing the voting power to elect a majority of the Corporation's Board of Directors immediately prior to such sale or issuance cease to own the Corporation's outstanding capital stock possessing the voting power to elect a majority of the Corporation's Board of Directors.

"Person" means an individual, a partnership, a corporation, a limited liability company, a limited liability partnership, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Redemption Date" as to any share of Series A Preferred Stock means the date specified in the notice of any redemption at the Corporation's option or the applicable date specified herein in the case of any other redemption.

"Redemption Obligation" means any obligation of the Corporation to redeem shares of Series A Preferred Stock hereunder.

"Registration Rights Agreement" means the Registration Rights Agreement, dated \_\_\_\_\_, 2008, by and among the Corporation and certain of its stockholders, as such agreement may from time to time be amended restated or otherwise modified in accordance with its terms.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

"Term Loan" means [\_\_\_\_\_].

(5) Transferability. All Capital Stock shall be subject to the restrictions on transferability contained in, and shall only be transferable in strict compliance with, the terms of that certain Stockholders Agreement, dated \_\_\_\_\_, 2008, by and among the Corporation and certain of its stockholders.

(6) Amendment and Waiver. No amendment, modification, alteration, repeal or waiver of any provision of this Article Four shall be binding or effective without the prior approval of the holders of a majority of the Shares of the Series A Preferred Stock outstanding at the time such action is taken. No amendment, modification, alteration, repeal or waiver of the terms or relative priorities of the Series A Preferred Stock may be accomplished by the merger, consolidation or other transaction of the Corporation with another corporation or entity unless the Corporation has obtained the prior approval of the holders of a majority of the shares of the Series A Preferred Stock then outstanding.

(7) Notices. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid, or by reputable overnight courier service, charges prepaid, and shall be deemed to have been given when so mailed or sent (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

## **ARTICLE FIVE AMENDMENT OF BYLAWS**

The directors shall have the power to adopt, amend or repeal Bylaws, except as may be otherwise be provided in the Bylaws or this Certificate of Incorporation.

## **ARTICLE SIX SECTION 203**

The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

## **ARTICLE SEVEN PLAN OF COMPROMISE**

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the

stockholders, or class of stockholders, of the Corporation, as the case may be, and also on this Corporation.

## **ARTICLE EIGHT** **BOARD OF DIRECTORS**

(1) Management. The business affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the corporation and do all such lawful acts and things as are not by statute or this Amended and Restated Certificate of Incorporation directed or required to be exercised or done by the stockholders.

(2) Number and Election of Directors. The number of directors of the Corporation shall be as from time-to-time fixed by, or in the manner provided in, the Bylaws of the Corporation. Election of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

## **ARTICLE NINE** **INDEMNIFICATION**

(1) Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she (or a person of whom he or she is the legal representative), is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the Corporation to the fullest extent which it is empowered to do so by the DGCL, 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) against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 2 of this Article Eight, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Article Eight shall be a contract right and, subject to Sections 2 and 5 of this Article Nine, shall include the right to payment by the Corporation of the expenses incurred in defending any such proceeding in advance of its final disposition. The Corporation may, by action of the Board of Directors, provide indemnification to other employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(2) Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the Corporation under Section 1 of this Article Nine or advance of expenses under Section 5 of this Article Nine shall be made promptly, and in any event within thirty (30) days, upon the written request of the director or officer. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this Article Nine is required, and the Corporation fails to respond within sixty days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days, the right to indemnification or advances as granted by this Article Nine shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including the 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 or she has met the applicable standard of conduct set forth in the DGCL, 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 the claimant has not met the applicable standard of conduct.

(3) Nonexclusivity of Article Nine. The rights to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article Nine shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

(4) Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the Corporation or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such liability under this Article Nine.

(5) Expenses. Expenses incurred by any person described in Section 1 of this Article Nine in defending a proceeding shall be paid by the Corporation in advance of such proceeding's final disposition unless otherwise determined by the Board of Directors, conditioned upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation.

Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(6) Employees and Agents. Persons who are not covered by the foregoing provisions of this Article Nine and who are or were employees or agents of the Corporation, or who are or were serving at the request of the Corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board of Directors.

(7) Contract Rights. The provisions of this Article Nine shall be deemed to be a contract right between the Corporation and each director or officer who serves in any such capacity at any time while this Article Nine and the relevant provisions of the DGCL or other applicable law are in effect, and any repeal or modification of this Article Nine or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

(8) Merger or Consolidation. For purposes of this Article Nine, references to "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 this Article Nine with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

## **ARTICLE TEN** **LIMITATION OF LIABILITY**

The Corporation hereby eliminates, to the fullest extent permitted by law (as contemplated by Section 102(b)(7) of the DGCL) the personal liability of any person who serves as a director of the Corporation to the Corporation and/or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article Ten shall not eliminate or limit the liability of a director: (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the DGCL; or (iv) for any transaction from which the director derived an improper personal benefit; provided further, however, that if in the future the DGCL is amended or modified (including, but not limited to, Section 102(a)(7)) to permit the elimination of the personal liability of a director of the Corporation to a greater extent than contemplated above, then the provisions of this Article Ten shall be deemed to be automatically amended to provide for the elimination of the personal liability of the directors of the Corporation to such greater extent. This Article Ten shall not

eliminate or limit the liability of a director for any act or omission occurring prior to the date when this Article Nine becomes effective.

## **ARTICLE ELEVEN** **LIMITATION ON CERTAIN BUSINESS OPPORTUNITIES**

[To the fullest extent permitted by the DGCL, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are presented to any of (i) [                  ], or any of their respective Affiliates (collectively, the "Sponsors"), or (ii) any director of the Corporation who is an employee or designee of any Sponsor or its Affiliates (each, a "Specified Director"). Without limiting the generality of the foregoing, the Corporation specifically renounces any rights the Corporation might have in any business venture or business opportunity of any Specified Director or Sponsor or any of their respective Affiliates, and none of the Specified Directors or Sponsors or any of their respective Affiliates shall have any obligation to offer any interest in any such business venture or business opportunity to the Corporation or otherwise account to the Corporation in respect of any such business ventures or opportunities. Furthermore, it shall not be deemed a breach of any fiduciary or other duties, if any, whether express or implied, for any Specified Director or Sponsor to permit itself or one of its Affiliates to engage in a business opportunity in preference or to the exclusion of the Corporation. As used in this Article Eleven, (i) an "Affiliate" (a) of any person shall mean any other person controlling, controlled by or under common control with such person".] **[NOTE TO DRAFT: NEED TO CONFIRM WHETHER THIS CONCEPT REMAINS RELEVANT.]**

## **ARTICLE ELEVEN** **AMENDMENTS**

Except as otherwise provided in this Certification of Incorporation, the Corporation reserves the right to amend or repeal any provisions contained in this Amended and Restated Certificate of Incorporation from time to time and at any time in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred upon stockholders and directors are granted subject to such reservation.

## **EXHIBIT XV**

### **Reorganized Parent Bylaws**

**DRAFT**

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**[BHM TECHNOLOGIES HOLDINGS, INC.],  
a Delaware Corporation**

**ARTICLE I**

**OFFICES**

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be located at [2711 Centerville Road, Suite 400, in the City of Wilmington, Delaware 19808, in the County of New Castle. The name of the corporation's registered agent at such address shall be The Corporation Service Company]. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

Section 2. Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

Section 1. Place and Time of Meetings. An annual meeting of the stockholders shall be held each year for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place of the annual meeting may be determined by resolution of the board of directors or as set by the president of the corporation.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose (including, without limitation, the filling of board vacancies and newly created directorships), and may be held at such time and place, within or without the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called at any time by any member of the board of directors or the president and shall be called by the president upon the written request of holders of not less than fifty percent (50%) of the outstanding shares of any series or class of the corporation's capital stock.

Section 3. Place of Meetings. The board of directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the corporation.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes of such meeting shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the board of directors, the president or the secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends 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.

Section 5. Stockholders List. The officer having charge of the stock ledger of the corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting 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, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum. Except as otherwise provided by applicable law or by the certificate of incorporation, a majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time in accordance with Section 7 of this Article II, until a quorum shall be present or represented.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and 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 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the question is one upon which by express provisions of an applicable law or of the certificate of incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question. Where a separate vote by class is required, the affirmative vote of the majority of shares of such class present in person or represented by proxy at the meeting shall be the act of such class.

Section 9. Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware or by the certificate of incorporation of the corporation or any amendments thereto and subject to Section 3 of Article VI hereof, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him, her or it by proxy. Every proxy must be signed by the stockholder granting the proxy or by his, her or its attorney-in-fact. No proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

Section 11. Action by Written Consent. Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than a majority of the shares entitled to vote, or, if greater, not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the state of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested; provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until such consent or consents are actually received at the registered office. All consents properly delivered in accordance with this Section 11 shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered to the corporation as required by this Section 11, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

## ARTICLE III

### DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

Section 2. Number, Election and Term of Office. Except as may otherwise be provided in the certificate of incorporation of the corporation or that certain Stockholders Agreement, dated \_\_\_\_\_, 2008 (as amended or modified from time to time, the "Stockholders Agreement"), by and among the corporation and certain of its stockholders, the number of directors shall be established by resolution of the board, and may be any number between five (5) and seven (7) inclusive. Except as may otherwise be provided in the certificate of incorporation of the corporation or the Stockholders Agreement, the directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. Whenever the holders of any class or series, or any other particular stockholder(s), are entitled to elect one or more directors by the provisions of the corporation's certificate of incorporation or Stockholders Agreement, the provisions of this section shall apply, in respect to the election of such director(s), to a vote of the holders of the outstanding shares of that class or series, or of that particular stockholder(s), and not to the vote of the outstanding shares as a whole. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 5 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Classification of Board and Filling Vacancies. The corporation's board of directors shall be divided into three (3) classes, each class to be as nearly equal in number as possible. The term of office of directors of the first class shall expire at the annual meeting of stockholders to be held in 2009 and until their respective successors are duly elected and qualified or their resignation or removal. The term of office of directors of the second class shall expire at the annual meeting of stockholders to be held in 2010 and until their respective successors are duly elected and qualified or their resignation or removal. The term of office of directors of the third class shall expire at the annual meeting of stockholders to be held in 2011 and until their respective successors are duly elected and qualified or their resignation or removal. Subject to the foregoing, at each annual meeting of stockholders, commencing at the annual meeting to be held in 2009, the successors to the class of directors whose term shall then expire shall be elected to hold office for a term expiring at the third succeeding annual meeting of stockholders and until their successors shall be duly elected and qualified or their resignation or removal.

Section 4. Removal and Resignation. Subject to the provision of Section 2 of this Article III and the Stockholders Agreement, any director or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series, or any particular stockholder(s), are entitled to elect one or more directors by the provisions of the corporation's certificate of incorporation or the Stockholders Agreement, the provisions of this section shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series, or of that particular stockholder(s), and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon written notice to the corporation.

Section 5. Vacancies. Subject to the provisions of Section 2 of this Article III and the Stockholders Agreement, any vacancy occurring in the board of directors may be filled only by the affirmative vote of a majority of the stockholders who had a right immediately prior to the

vacancy to vote with respect to the removal of the director who is being replaced. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Except as provided in the Stockholders Agreement, any directorship to be filled by reason of an increase in the number of directors shall be filled by election at any annual meeting or by a special meeting of the stockholders called for that purpose.

Section 6. Annual Meetings. The annual meeting of each newly elected board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of stockholders.

Section 7. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the board. Special meetings of the board of directors may be called by or at the request of the president or vice president on at least 8 hours notice to each director, either personally, by telephone, by mail, or by telegraph; in like manner and on like notice the president must call a special meeting on the written request of at least a majority of the directors.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors, shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committeees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these bylaws shall have and may exercise the powers of the board of directors in the management and affairs of the corporation except as otherwise limited by law. 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. Such committee or committeees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

Section 10. Committee Rules. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the board of directors as provided in Section 9 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member.

Section 11. Communications Equipment. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

Section 12. Waiver of Notice and Presumption of Assent. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends 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. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 13. Action by Written Consent. Unless otherwise restricted by the certificate of incorporation, 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 or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

## ARTICLE IV

### OFFICERS

Section 1. Number. The officers of the corporation shall be elected by the board of directors and may consist of a chairman, a president, one or more vice presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the board of directors. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. The president shall appoint other officers to serve for such terms as he or she deems desirable. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Removal. Any officer or agent elected by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term by the board of directors then in office.

Section 5. Compensation. Compensation of all officers shall be fixed by the board of directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

Section 6. The Chairman of the Board. The Chairman of the Board, if one shall have been elected, shall be a member of the board, an officer of the Corporation, and, if present, shall preside at each meeting of the board of directors or stockholders. The Chairman of the Board shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. He or she shall advise the president, and in the president's absence, other officers of the Corporation, and shall perform such other duties as may from time to time be assigned to him or her by the board of directors.

Section 7. The President. The president shall be the chief executive officer of the corporation. In the absence of the Chairman of the Board or if a Chairman of the Board shall have not been elected, the president shall preside at all meetings of the stockholders and board of directors at which he or she is present; subject to the powers of the board of directors, shall have general charge of the business, affairs and property of the corporation, and control over its officers, agents and employees; and shall see that all orders and resolutions of the board of directors are carried into effect. The president shall have such other powers and perform such other duties as may be prescribed by the board of directors or as may be provided in these bylaws.

Section 8. Vice Presidents. The vice president, if any, or if there shall be more than one, the vice presidents in the order determined by the board of directors shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice presidents shall also perform such other duties and have such other powers as the board of directors, the president or these bylaws may, from time to time, prescribe.

Section 9. The Secretary and Assistant Secretaries. The secretary shall attend all meetings of the board of directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the president's supervision, the secretary shall give, or cause to be given, all notices required to be given by these bylaws or by law; shall have such powers and perform such duties as the board of directors, the president or these bylaws may, from time to time, prescribe; and shall have custody of the corporate seal of the corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the president, or secretary may, from time to time, prescribe.

Section 10. The Treasurer and Assistant Treasurer. The treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the board of directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the president and the board of directors, at its regular meeting or when the board of directors so requires, an account of the corporation; shall have such powers and perform such duties as the board of directors, the president or these bylaws may, from time to time, prescribe. If required by the board of directors, the treasurer shall give the corporation a bond (which shall be rendered every six years) in such sums and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of the office of treasurer and for the restoration to the corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the possession or under the control of the treasurer belonging to the corporation. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, shall in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. The assistant treasurers shall perform such other duties and have such other powers as the board of directors, the president or treasurer may, from time to time, prescribe.

Section 11. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

Section 12. Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

## ARTICLE V

### INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Nature of Indemnity. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she (or a person of whom he or she is the legal representative), is or was a director or an officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent which it is empowered to do so by the General Corporation Law of the State of Delaware, 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) against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification shall inure to the benefit of his or her heirs, executors and administrators; provided that, except as provided in Section 2 of this Article V, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the corporation. The foregoing proviso shall not apply (i) to counterclaims or affirmative defenses asserted by a person seeking indemnification in an action brought against such person or (ii) to any proceeding brought by a person seeking indemnification or payment under any directors' and officers' liability insurance covering such person or seeking enforcement of such person's rights to indemnification under this Article V. The right to indemnification conferred in this Article V shall be a contract right and, subject to Section 2 and Section 3 of this Article V, shall include the right to payment by the corporation of the expenses incurred in defending any such proceeding in advance of its final disposition. The corporation may, by action of its board of directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

Section 2. Procedure for Indemnification of Directors and Officers. Any indemnification of a director or officer of the corporation under Section 1 of this Article V or advance of expenses under Section 3 of this Article V shall be made promptly, and in any event within 30 days, upon the written request of the director or officer. If a determination by the corporation that the director or officer is entitled to indemnification pursuant to this Article V is required and the corporation fails to respond within 60 days to a written request for indemnity, the corporation shall be deemed to have approved the request. If the corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or if payment in full pursuant to such request is not made within 30 days, the right to indemnification or advances as granted by this Article V shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the corporation. Neither the failure of the corporation (including its board of directors, its 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 or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the corporation (including its board of directors, its 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 the claimant has not met the applicable standard of conduct.

Section 3. Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the present or former director, officer, employee or agent to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified by the corporation as authorized in this Article V.

Section 4. Nonexclusivity of Article V. The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

Section 5. Insurance. The corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article V.

Section 6. Survival of Rights. The indemnification and advancement of expenses provided by, or granted pursuant to this Article V shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Contract Rights. The foregoing provisions of this Article V shall be deemed to be a contract between the corporation and each person who serves in any capacity specified in this Article V at any time while this Article V, as amended, is in effect, and any repeal or modification of this Article V shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, prosecution, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

Section 8. Merger or Consolidation. For purposes of this Article V, references to "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 this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

## ARTICLE VI

### CERTIFICATES OF STOCK

Section 1. Form. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by the chairman of the board, the president or a vice president and the secretary or an assistant secretary of the corporation, certifying the number of shares owned by such holder in the corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the corporation or its employee, or (2) by a registrar, other than the corporation or its employee, the signature of any such chairman of the board, president, vice president, secretary, or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization, and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. The board of directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his or her legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, 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 not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day 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 the adjourned meeting.

Section 4. Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, 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 date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

Section 5. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, 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, and which record date shall be not more than sixty days prior to such action. If no record date is 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 6. Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. 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 at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation. 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 directors from time to time, in their 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 any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner, as shall be determined by resolution of the board of directors or a duly authorized committee thereof.

Section 3. Contracts. The board of directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 6. Corporate Seal. The board of directors may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other corporation held by the corporation shall be voted by the president, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or

confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8. Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

Section 9. Section Headings. Section headings in these bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Inconsistent Provisions. In the event that any provision of these bylaws is or becomes inconsistent with any provision of the certificate of incorporation, the Stockholders Agreement, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

## ARTICLE VIII

### AMENDMENTS

Subject to the terms of the corporation's certificate of incorporation, these bylaws may be amended, altered, or repealed and new bylaws adopted at any meeting of the board of directors by a majority vote; provided, however, that Sections 2-4 of Article III may not be amended without the approval of a majority of the stockholders entitled to vote. The fact that the power to adopt, amend, alter, or repeal the bylaws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

## **EXHIBIT XVI**

**Initial Officers of Reorganized Parent and Each Other  
Reorganized Debtor**

**TO BE SUPPLIED**

**EXHIBIT XVII**

**Initial Directors of Reorganized Parent and Each Other  
Reorganized Debtor**

**TO BE SUPPLIED**

## **EXHIBIT XVIII**

### **List of Executory Contracts and Unexpired Leases to be Rejected**

**TO BE SUPPLIED**

## **EXHIBIT XIX**

### **Potential Causes of Action**

### **TO BE SUPPLIED**

**EXHIBIT XX**

**OTHER EXHIBITS**

**TO BE SUPPLIED**