

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
OTC HOLDINGS CORPORATION,	:	Case No. 10-12636 (BLS)
<i>et al.</i> , ¹	:	
Debtors.	:	Jointly Administered
	:	
	x	

**NOTICE OF FILING OF PLAN SUPPLEMENT FOR
DEBTORS' FOURTH AMENDED JOINT PLAN OF REORGANIZATION**

PLEASE TAKE NOTICE that in accordance with the Debtors' Fourth Amended Joint Plan of Reorganization (as amended, supplemented or otherwise modified from time to time, the "Plan")² [Docket No. 321], the Debtors hereby file the first volume of the Plan Supplement which consists of the following:³

DOCUMENT	EXHIBIT NUMBER
Exit Facility Term Sheet	1
Third Party Lender New Term Loan Term Sheet / Senior Secured High-Yield Bond Term Sheet	2
First Lien Lender New Term Loan Term Sheet	3
Form of Certificate of Incorporation of New Holdco	4
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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: OTC Holdings Corporation, a Delaware corporation (0174); Oriental Trading Company, Inc., a Delaware corporation (0180); OTC Investors Corporation, a Delaware corporation (5603); Fun Express, Inc., a Nebraska corporation (7942); and Oriental Trading Marketing, Inc., a Nebraska corporation (0923). The location of the Debtors' corporate headquarters and the service address for all the Debtors is 5455 South 90th Street, Omaha, Nebraska 68127.

² Capitalized terms used herein without definition shall have the meanings assigned to them in the Plan.

³ On December 7, 2010 the Debtors intend to file the second volume of the Plan Supplement including the following documents: (i) a list of employee compensation and benefit plans and programs to be assumed by the Debtors and assigned to the New Companies pursuant to Section 6.2 of the Plan; (ii) the Registration Rights Agreement; (iii) the Stockholders Agreement; and (iv) the New Warrant Agreement.



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List of Executory Contracts and Unexpired Leases to be Rejected	13
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PLEASE TAKE FURTHER NOTICE that pursuant to Section 5.9 of the Plan, the Debtors reserve the right, with the prior consent of the First Lien Steering Committee, to alter, amend or modify the Plan Supplement or any of the Plan Documents at any time prior to the Effective Date.

Dated: Wilmington, Delaware
December 6, 2010

/s/ Kenneth J. Enos
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ATTORNEYS FOR THE DEBTORS AND DEBTORS IN
POSSESSION

EXHIBIT 1

Exit Facility Term Sheet

(i) This Term Sheet does not constitute an offer, agreement or commitment by any of GE Capital, GECM or any other Person to enter into the credit facility described herein and that this Term Sheet is not exhaustive as to all terms and conditions which would govern the credit facility described herein and (ii) the credit facility described herein and the actual terms and conditions thereof remain subject in all respects to internal credit approvals, due diligence, satisfactory review of definitive documentation and such other terms and conditions as may be determined by GE Capital, GECM and the Lenders, in their sole discretion.

\$50,000,000 Senior Secured Revolving Exit Credit Facility

Summary of Terms

**ADMINISTRATIVE AGENT AND
COLLATERAL AGENT:**

General Electric Capital Corporation (“GE Capital” or “Agent”).

**SOLE LEAD ARRANGER AND
BOOKRUNNER**

GE Capital Markets, Inc. (“GECM” and “Arranger”)

SYNDICATION AGENT:

GE Capital

LENDERS:

A syndicate of banks, financial institutions or other institutional investors (including GE Capital individually) arranged by GECM (the “Revolving Lenders”).

BORROWER:

Oriental Trading Company, Inc., or its successor, and possibly direct and indirect subsidiaries thereof, as reorganized debtors under the Plan of Reorganization, in each case subject to approval of the Agent.

REVOLVER:

The facility will consist of a senior revolving credit facility (the “Revolver”) in a aggregate principal amount of \$50,000,000 (the “Revolver Commitment”). The Revolver will include a \$10,000,000 sublimit for the issuance of letters of credit (each, a “Letter of Credit”).

GUARANTORS:

New Holdco, a Delaware corporation and indirect holding company parent of the Borrower, New Midco, a newly formed Delaware corporation and direct holding company parent of the Borrower and each of the Borrower’s direct and indirect subsidiaries (collectively, including New Holdco and New Midco, the “Guarantors”, and together with the Borrower, collectively, the “Loan

Parties”).

MATURITY:

Five years from the Closing Date.

BORROWING BASE FORMULA:

The sum of (a) 85% of Eligible Accounts, plus (b) 85% of the NOLV (to be defined in the definitive documentation) of Eligible Inventory, less (c) reserves established by the Agent in accordance with its reasonable credit judgment. The amount calculated pursuant to the foregoing formula shall be referred to as the “Borrowing Base”.

Agent will retain the right from time to time in its reasonable credit judgment to establish or modify advance rates, standards of eligibility and reserves against availability.

USE OF PROCEEDS:

The Revolver shall be used solely for (a) the refinancing of obligations outstanding under the Borrower’s existing debtor in possession working capital indebtedness on the consummation date of the Plan of Reorganization (the “Consummation Date”); (b) to otherwise enable the Borrower to consummate the Plan of Reorganization on the Consummation Date; (c) for working capital, capital expenditures, and other lawful corporate purposes; and (d) to pay certain fees and expenses associated with the Revolver and Plan of Reorganization.

SECURITY:

The obligations of each Borrower and each Guarantor and all bank products and cash management services provided by the Revolving Lenders, the Arranger, the Agent, or their respective affiliates pursuant to the loan documentation will be secured by (a) a first priority perfected security interest in all accounts, credit card receivables and other rights to payment, all inventory, all documents, instruments and general intangibles (including intellectual property) relating to such accounts and inventory, deposit accounts, cash and cash equivalents and all products and proceeds of the foregoing, in each case, of Borrower and the Guarantors, whether owned on the Closing Date or thereafter acquired, subject to exceptions to be mutually agreed upon

in the definitive documentation and (b) a second priority security interest in all other assets of Borrower and the Guarantors, whether owned on the Closing Date or thereafter acquired, subject to exceptions to be mutually agreed upon in the definitive documentation; provided, such collateral shall exclude such property or assets which the Agent shall determine in its reasonable judgment would require costs of obtaining liens and security interests thereon that are excessive in relation to the value of the security to be afforded thereby.

The relative priorities of the security interests and related creditor rights between the contemplated \$200,000,000 term financing and the Revolver will be set forth in a customary intercreditor agreement (the “Intercreditor Agreement”) in form and substance reasonably satisfactory to the Agent, the lenders under such term financing and the Borrower.

CASH MANAGEMENT:

The Borrower and Guarantors (collectively, the “Obligors”) shall implement cash management procedures reasonably satisfactory to Agent and the Borrower, including, but not limited to, customary lockbox arrangements and blocked account agreements, which procedures will provide for control and full cash dominion.

INTEREST:

Loans advanced under the Revolver will bear interest at the Base Rate plus the Applicable Margin (as defined below) per annum or, at the election of Borrower, the applicable Eurodollar Rate plus the Applicable Margin per annum. “Base Rate” means a floating rate of interest per annum equal to the highest of (a) the rate last quoted by The Wall Street Journal (or another national publication selected by the Agent) as the U.S. “Prime Rate,” (b) the federal funds rate plus up to 300 basis points, and (c) the sum of the three-month Eurodollar Rate plus 100 basis points, “Eurodollar Rate” means, for each interest period, the offered rate for deposits in U.S. dollars in the London interbank market for the relevant interest period which is published by the British Bankers’ Association, and currently appears on Reuters

Screen LIBOR01 Page, as of 11:00 a.m. (London time) on the day which is two (2) business days prior to the first day of such interest period adjusted for reserve requirements.

The “Applicable Margin” (on a per annum basis) means 0.75% per annum, in the case of Base Rate Loans, and 2.75% per annum, in the case of Eurodollar Rate Loans.

The default rate of interest with respect to each loan shall be the applicable interest rate set forth above or the applicable rate of Letter of Credit fees set forth below, plus, in each case, 2.0%.

FEES:

Borrower shall pay fees of GE Capital and GECM in respect of the Revolver as set forth in a certain letter or certain letters to be disclosed to the Bankruptcy Court, such letter or letters to be requested to be filed under seal with the Bankruptcy Court (with a copy provided to counsel for the Unsecured Creditors Committee and counsel to the First Lien Agent and the First Lien Lenders, in each case, on a “for attorneys’ eyes only” basis).

CONDITIONS TO CLOSING;
CONDITIONS TO ADVANCES,
REPRESENTATIONS, WARRANTIES,
AFFIRMATIVE COVENANTS,
NEGATIVE COVENANTS AND
EVENTS OF DEFAULT:

Usual and customary for facilities of this nature, including, without limitation, a minimum Closing Date Excess Availability in an amount to be determined.

REMEDIES:

Usual and customary for facilities of this nature or as otherwise specified by Agent.

CONDITIONS OF EACH EXTENSION
OF CREDIT:

Usual and customary for facilities of this nature or as otherwise specified by Agent.

INDEMNIFICATION:

Usual and customary for facilities of this nature.

GOVERNING LAW:

The State of New York.

COUNSEL:

Morgan, Lewis and Bockius LLP

EXHIBIT 2

**Third Party Lender New Term Loan Term Sheet / Senior Secured
High-Yield Bond Term Sheet**

Confidential
Oriental Trading Company, Inc.

Term Sheets – Bank and Bonds

December 6, 2010

PRELIMINARY | SUBJECT TO FURTHER REVIEW AND EVALUATION

These materials may not be used or relied upon for any purpose other than as specifically contemplated by a written agreement with Credit Suisse AG or its Affiliates (hereafter "Credit Suisse").

Summary indicative terms – term loan facility

This term sheet is for discussion purposes only and is not intended to be, and shall not constitute, a commitment or undertaking by Credit Suisse or JPMorgan (a) to arrange or make a commitment with respect to any portion of the term loan facility or (b) to underwrite, place or otherwise purchase the senior secured notes on a principal or agency basis. Any future participation in arranging or committing to a portion of the term loan facility or an underwriting, placement or other purchase of the senior secured notes will be subject to customary conditions, including but not limited to completion of diligence, internal committee approvals and definitive documentation. The structure, covenants and terms of any financing, including the total cost of capital and the structure, covenants and terms of the term loan facility or the senior secured notes, as the case may be, will be determined by Credit Suisse and JPMorgan in consultation with Oriental Trading Company, Inc. based on market conditions at the time of the arrangement of the term loan facility or the sale, placement or arrangement of the senior secured notes, as the case may be, and on the structure and documentation of such financing.

Borrower:	Oriental Trading Company Inc.
Facility:	\$200 million senior secured first lien term loan
Tenor:	6 years
Interest rate:	Market based pricing
OID:	Market based pricing
LIBOR floor:	Market based pricing
Guarantors:	New Holdco, a Delaware corporation and indirect holding company parent of the Borrower, New Midco, a newly formed Delaware corporation and direct holding company parent of the Borrower, and each existing and future direct and indirect domestic subsidiary of the Borrower (the "Subsidiary Guarantors")
Security:	The liens securing the term loan facility will have (a) a first priority security interest substantially all the assets of the Borrower and each Subsidiary Guarantor, whether owned on the closing date or thereafter acquired (other than the ABL Collateral) and (b) a second priority security interest in accounts receivable, all inventory and certain other assets relating thereto, whether owned on the closing date or thereafter acquired (the "ABL Collateral")
Mandatory amortization:	1% per annum, paid quarterly
Mandatory prepayments:	Customary for facilities of this type and including prepayments from excess cash flow (initially set at 50% with leveraged based stepdowns to be agreed upon), the net proceeds of asset sales and the issuance of debt and equity securities
Affirmative covenants:	Customary for facilities of this type
Negative covenants:	Customary for facilities of this type and including limitations on indebtedness, liens, guarantees, mergers and acquisitions, asset sales, restricted payments, transactions with affiliates and investments
Financial covenants:	Maximum total leverage ratio, maximum annual capital expenditures and minimum interest coverage ratio, with financial covenants set at a cushion to management plan TBD

Summary indicative terms – senior secured notes

This term sheet is for discussion purposes only and is not intended to be, and shall not constitute, a commitment or undertaking by Credit Suisse or JPMorgan (a) to arrange or make a commitment with respect to any portion of the term loan facility or (b) to underwrite, place or otherwise purchase the senior secured notes on a principal or agency basis. Any future participation in arranging or committing to a portion of the term loan facility or an underwriting, placement or other purchase of the senior secured notes will be subject to customary conditions, including but not limited to completion of diligence, internal committee approvals and definitive documentation. The structure, covenants and terms of any financing, including the total cost of capital and the structure, covenants and terms of the term loan facility or the senior secured notes, as the case may be, will be determined by Credit Suisse and JPMorgan in consultation with Oriental Trading Company, Inc. based on market conditions at the time of the arrangement of the term loan facility or the sale, placement or arrangement of the senior secured notes, as the case may be, and on the structure and documentation of such financing.

Issuer:	Oriental Trading Company Inc.
Issue:	\$200 million senior secured first lien notes
Maturity:	5 to 7 years
Indicative yield:	Market based pricing
Optional redemption:	NC2.5 to 4 (subject to makewhole at T+50 bps), then callable at par plus ½ the coupon and declining to par thereafter
Guarantors:	New Holdco, a Delaware corporation and indirect holding company parent of the Issuer, New Midco, a newly formed Delaware corporation and direct holding company parent of the Issuer, and each existing and future direct and indirect domestic subsidiary of the Issuer (the “Subsidiary Guarantors”)
Security:	The liens securing the senior secured notes will have (a) a first priority security interest substantially all the assets of the Issuer and each Subsidiary Guarantor, whether owned on the closing date or thereafter acquired (other than the ABL Collateral) and (b) a second priority security interest in accounts receivable, all inventory and certain other assets relating thereto, whether owned on the closing date or thereafter acquired (the “ABL Collateral”)
Equity clawback:	Up to 35% at a redemption price TBD, plus accrued and unpaid interest, during the non-call period with net cash proceeds of certain equity offerings
Change of control:	Put at 101% of principal amount plus accrued and unpaid interest
Covenants:	Standard high yield incurrence based covenants

Credit Suisse does not provide any tax advice. Any tax statement herein regarding any US federal tax is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties. Any such statement herein was written to support the marketing or promotion of the transaction(s) or matter(s) to which the statement relates. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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EXHIBIT 3

First Lien Lender New Term Loan Term Sheet

ORIENTAL TRADING COMPANY, INC.

**\$200,000,000 New Term Loans
Summary of Terms and Conditions**

This Term Sheet is being filed as part of the Plan Supplement under, and as defined in, the Fourth Amended Joint Plan of Reorganization of Oriental Trading Company, Inc., a Delaware corporation (the “Company”), and its subsidiaries and certain of its affiliates (as amended, the “Plan”; unless otherwise defined herein, capitalized terms are used as defined in the Plan). Pursuant to Section 5.7(b) of the Plan, the Debtors (in consultation with the First Lien Steering Committee) shall use reasonable best efforts to obtain the New Term Loans from New Term Loan Third Party Lenders. This Term Sheet sets forth certain of the principal terms of the New Term Loans that would be issued to the First Lien Lenders in the event the Debtors are not able to obtain the New Term Loans from New Term Loan Third Party Lenders on terms reasonably acceptable to the Debtors and the First Lien Steering Committee. Because the Debtors anticipate being able to obtain the New Term Loans from New Term Loan Third Party Lenders, the Debtors (in consultation with the First Lien Steering Committee) are filing this Term Sheet as part of the Plan Supplement, rather than filing forms of the New Term Loan Documents. If the New Term Loans are to be issued to the First Lien Lenders on the Effective Date, the final terms of the New Term Loan Documents shall be as agreed among the Debtors, the First Lien Steering Committee and the Administrative Agent, and the forms of the principal New Term Loan Documents will be filed with the Bankruptcy Court prior to the Effective Date.

I. PARTIES

Borrower:	Oriental Trading Company, Inc., a Delaware corporation (the “ <u>Borrower</u> ”).
Guarantors:	New Holdco, a Delaware corporation and indirect holding company parent of the Borrower, New Midco, a newly formed Delaware corporation and direct holding company parent of the Borrower and each of the Borrower’s direct and indirect subsidiaries (collectively, including New Holdco and New Midco, the “ <u>Guarantors</u> ”, and together with the Borrower, collectively, the “ <u>Loan Parties</u> ”).
Administrative Agent:	JPMorgan Chase Bank, N.A. (“ <u>JPMorgan Chase Bank</u> ” and, in such capacity, the “ <u>Administrative Agent</u> ”).
Lenders:	The First Lien Lenders on the record date for distributions under the Plan (collectively, the “ <u>Lenders</u> ”).

II. TYPE AND AMOUNT OF NEW TERM LOANS

Type and Amount:	Term Loans with a four-year maturity in the aggregate amount of \$200,000,000 (the “ <u>New Term Loans</u> ”).
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III. CERTAIN PAYMENT PROVISIONS

Fees and Interest Rates:	As set forth on Annex I.
Amortization:	Customary quarterly repayments of the principal amount of the Term Loans.
Optional Prepayments:	The New Term Loans may be prepaid by the Borrower in minimum amounts to be agreed upon. Optional prepayments of the New Term Loans may not be reborrowed.
Mandatory Prepayments:	Customary terms for financings of this type, subject to exceptions to be agreed upon.

IV. <u>COLLATERAL</u>	<p>The obligations of each Loan Party in respect of the New Term Loans shall be secured by a perfected security interest in all of its tangible and intangible assets (including, without limitation, intellectual property, real property and all of the capital stock of the Borrower and each of its direct and indirect subsidiaries), except for those assets as to which the Administrative Agent shall determine in its sole discretion that the costs of obtaining a security interest therein are excessive in relation to the value of the security to be afforded thereby (the “<u>Collateral</u>”); <u>provided, however</u>, that the liens securing the Exit Facility shall have (a) a first priority security interest in accounts, credit card receivables and other rights to payment, all inventory, all documents, instruments and general intangibles (including intellectual property) relating to such accounts and inventory, deposit accounts, cash and cash equivalents and all products and proceeds of the foregoing, in each case, of the Loan Parties, whether owned on the closing date or thereafter acquired and (b) a second priority security interest in all other assets of the Loan Parties, whether owned on the closing date or thereafter acquired.</p>
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The terms and conditions setting forth the relative priorities of the security interests in the collateral securing the Exit Facility and the New Term Loans shall be set forth in an intercreditor agreement (the “Intercreditor Agreement”).

V. CERTAIN CONDITIONS

Conditions to Closing:	Customary terms for financings of this type and, in any event, consistent with the terms with respect to the Exit Facility, and, in addition, the closing shall be subject to the satisfaction of the following conditions (the date upon which all such conditions precedent shall be satisfied, the “ <u>Closing Date</u> ”):
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- (a) Each Loan Party shall have executed and delivered the New Term Loan Documents, including without limitation, the Intercreditor Agreement.
- (b) The Confirmation Order shall authorize the New Term Loans and shall be in full force and effect, shall not have been reversed or modified and shall not be stayed or subject to a motion to stay. The Effective Date shall have occurred (and all conditions precedent thereto as set forth therein shall have been satisfied or waived in accordance with the terms thereof).
- (c) The DIP Facility Claims shall have been repaid in full in cash (any outstanding letters of credit shall have been treated in accordance with Section 2.1(b) of the Plan), all commitments under the DIP Facility Agreement shall have been terminated and all liens and security interests related thereto shall have been terminated or released.
- (d) The conditions to the effectiveness of the documentation governing the Exit Facility shall have been satisfied or waived.
- (e) All documents and instruments required to perfect the Administrative Agent's security interests in the Collateral (including delivery of stock certificates and undated stock powers executed in blank) shall have been executed and be in proper form for filing, and, in connection with the real estate collateral, the Administrative Agent shall have received satisfactory title insurance policies, surveys and other customary documentation to the extent reasonably requested by it.
- (f) The Administrative Agent shall have received such legal opinions (including opinions (i) from counsel to the Borrower and its subsidiaries and (ii) from such special and local counsel as may be reasonably requested by the Administrative Agent), documents and other instruments as are customary for transactions of this type or as they may reasonably request.
- (g) There being no default or event of default in existence at the time of, or after giving effect to, the closing.

VI. CERTAIN DOCUMENTATION MATTERS

The New Term Loan Documents shall contain representations, warranties, covenants and events of default (in each case, applicable to each of the Loan Parties) customary for financings of this type, including without limitation:

Financial Covenants: To include customary financial covenants for financings of this type.

Assignments and Participations:	Customary terms for financings of this type.
Yield Protection:	The New Term Loan Documents shall contain customary provisions (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, tax, capital adequacy and other requirements of law and from the imposition of or changes in withholding or other taxes and (b) indemnifying the Lenders for “breakage costs” incurred in connection with, among other things, any prepayment of a Eurodollar Loan (as defined in Annex I) on a day other than the last day of an interest period with respect thereto.
Expenses and Indemnification:	<p>The Borrower shall pay (a) all reasonable out-of-pocket expenses of the Administrative Agent associated with the preparation, execution, delivery and administration of the New Term Loan Documents and any amendment or waiver with respect thereto (including the reasonable fees, disbursements and other charges of counsel) and (b) all out-of-pocket expenses of the Administrative Agent and the Lenders (including the fees, disbursements and other charges of counsel) in connection with the enforcement of the New Term Loan Documents.</p> <p>The Administrative Agent and the Lenders (and their affiliates and their respective officers, directors, employees, advisors and agents) will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby, except to the extent they are found by a final, non-appealable judgment of a court to arise from the gross negligence or willful misconduct of the relevant indemnified person.</p>
Governing Law and Forum:	State of New York.

INTEREST

Interest Rate Options:	<p>The Borrower may elect that the New Term Loans comprising each borrowing bear interest at a rate per annum equal to (a) the ABR, plus an applicable margin to be agreed upon between the Debtors and the First Lien Steering Committee or (b) the Eurodollar Rate, plus an applicable margin to be agreed upon between the Debtors and the First Lien Steering Committee.</p> <p>As used herein:</p> <p>“<u>ABR</u>” means the highest of (i) the rate of interest publicly announced by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City (the “<u>Prime Rate</u>”), (ii) the federal funds effective rate from time to time <u>plus</u> 0.5%, and (iii) the Eurodollar Rate (as defined below) for a one-month interest period, <u>plus</u> 1%.</p> <p>“<u>Eurodollar Rate</u>” means the greater of the rate (adjusted for statutory reserve requirements for Eurocurrency liabilities) for Eurodollar deposits for a period equal to one, two or three months (as selected by the Borrower) appearing on Reuters Screen LIBOR01 Page, with a LIBOR floor to be agreed upon between the Debtors and the First Lien Steering Committee.</p>
Interest Payment Dates:	<p>In the case of New Term Loans bearing interest based upon the ABR (“<u>ABR Loans</u>”), quarterly in arrears.</p> <p>In the case of New Term Loans bearing interest based upon the Eurodollar Rate (“<u>Eurodollar Loans</u>”), on the last day of each relevant interest period and, in the case of any interest period longer than three months, on each successive date three months after the first day of such interest period.</p>
Default Rate:	<p>Upon the occurrence and during the continuance of any event of default, all outstanding New Term Loans shall bear interest at 2% above the rate otherwise applicable thereto. Overdue interest, fees and other obligations shall bear interest at 2% above the rate applicable to the relevant ABR Loans.</p>
Administration Agent Fee:	<p>Customary for financings of this type.</p>
Rate Basis:	<p>All per annum rates shall be calculated on the basis of a year of 360 days (or 365/366 days, in the case of ABR Loans the interest rate payable on which is then based on the Prime Rate) for actual days elapsed.</p>

EXHIBIT 4

Form of Certificate of Incorporation of New Holdco

CERTIFICATE OF INCORPORATION

OF

[NEW HOLDCO]

[New Holdco], a corporation organized and existing under the laws of the State of Delaware (the “Company”), hereby certifies as follows:

ARTICLE ONE

The name of the Company is [New Holdco] (hereinafter called the “Company”).

ARTICLE TWO

The Company’s registered office in the State of Delaware is at [Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801.] The name of its registered agent at such address is [The Corporation Trust Company].

ARTICLE THREE

The nature of the business of the Company and its purpose is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE FOUR

1. Authorized Capital Stock.

The total number of shares of stock which the Company shall have authority to issue is thirty million (30,000,000) ¹ shares, consisting of:

A. [●] shares of Class A Common Stock, par value \$0.001 per share (the “Class A Common Stock”); and

B. [●] shares of Class B Common Stock, par value \$0.001 per share (the “Class B Common Stock” and, together with the Class A Common Stock, the “Common Stock”).

The number of authorized shares of Class A Common Stock and the number of authorized shares of Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Class A Common Stock and the Class B Common Stock,

¹ Debtors anticipate issuing seventeen million (17,000,000) shares on the Plan Effective Date. Of such shares approximately one million seven hundred thousand (1,700,000) shares shall be issued as Class B Common Stock and a corresponding one million seven hundred thousand (1,700,000) shares of Class A Common Stock will be reserved for conversion upon issuance of the Class B Common Stock.

voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

2. Common Stock.

Except as otherwise provided in this Section 2 or as required by applicable law, all shares of Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions.

A. Voting Rights.

(i) The holders of Common Stock shall be entitled to one vote per share and shall vote together as a single class, except that holders of Class B Common Stock shall have no right to vote any shares of Class B Common Stock with respect to any matter submitted to a vote of the holders of Common Stock other than as expressly provided in Section 2(A)(iii) of this Article Four.

(ii) Until the earlier to occur of (a) the termination of the Securityholders Agreement by its terms or (b) the Institutional Stockholders and their Affiliates cease to beneficially own at least a majority of the then outstanding shares of Common Stock, the following actions shall require the vote or prior written consent of the Majority Institutional Stockholders (and their permitted transferees):

(a) effect any material change, through acquisitions, dispositions of assets, or otherwise, in the nature of the business of the Company and its Subsidiaries;

(b) effect any merger, consolidation, business combination or joint venture involving the Company, or any sale or other disposition of all or substantially all of the Company's assets; other than the exercise of rights pursuant to a Drag-Along Transaction;

(c) amend the Company's or any of its Subsidiaries' certificate of incorporation or bylaws (or equivalent governing documents);

(d) adopt any plan or proposal for a complete or partial liquidation or dissolution of the Company or any Subsidiary or any reorganization or recapitalization of the Company or commence any case, proceeding or action seeking relief under any existing or future laws relating to bankruptcy, insolvency, conservatorship or relief of debtors with respect to the Company or any Subsidiary; and

(e) any material change in the compensation of directors of the Company.

(iii) If and only if any of the following actions are submitted to a vote of the holders of Common Stock, each share of Class B Common Stock shall be entitled to vote with the Class A Common Stock, with each share of Common Stock having one vote and voting together as a single class:

(a) the retention or dismissal of outside auditors of the Company or any of its Subsidiaries;

- (b) any distributions to Stockholders in respect of their Common Stock;
- (c) any material asset sale, recapitalization, merger, business combination, consolidation, exchange or other similar reorganization involving the Company or any of its Subsidiaries, including a Drag-Along Transaction;
- (d) the adoption of any new or amended certificate of incorporation or bylaws (or equivalent governing documents) of the Company or any of its Subsidiaries, other than any amendment that is ministerial in nature; provided that the certificate of incorporation or bylaws (or equivalent governing documents) of the Company or any of its Subsidiaries may not be amended, altered or repealed, and no new or amended certificate of incorporation or bylaws (or equivalent governing documents) of the Company or any of its Subsidiaries may be adopted, that is inconsistent with the Securityholders Agreement;
- (e) other than in connection with authorizations or issuances under a management equity plan or similar plan or the exercise, conversion or exchange of any securities authorized or issued under a management equity or similar plan, any authorization or issuance of Equity Interests, or any security or instrument convertible into or exchangeable for Equity Interests, in the Company or any of its Subsidiaries; and
- (f) the commencement of any dissolution, liquidation or winding-up of the affairs of the Company or any of its Subsidiaries.

B. Conversion Rights.

(i) At any time and from time to time, any holder of Common Stock may convert all or any of its shares of Class B Common Stock into an identical number of shares of Class A Common Stock (and vice versa) by delivering to the Company (a) written notice of its desire for such conversion and (b) if certificated, the certificate or certificates representing the Class B Common Stock (or Class A Common Stock, as the case may be) to be converted (a “Conversion Request”). Except as otherwise provided herein, each conversion shall be deemed to have been effected as of the close of business on the date the Company receives a Conversion Request. If a conversion of Common Stock is to be made in connection with a Public Offering, a Change of Control (including a Drag-Along Transaction) or any other transaction affecting the Company, the conversion may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated.

(ii) As soon as possible after a conversion has been effected (but in any event within five (5) Business Days after the Company receives a Conversion Request), and only if Common Stock is certificated, the Company shall deliver to the converting holder, at such holder’s request:

- (a) a certificate representing the number of shares of Class A Common Stock or Class B Common Stock, as the case may be, issuable by reason of such conversion; and

(b) a certificate representing the remaining number of shares of Class A Common Stock or Class B Common Stock, as the case may be, if the converting holder elected to convert less than all of such holder's Class A Common Stock or Class B Common Stock, as the case may be.

(iii) In connection with the issuance of any shares of Class A Common Stock upon conversion of Class B Common Stock (or Class B Common Stock upon conversion of Class A Common Stock), the Company shall take all such actions as are necessary in order to ensure that the Common Stock issuable upon such conversion shall be duly and validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof other than restrictions of applicable securities laws or contained in the Securityholders Agreement or the Registration Rights Agreement.

(iv) For the purpose of enabling the Company to satisfy any obligation to issue Class A Common Stock upon the conversion of Class B Common Stock, the Company shall reserve and keep available at all times out of its aggregate authorized but unissued or treasury shares of Class A Common Stock the number of shares of Class A Common Stock issuable upon the conversion of all outstanding shares of Class B Common Stock.

C. Dividends. As and when dividends are declared or paid thereon, whether in cash, property or securities of the Company, the holders of Common Stock shall be entitled to participate in such dividends ratably on a per share basis; provided, that if dividends are declared which are payable in shares of Common Stock, dividends shall be declared which are payable at the same rate on all classes of Common Stock and dividends payable in shares of Class A Common Stock shall be payable to holders of Class A Common Stock and dividends payable in shares of Class B Common Stock shall be payable to holders of Class B Common Stock.

D. Liquidation. The holders of Common Stock shall be entitled to participate ratably on a per share basis in all distributions to the holders of Common Stock in any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, after payment or provision for payment of the Company's debts. A merger or consolidation of the Company with any other corporation or other entity, or a sale or conveyance of all or any part of the assets of the Company (which shall not in fact result in the liquidation of the Company and the distribution of assets to its stockholders) shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Company within the meaning of this Section 2(D) of this Article Four.

E. Notices. All notices referred to herein shall be in writing, and shall be deemed to have been duly given or made when delivered by hand, or two (2) Business Days after being delivered to a recognized courier (whose stated terms of delivery are two (2) Business Days or less to the destination of such notice), or five (5) calendar days after being sent by certified or registered mail, postage prepaid, return receipt requested, or in the case of a telecopy notice, upon receipt of confirmation of transmission, addressed (i) to the Company at its principal executive offices and (ii) to any stockholder at such holder's address as it appears in the stock records of the Company (unless otherwise specified in a written notice to the Company by such holder).

3. Non-Voting Equity Securities.

The Company shall not issue any class of non-voting equity securities unless and solely to the extent permitted by section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) as in effect on the date of filing this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Section 3 of this Article Four (i) will have no further force and effect beyond that required under section 1123(a)(6) of the Bankruptcy Code; (ii) will have such force and effect, if any, only for so long as section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Company; and (iii) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

ARTICLE FIVE

A director of the Company shall owe no fiduciary duty to the Company or any securityholder, except as expressly provided by applicable law, and shall not be personally liable to the Company or its securityholders for monetary damages for breach of fiduciary duty except where the acts or omissions of such director constitute for purposes of 102(b)(7) of the DGCL (i) breach of the director’s duty of loyalty to the Company or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law or (iii) a transaction from which the director derived any improper personal benefit. If in the future the DGCL is amended or modified to authorize corporate action further eliminating or limiting the personal liability of directors, then the provisions of this Article Five shall be deemed to be automatically amended or modified to provide for the elimination or limitation of the personal liability of the directors of the Company to such greater extent. Any repeal or modification of the foregoing paragraph by the stockholders of the Company or otherwise shall not adversely affect any right or protection of a director of the Company existing at the time of such repeal or modification.

ARTICLE SIX

The Company expressly elects not to be governed by Section 203 of the DGCL.

ARTICLE SEVEN

To the fullest extent permitted by the DGCL, the Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, business opportunities that are presented to any of its directors or securityholders or any of their respective Affiliates. Without limiting the generality of the foregoing, the Company specifically renounces any rights the Company might have in any business venture or business opportunity of any director or securityholder or any of their respective Affiliates, and no director or securityholder or any of their respective Affiliates shall have any obligation to offer any interest in any such business venture or business opportunity to the Company or otherwise account to the Company 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 director or securityholder to permit itself or one of its Affiliates to engage in a business opportunity in preference or to the exclusion of the

Company and such director or securityholder or any of their respective Affiliates shall have no obligation to present business opportunities to the Company, refrain from engaging in any line of business, refrain from investing in any Person or refrain from doing business with any Person. References to “securityholder” in this Article 7 are to each securityholder in its capacity as such.

ARTICLE EIGHT

The Company reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights herein conferred upon stockholders or directors are granted subject to this reservation; provided that the Company shall not amend or repeal any provision contained in this Certificate of Incorporation to the extent inconsistent with the Securityholders Agreement, except to the extent required by the laws of the State of Delaware.

ARTICLE NINE

Capitalized terms used herein but not otherwise defined herein shall have the following meanings:

“Affiliate” (a) shall mean, with respect to any Person, any Person that directly or indirectly controls, is controlled by or is under common control with, such Person or any Immediate Family Member of such Person; and (b) with respect to any Person who is an individual, shall also include a trust, the beneficiaries of which, or a corporation or partnership, the securityholders or limited or general partners of which, include only such individual and/or such individual’s Immediate Family Members.

“Business Day” shall mean a day other than a Saturday, Sunday, federal or New York State holiday or other day on which commercial banks in New York City are authorized or required by law to close.

“Change of Control” shall have the meaning set forth in the Securityholders Agreement.

“Common Stock Equivalents” shall mean any warrants, rights, options or other securities exchangeable or exercisable for, or convertible into, Common Stock, including the Warrants.

“Drag-Along Transaction” shall have the meaning set forth in the Securityholders Agreement.

“Equity Interests” shall mean Common Stock, Common Stock Equivalents or any other equity securities of the Company, or securities exchangeable or exercisable for, or convertible into, such other equity securities of the Company.

“Governmental Authority” shall mean any government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Immediate Family Member” shall mean, with respect to any Person, a spouse, parent, child, grandchild or sibling of such Person.

“Institutional Stockholders” shall have the meaning set forth in the Securityholders Agreement.

“Majority Institutional Stockholders” shall have the meaning set forth in the Securityholders Agreement.

“Person” shall mean any individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, Governmental Authority or other entity of any nature whatsoever.

“Public Offering” shall mean a public offering and sale of Class A Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended.

“Registration Rights Agreement” shall mean that certain Registration Rights Agreement, dated as of [●], among the Company and the holders named therein or bound thereby, as it may be amended from time to time in accordance with its terms.

“Securityholders Agreement” shall mean that certain Securityholders Agreement, dated as of [●], among the Company and the holders named therein or bound thereby, as it may be amended from time to time in accordance with its terms.

“Stockholders” shall have the meaning set forth in the Securityholders Agreement.

“Subsidiaries” shall mean, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which fifty percent (50%) or more of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote generally in the election of directors, managers or trustees thereof, or fifty percent (50%) or more of the equity interest therein, is at the time owned or controlled, directly or indirectly, by any Person or one or more of the other Subsidiaries of such Person or a combination thereof.

“Warrant Agreement” shall mean that certain Warrant Agreement, dated as [●], between the Company and [●], as warrant agent, as it may be amended from time to time in accordance with its terms.

“Warrants” shall mean the warrants, issued pursuant to the [Fourth] Amended Joint Plan of Reorganization pursuant to Chapter 11 of the Bankruptcy Code of OTC Holdings Corporation et al., as confirmed on [December 16, 2010] by order of the United States Bankruptcy Court for the District of Delaware and governed by the Warrant Agreement, that are exercisable for Class A Common Stock.

EXHIBIT 5

Form of By-laws of New Holdco

[NEW HOLDCO]

BY-LAWS

As Adopted on [●]

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[NEW HOLDCO]
(the “Company”)

BY-LAWS

As adopted on [●]

ARTICLE I

STOCKHOLDERS

Section 1.01 Annual Meetings. Subject to Section 1.10 of these By-Laws, the annual meeting of the stockholders of the Company for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors, by remote electronic communication technologies, at such date and hour, as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice or waiver of notice of the meeting.

Section 1.02 Special Meetings. Special meetings of the stockholders may be called at any time by the Chairman of the Board or by the Board of Directors. A special meeting shall be called by the President (or, in the event of his or her absence or disability, by any Vice President), or by the Secretary, immediately upon receipt of a written request therefor by stockholders holding in the aggregate not less than a majority in voting power of the outstanding shares of the Company at the time entitled to vote at any meeting of the stockholders. If such officers or the Board of Directors shall fail to call such meeting within twenty days after receipt of such request, any stockholder executing such request may call such meeting. Such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, by remote electronic communication technologies, as shall be specified in the respective notices or waivers of notice thereof.

Section 1.03 Notice of Meetings; Waiver. The Secretary or any Assistant Secretary shall cause notice of each meeting of stockholders to be given in a manner permitted by the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), not less than ten nor more than sixty days prior to the meeting, to each stockholder of record entitled to vote at such meeting, subject to such exclusions as are then permitted by the DGCL. The notice shall specify the place, if any, date and hour of each meeting of the stockholders, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, to be given personally or by mail. If a stockholder meeting is to be held via electronic communications and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such meeting; and (ii) provide the information required to access the stockholder list.

For notice given by electronic transmission to a stockholder to be effective, such stockholder must consent to the Company's giving notice by that particular form of electronic transmission. A stockholder may revoke consent to receive notice by electronic transmission by written notice to the Company. A stockholder's consent to notice by electronic transmission is automatically revoked if the Company is unable to deliver two consecutive electronic transmission notices and such inability becomes known to the Secretary, Assistant Secretary, any transfer agent or other person responsible for giving notice.

Notices are deemed given (i) if by mail, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the record of stockholders of the Company, or, if he or she shall have filed with the Secretary of the Company a written request that notices to him or her be mailed to some other address, then directed to him or her at such other address; (ii) if by facsimile, when faxed to a number where the stockholder has consented to receive notice; (iii) if by electronic mail, when mailed electronically to an electronic mail address at which the stockholder consented to receive such notice; (iv) if by posting on an electronic network (such as a website or chatroom) together with a separate notice to the stockholder of such specific posting, upon the later to occur of (A) such posting or (B) the giving of the separate notice of such posting; or (v) if by any other form of electronic communication, when directed to the stockholder in the manner consented to by the stockholder. Such further notice shall be given as may be required by law.

A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice, whether provided before or after the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in a waiver of notice. The attendance of any stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 1.04 Quorum. Except as otherwise required by law or by the Amended and Restated Certificate of Incorporation (as it may be amended from time to time, the "Certificate of Incorporation"), the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by a class or series (if the corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business. Once a quorum is established, it may not be broken by the subsequent withdrawal of any stockholders or their proxies. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation or any subsidiary of the

corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.05 Voting. If, pursuant to Section 5.05 of these By-Laws, a record date has been fixed, every holder of record of shares entitled to vote at a meeting of stockholders shall be entitled to the number of votes specified in the Company's Certificate of Incorporation for each such share outstanding in his or her name on the books of the Company at the close of business on such record date. If no record date has been fixed, then every holder of record of shares entitled to vote at a meeting of stockholders shall be entitled to the number of votes specified in the Company's Certificate of Incorporation for each such share of stock outstanding in his or her name on the books of the Company at the close of business on the day next preceding the day on which notice of the meeting 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. Except as otherwise required by law or by the Certificate of Incorporation or by these By-Laws, a majority of the votes of shares entitled to vote at a meeting of stockholders represented in person or by proxy at any meeting at which a quorum is present cast in favor of any business shall be sufficient for the transaction of such business at such meeting.

Section 1.06 Voting by Ballot; Voting Lists. No vote of the stockholders need be conducted by inspectors of elections or taken by written ballot or ballot submitted by electronic transmission, unless otherwise required by law. Any vote which need not be taken by written ballot, or by a ballot submitted by electronic transmission, may be conducted in any manner approved by the meeting.

Section 1.07 Adjournment. If a quorum is not present at any meeting of the stockholders, the stockholders present in person or by proxy shall have the power to adjourn any such meeting from time to time until a quorum is present. Notice of any adjourned meeting of the stockholders of the Company need not be given if the place, if any, date and hour thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken, provided, however, that if the adjournment is for more than thirty days, or if after the adjournment a new record date for the adjourned meeting is fixed pursuant to Section 5.05 of these By-Laws, a notice of the adjourned meeting, conforming to the requirements of Section 1.03 of these By-Laws, shall be given to each stockholder of record entitled to vote at such meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted on the original date of the meeting.

Section 1.08 Proxies. Subject to the terms of the Securityholders Agreement among [New Holdco] and certain stockholders, dated as of [●] (as amended from time to time, the "Securityholders Agreement"), any stockholder entitled to vote at any meeting of the stockholders or to express consent to or dissent from corporate action in writing without a meeting may authorize another person or persons to vote at any such meeting and express such consent or dissent for him or her by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature, or by transmitting or authorizing the transmission of an email or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation

firm or a like authorized agent. No such proxy shall be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the stockholder executing it, except in those cases where applicable law provides that a proxy shall be irrevocable. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary. Proxies by electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 1.09 Organization; Procedure. At every meeting of stockholders the presiding officer shall be the Chairman of the Board or, in the event of his or her absence or disability, the President or, in the event of his or her absence or disability, a presiding officer chosen by a majority of the stockholders present in person or by proxy. The Secretary, or in the event of his or her absence or disability, the Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary, an appointee of the presiding officer, shall act as Secretary of the meeting. The Board of Directors may make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to any such rules and regulations, the order of business and all other matters of procedure at every meeting of stockholders may be determined by such presiding officer.

Section 1.10 Consent of Stockholders in Lieu of Meeting. To the fullest extent permitted by law, whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, such action may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having 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 (but not less than the minimum number of votes otherwise prescribed by law) and shall be delivered to the Company by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Company having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Company's registered office shall be by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by law to the Company, written consents signed by a sufficient number of holders to take action are delivered to the Company by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Company having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Company's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 1.11 Action by Electronic Transmission Consent.

An email or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section; provided that any such electronic transmission sets forth or is delivered with information from which the corporation can determine (A) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (B) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be 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 if, to the extent and in the manner provided by resolution of the board of directors of the corporation.

ARTICLE II

BOARD OF DIRECTORS

Section 2.01 General Powers. Except as may otherwise be provided by law, by the Certificate of Incorporation or by these By-Laws, the property, affairs and business of the Company shall be managed by or under the direction of the Board of Directors and the Board of Directors may exercise all the powers of the Company.

Section 2.02 Number and Term of Office. The number of Directors constituting the entire Board of Directors shall be as provided in the Securityholders Agreement. Each Director (whenever elected) shall hold office until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.

Section 2.03 Election of Directors. Except as otherwise provided in Sections 2.12 and 2.13 of these By-Laws, the Directors shall be elected at each annual meeting of the stockholders or by written consent in lieu of an annual meeting pursuant to Section 1.10 of these By-Laws in compliance with the provisions of the Securityholders Agreement. If the annual meeting for the election of Directors is not held on the date designated therefor, the Directors shall cause the meeting to be held as soon thereafter as convenient. At each meeting of the stockholders for the election of Directors, provided a quorum is present, the Directors shall be elected by a plurality of the votes validly cast in such election.

Section 2.04 Annual and Regular Meetings; Notice. An annual meeting of the Board of Directors may be held for the purpose of electing officers and for the transaction of such other business as may come before the meeting. If any such meeting is to be held, it shall be held as soon as possible following adjournment of the annual meeting of the stockholders either (i) at the place of such annual meeting of the stockholders, in which event notice of such annual meeting of the Board of Directors need not be given, or (ii) at such other time and place as shall

have been specified in advance notice given to members of the Board of Directors of the date, place and hour of such meeting. Any such notice shall be given at least twenty-four hours in advance if sent to each Director by facsimile or any form of electronic transmission previously approved by a Director, which approval has not been revoked (“Approved Electronic Transmission”), or delivered to him or her personally, or at least five days’ in advance, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Any such notice need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a waiver of notice, whether before or after such meeting.

The Board of Directors from time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Advance notice of regular meetings need not be given; provided if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each member of the Board of Directors of the place, date and hour of such meetings which shall be at least twenty-four hours’ notice, if such notice is sent by facsimile or Approved Electronic Transmission, to each Director, or delivered to him or her personally, or at least five days’ notice, if such notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Notice of such a meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a waiver of notice, whether before or after such meeting.

Section 2.05 Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board or the President, or in the event of their absence or disability, by any Vice President, at such place (within or without the State of Delaware), date and hour as may be specified in the respective notices or waivers of notice of such meetings. Special meetings of the Board of Directors may be called on twenty-four hours’ notice, if such notice is sent by facsimile or Approved Electronic Transmission, to each Director, or delivered to him or her personally, or on five days’ notice, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Notice of any special meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a signed waiver of notice (including by electronic transmission), whether before or after such meeting.

Section 2.06 Quorum. A quorum for meetings of the Board shall consist of a majority of the total votes held by the authorized membership of the Board.

Section 2.07 Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, the majority vote of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors

Section 2.08 Adjournment. The majority vote of the Directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place, provided such adjourned meeting is no earlier than twenty-four hours after written notice

(in accordance with these By-Laws) of such postponement has been given to the directors (or such notice waived in accordance with these By-Laws), and, at any such postponed meeting, quorum shall consist of a majority of the total votes held by the authorized membership of the Board.

Section 2.09 Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by Approved Electronic Transmission, and such writing or writings or Approved Electronic Transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.10 Regulations; Manner of Acting. To the extent consistent with applicable law, the Certificate of Incorporation and these By-Laws, the Board of Directors may adopt such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Company as the Board of Directors may deem appropriate. The Directors shall act only as a Board, and the individual Directors shall have no power as such.

Section 2.11 Action by Telephonic Communications. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.12 Resignations. Any Director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such Director, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 2.13 Removal and Replacement of Directors. Any Director may be removed at any time, either for or without cause, upon the affirmative vote of the holders of a majority of the outstanding shares of stock of the Company entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent in accordance with the DGCL and these By-Laws, provided that for so long as the Securityholders Agreement is in effect, the removal of any Director shall instead be governed by the provisions of the Securityholders Agreement.

Section 2.14 Vacancies and Newly Created Directorships. If any vacancies shall occur in the Board of Directors, by reason of death, resignation, removal or otherwise, or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act, and such vacancies and newly created directorships may be filled by a majority of the Directors then in office, although less than a quorum, provided that for so long as the Securityholders Agreement is in effect, any newly created directorship or vacancy on the Board of Directors shall instead be filled in accordance therewith. A Director elected to fill a vacancy or newly created directorship shall hold office until his or her successor has been elected and

qualified or until his or her earlier death, resignation or removal. Any such vacancy or newly created directorship may also be filled at any time by vote of the stockholders, provided that for so long as the Securityholders Agreement is in effect, any newly created directorship or vacancy on the Board of Directors shall instead be filled in accordance therewith.

Section 2.15 Director Fees and Expenses. The amount, if any, which each Director shall be entitled to receive as compensation (in the form of cash or equity securities of the Company) for his or her services shall be fixed from time to time by the Board of Directors, subject to the Securityholders Agreement (if then in effect); provided that only Directors who are not employees of Institutional Stockholders or the Company and its subsidiaries will be compensated by the Company for serving on the Board. The Company will cause each Director serving on the Board of Directors to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him or her in connection with such service.

Section 2.16 Reliance on Accounts and Reports, etc. A Director, or a member of any Committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Company and upon information, opinions, reports or statements presented to the Company by any of the Company's officers or employees, or Committees designated by the Board of Directors, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

ARTICLE III

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 3.01 How Constituted. The Board of Directors may designate one or more Committees, including an Executive Committee, each such Committee to consist of such number of Directors as from time to time may be fixed by the Board of Directors. The Board of Directors may designate one or more Directors as alternate members of any such Committee, who may replace any absent or disqualified member or members at any meeting of such Committee. Thereafter, members (and alternate members, if any) of each such Committee may be designated at the annual meeting of the Board of Directors. Any such Committee may be abolished or re-designated from time to time by the Board of Directors. Each member (and each alternate member) of any such Committee (whether designated at an annual meeting of the Board of Directors or to fill a vacancy or otherwise) shall hold office until his or her successor shall have been designated or until he or she shall cease to be a Director, or until his or her earlier death, resignation or removal.

Section 3.02 Powers. Each Committee shall have such powers and responsibilities as the Board may from time to time authorize. During the intervals between the meetings of the Board of Directors, the Executive Committee, except as otherwise provided in this Section 3.02 or required by the DGCL shall have and may exercise all the powers and authority of the Board of Directors in the management of the property, affairs and business of the Company. Each such other Committee, except as otherwise provided in this Section 3.02, shall have and may exercise such powers of the Board of Directors as may be provided by resolution

or resolutions of the Board of Directors. Neither the Executive Committee nor any such other Committee shall have the power or authority (a) with respect to approving or adopting or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) to adopt, amend or repeal these By-Laws of the Company.

The Executive Committee shall have, and any such other Committee may be granted by the Board of Directors, power to authorize the seal of the Company to be affixed to any or all papers which may require it.

Section 3.03 Proceedings. Each such Committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time, provided that the Board may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of these By-Laws. Each such Committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board of Directors following any such proceedings.

Section 3.04 Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such Committee, at all meetings of any Committee the presence of members (or alternate members) constituting a majority of the total votes held by the authorized membership of such Committee shall constitute a quorum for the transaction of business. Any act authorized by a majority of the votes held by the members present at any meeting at which a quorum is present shall be the act of such Committee. Any action required or permitted to be taken at any meeting of any such Committee may be taken without a meeting, if all members of such Committee shall consent to such action in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. The members of any such Committee shall act only as a Committee, and the individual members of such Committee shall have no power as such.

Section 3.05 Action by Telephonic Communications. Members of any Committee designated by the Board of Directors may participate in a meeting of such Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 3.06 Absent or Disqualified Members. In the absence or disqualification of a member of any Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 3.07 Resignations. Any member (and any alternate member) of any Committee may resign at any time by delivering a written notice of resignation, signed by such

member, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 3.08 Removal. Any member (and any alternate member) of any Committee may be removed from his or her position as a member (or alternate member, as the case may be) of such Committee at any time, either for or without cause, by resolution adopted by a majority of the whole Board of Directors.

Section 3.09 Vacancies. If any vacancy shall occur in any Committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors subject to Section 3.0.1 of these By-Laws.

ARTICLE IV

OFFICERS

Section 4.01 Number. The officers of the Company shall be chosen by the Board of Directors and shall be a Chairman of the Board, the President, one or more Vice Presidents, a Secretary and a Treasurer and any other officers appointed pursuant to Section 4.11. The Board of Directors also may elect one or more Assistant Secretaries and Assistant Treasurers in such numbers as the Board of Directors may determine. Any number of offices may be held by the same person. No officer need be a Director of the Company.

Section 4.02 Election. Unless otherwise determined by the Board of Directors, the officers of the Company shall be elected by the Board of Directors at the annual meeting of the Board of Directors, and shall be elected to hold office until the next succeeding annual meeting of the Board of Directors. In the event of the failure to elect officers at such annual meeting, officers may be elected at any regular or special meeting of the Board of Directors. Each officer shall hold office until his or her successor has been elected and qualified, or until his or her earlier death, resignation or removal. For so long as the Securityholders Agreement is in effect, the election of the Chairman of the Board shall instead be governed by the terms of the Securityholders Agreement.

Section 4.03 Salaries. The salaries of all officers and agents of the Company shall be fixed by the Board of Directors.

Section 4.04 Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering notice of resignation, either in writing signed by such officer or by electronic transmission, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Company by death, resignation, removal or otherwise, shall be filled by the Board of Directors. For so long as the Securityholders Agreement is in effect, the removal of the Chairman of the Board, and the filling of vacancy in such position, shall be subject to the terms of the Securityholders Agreement.

Section 4.05 Authority and Duties of Officers. The officers of the Company shall have such authority and shall exercise such powers and perform such duties as may be specified in these By-Laws or in a resolution of the Board not inconsistent with these By-Laws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

Section 4.06 The Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders at which he or she is present.

Section 4.07 The President. The President shall preside at all meetings of the stockholders and directors at which he or she is present, shall be the chief executive officer and the chief operating officer of the Company, shall have general control and supervision of the policies and operations of the Company and shall see that all orders and resolutions of the Board of Directors are carried into effect. He or she shall manage and administer the Company's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer and a chief operating officer of a corporation. He or she shall have the authority to sign, in the name and on behalf of the Company, checks, orders, contracts, leases, notes, drafts and other documents and instruments in connection with the business of the Company, and together with the Secretary or an Assistant Secretary, conveyances of real estate and other documents and instruments to which the seal of the Company is affixed. He or she shall have the authority to cause the employment or appointment of such employees and agents of the Company as the conduct of the business of the Company may require, to fix their compensation, and to remove or suspend any employee or agent elected or appointed by the President or the Board of Directors. The President shall perform such other duties and have such other powers as the Board of Directors or the Chairman may from time to time prescribe.

Section 4.08 The Vice President. Each Vice President shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the President. In the absence of the President, the duties of the President shall be performed and his or her powers may be exercised by such Vice President as shall be designated by the President, or failing such designation, such duties shall be performed and such powers may be exercised by each Vice President in the order of their earliest election to that office; subject in any case to review and superseding action by the President.

Section 4.09 The Secretary. The Secretary shall have the following powers and duties:

(a) He or she shall keep or cause to be kept a record of all the proceedings of the meetings of the stockholders and of the Board of Directors and all Committees of which a secretary has not been appointed in books provided for that purpose.

(b) He or she shall cause all notices to be duly given in accordance with the provisions of these By-Laws and as required by law.

(c) Whenever any Committee shall be appointed pursuant to a resolution of the Board of Directors, he or she shall furnish a copy of such resolution to the members of such Committee.

(d) He or she shall be the custodian of the records and of the seal of the Company and cause such seal (or a facsimile thereof) to be affixed to all certificates representing shares of the Company prior to the issuance thereof and to all instruments the execution of which on behalf of the Company under its seal shall have been duly authorized in accordance with these By-Laws, and when so affixed he or she may attest the same.

(e) He or she shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, the Certificate of Incorporation or these By-Laws.

(f) He or she shall have charge of the stock books and ledgers of the Company and shall cause the stock and transfer books to be kept in such manner as to show at any time the number of shares of stock of the Company of each class issued and outstanding, the names (alphabetically arranged) and the addresses of the holders of record of such shares, the number of shares held by each holder and the date as of which each became such holder of record.

(g) He or she shall sign (unless the Treasurer, an Assistant Treasurer or an Assistant Secretary shall have signed) certificates representing shares of the Company the issuance of which shall have been authorized by the Board of Directors.

(h) He or she shall perform, in general, all duties incident to the office of secretary and such other duties as may be specified in these By-Laws or as may be assigned to him or her from time to time by the Board of Directors, or the President.

Section 4.10 The Treasurer. The Treasurer shall be the chief financial officer of the Company and shall have the following powers and duties:

(a) He or she shall have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the Company, and shall keep or cause to be kept full and accurate records of all receipts of the Company.

(b) He or she shall cause the moneys and other valuable effects of the Company to be deposited in the name and to the credit of the Company in such banks or trust companies or with such bankers or other depositaries as shall be selected in accordance with Section 8.05 of these By-Laws.

(c) He or she shall cause the moneys of the Company to be disbursed by checks or drafts (signed as provided in Section 8.06 of these By-Laws) upon the authorized depositaries of the Company and cause to be taken and preserved proper vouchers for all moneys disbursed.

(d) He or she shall render to the Board of Directors or the President, whenever requested, a statement of the financial condition of the Company and of all his or her transactions as Treasurer, and render a full financial report at the annual meeting of the stockholders, if called upon to do so.

(e) He or she shall be empowered from time to time to require from all officers or agents of the Company reports or statements giving such information as he or she may desire with respect to any and all financial transactions of the Company.

(f) He or she may sign (unless an Assistant Treasurer or the Secretary or an Assistant Secretary shall have signed) certificates representing stock of the Company the issuance of which shall have been authorized by the Board of Directors.

(g) He or she shall perform, in general, all duties incident to the office of treasurer and such other duties as may be specified in these By-Laws or as may be assigned to him or her from time to time by the Board of Directors, or the President.

Section 4.11 Additional Officers. The Board of Directors may appoint such other officers and agents as it may deem appropriate, and such other officers and agents shall hold their offices for such terms and shall exercise such powers and perform such duties as may be determined from time to time by the Board of Directors. The Board of Directors from time to time may delegate to any officer or agent the power to appoint subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties. Any such officer or agent may remove any such subordinate officer or agent appointed by him or her, for or without cause.

Section 4.12 Security. The Board of Directors may require any officer, agent or employee of the Company to provide security for the faithful performance of his or her duties, in such amount and of such character as may be determined from time to time by the Board of Directors.

ARTICLE V

CAPITAL STOCK

Section 5.01 Certificates of Stock, Uncertificated Shares. The shares of the Company shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Company shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until each certificate is surrendered to the Company. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock in the Company represented by certificates and upon request every holder of uncertificated shares may at the direction of the Board of Directors receive a certificate signed by, or in the name of the Company, by the Chairman of the Board, the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, representing the number of shares registered in certificate form. Such certificate shall be in such form as the Board of Directors may determine, to the extent consistent with applicable law, the Certificate of Incorporation and these By-Laws.

Section 5.02 Signatures; Facsimile. All signatures on the certificate referred to in Section 5.01 of these By-Laws may be in facsimile, engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose

facsimile, engraved or printed signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.03 Lost, Stolen or Destroyed Certificates. The Board of Directors may direct that a new certificate be issued in place of any certificate theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon delivery to the Board of Directors of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Board of Directors may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04 Transfer of Stock. Upon surrender to the Company or the transfer agent of the Company of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Company shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Company shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL. Subject to the provisions of the Certificate of Incorporation and these By-Laws, the Board of Directors

Section 5.05 Record Date. In order to 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, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty nor less than ten days before the date of such meeting. 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.

In order that the Company 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 law, 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 Company by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Company having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Company'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 law, 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.

In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which 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 5.06 Registered Stockholders. Prior to due surrender of a certificate for registration of transfer, the Company may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate, and the Company shall not be bound to recognize any equitable or legal claim to or interest in such shares on the part of any other person, whether or not the Company shall have notice of such claim or interests. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Company for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the Company to do so.

Section 5.07 Transfer Agent and Registrar. The Board of Directors may appoint one or more transfer agents and one or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

ARTICLE VI

INDEMNIFICATION

Section 6.01 Nature of Indemnity. The Company shall indemnify, to the fullest extent authorized by the DGCL, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director or officer of the Company, or, while a director or officer of the Company, is or was serving at the request of the Company as a Director, officer, employee or manager of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, and may indemnify any person who was or is a party or is threatened to be made a party to such an action, suit or proceeding by reason of the fact that he or she is or was or has agreed to become a director, employee or agent of the Company, or is or was serving at the request of the Company as a director, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf in connection with such action, suit or proceeding and any appeal therefrom; provided that in the case of an

action or suit by or in the right of the Company to procure a judgment in its favor (1) such indemnification shall be limited to expenses (including attorneys' fees) actually and reasonably incurred by such person in the defense or settlement of such action or suit, and (2) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper. Notwithstanding the foregoing, but subject to Section 6.04 of these By-Laws, the Company shall not be obligated to indemnify a Director or officer of the Company in respect of a suit or proceeding (or part thereof) instituted by such Director or officer, unless such suit or proceeding (or part thereof) has been authorized by the Board of Directors or the Company has separately agreed to indemnify such Director or officer pursuant to an agreement authorized by the Board of Directors.

Section 6.02 Successful Defense. To the extent that a present or former Director, officer, employee or agent of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.01 of these By-Laws or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 6.03 Advance Payment of Expenses. Expenses (including attorneys' fees) incurred by a present Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding 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 Company as authorized in this Article. Such expenses (including attorneys' fees) incurred by former Directors and officers may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The Company or, in respect of a present Director or officer, the Board of Directors may authorize the Company's counsel to represent such present or former Director or officer in any action, suit or proceeding, whether or not the Company is a party to such action, suit or proceeding.

Section 6.04 Procedure for Indemnification of Directors and Officers. Any indemnification of a Director or officer of the Company under Sections 6.01 and 6.02 of these By-Laws, or advance of costs, charges and expenses to such person under Section 6.03 of these By-Laws, shall be made promptly, and in any event within thirty days, upon the written request of such person. If the Company fails to respond within sixty days to a written request for indemnity, the Company shall be deemed to have approved such request. If the Company denies a written request for indemnity or advancement of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty days, the right to indemnification or advances as granted by this Article shall be enforceable by such person in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Company. The Company shall have the burden of proving that such

person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.05 Survival; Preservation of Other Rights. The foregoing indemnification provisions shall be deemed to be a contract between the Company and each Director and officer who serves in any such capacity at any time while these provisions as well as the relevant provisions of the DGCL are in effect and any repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such a “contract right” may not be modified retroactively without the consent of such Director or officer.

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.06 Insurance. The Company may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Company, or is or was serving at the request of the Company as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her or on his or her behalf in any such capacity, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability under the provisions of this Article, provided that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the entire Board of Directors.

Section 6.07 Severability. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify each Director or officer and may indemnify each employee or agent of the Company as to costs, charges and expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Company, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VII

OFFICES

Section 7.01 Registered Office. The registered office of the Company in the State of Delaware is at [Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801.] The name of its registered agent at such address is [The Corporation Trust Company].

Section 7.02 Other Offices. The Company may maintain offices or places of business at such other locations within or without the State of Delaware as the Board of Directors may from time to time determine or as the business of the Company may require.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 Dividends. Subject to any applicable provisions of law and the Certificate of Incorporation, dividends upon the shares of the Company may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property, or shares of the Company's capital stock.

A member of the Board of Directors, or a member of any Committee designated by the Board of Directors shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any of its officers or employees, or Committees of the Board of Directors, or by any other person as to matters the Director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, as to the value and amount of the assets, liabilities and/or net profits of the Company, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 8.02 Reserves. There may be set aside out of any funds of the Company available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company or for such other purpose as the Board of Directors shall think conducive to the interest of the Company, and the Board of Directors may similarly modify or abolish any such reserve.

Section 8.03 Execution of Instruments. The President, any Vice President, the Secretary or the Treasurer may enter into any contract or execute and deliver any instrument in the name and on behalf of the Company. The Board of Directors or the President may authorize any other officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the Company. Any such authorization may be general or limited to specific contracts or instruments.

Section 8.04 Corporate Indebtedness. No loan shall be contracted on behalf of the Company, and no evidence of indebtedness shall be issued in its name, unless authorized by the Board of Directors, the President, or, to the extent the Executive Committee has the power to authorize such loan or evidence of indebtedness, the Executive Committee. Such authorization may be general or confined to specific instances. Loans so authorized may be effected at any time for the Company. All bonds, debentures, notes and other obligations or evidences of indebtedness of the Company issued for such loans shall be made, executed and delivered as the Board of Directors, the President or the Executive Committee, as the case may be, shall authorize. When so authorized, any part of or all the properties, including contract rights, assets, business or good will of the Company, whether then owned or thereafter acquired, may be

mortgaged, pledged, hypothecated or conveyed or assigned in trust as security for the payment of such bonds, debentures, notes and other obligations or evidences of indebtedness of the Company, and of the interest thereon, by instruments executed and delivered in the name of the Company.

Section 8.05 Deposits. Any funds of the Company may be deposited from time to time in such banks, trust companies or other depositories as may be determined by the Board of Directors, the Chairman of the Board or the President, or by such officers or agents as may be authorized by the Board of Directors, the Chairman of the Board or the President to make such determination.

Section 8.06 Checks. All checks or demands for money and notes of the Company shall be signed by such officer or officers or such agent or agents of the Company, and in such manner, as the Board of Directors, the Chairman of the Board or the President Officer from time to time may determine.

Section 8.07 Sale, Transfer, etc. of Securities. Subject to any approval required under the Securityholders Agreement, to the extent authorized by the Board of Directors, the Chairman of the Board or by the President, any Vice President, the Secretary or the Treasurer or any other officers designated by the Board of Directors, the Chairman of the Board or the President may sell, transfer, endorse, and assign any shares of stock, bonds or other securities owned by or held in the name of the Company, and may make, execute and deliver in the name of the Company, under its corporate seal, any instruments that may be appropriate to effect any such sale, transfer, endorsement or assignment.

Section 8.08 Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chairman of the Board, the President or any Vice President shall have full power and authority on behalf of the Company to attend any meeting of stockholders of any corporation in which the Company may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock. Such officers acting on behalf of the Company shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section 8.09 Fiscal Year. The fiscal year of the Company shall be a 52 or 53 week fiscal year that shall end each year on the Saturday nearest to March 31 of that calendar year.

Section 8.10 Seal. The seal of the Company shall be circular in form and shall contain the name of the Company, the year of its incorporation and the words "Corporate Seal" and "Delaware". The form of such seal shall be subject to alteration by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced, or may be used in any other lawful manner,

Section 8.11 Books and Records; Inspection. Except to the extent otherwise required by law, the books and records of the Company shall be kept at such place or places

within or without the State of Delaware as may be determined from time to time by the Board of Directors.

ARTICLE IX

AMENDMENT OF BY-LAWS

Section 9.01 Amendment. Subject to the provisions of the Certificate of Incorporation, these By-Laws may be amended, altered or repealed

(a) by resolution adopted by a majority of the Board of Directors at any special or regular meeting of the Board if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting; or

(b) at any regular or special meeting of the stockholders if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting;

provided, that the by-laws may not be amended, altered or repealed or new by-laws adopted to the extent inconsistent with the Securityholders Agreement.

ARTICLE X

CONSTRUCTION

Section 10.01 Construction. In the event of any conflict between the provisions of these By-Laws as in effect from time to time and the provisions of the Certificate of Incorporation of the Company as in effect from time to time, the provisions of such Certificate of Incorporation shall be controlling.

EXHIBIT 6

Form of Certificate of Incorporation of New Midco

CERTIFICATE OF INCORPORATION

OF

[NEW MIDCO]

ARTICLE I. The name of the corporation is [NEW MIDCO] (the “Corporation”).

ARTICLE II. The Corporation’s registered office in the State of Delaware is at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III. The nature of the business of the Corporation and its purpose is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE IV. The total number of shares of stock which the Corporation shall have authority to issue is 100 shares of Common Stock, par value \$0.01 per share. Pursuant to section 1123(a)(6) of title 11 of the United States Code, notwithstanding any other provision contained herein to the contrary, the Corporation shall not issue non-voting equity securities.

ARTICLE V. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation and for the purpose of creating, defining, limiting and regulating the powers of the Corporation and its directors and stockholders:

(a) The number of directors of the Corporation shall be fixed and may be altered from time to time in the manner provided in the By-Laws, and vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of directors may be filled, and directors may be removed, as provided in the By-Laws.

(b) The election of directors may be conducted in any manner approved by the stockholders at the time when the election is held and need not be by written ballot.

(c) All corporate powers and authority of the Corporation (except as at the time otherwise provided by law or by this Certificate of Incorporation) shall be vested in and exercised by the Board of Directors.

(d) The Board of Directors shall have the power without the assent or vote of the stockholders to adopt, amend, alter or repeal the By-Laws of the Corporation, except to the extent that the By-Laws or this Certificate of Incorporation otherwise provide.

(e) A director of the Corporation shall owe no fiduciary duty to the Corporation or any stockholder, except as expressly provided by applicable law and shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty except where the acts or omissions of such director constitute for purposes of 102(b)(7) of the DGCL (i) breach of the director’s

duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law or (iii) a transaction from which the director derived any improper personal benefit. If in the future the DGCL is amended or modified to authorize corporate action further eliminating or limiting the personal liability of directors, then the provisions of this clause (e) shall be deemed to be automatically amended or modified to provide for the elimination or limitation of the personal liability of the directors of the Corporation to such greater extent. Any repeal or modification of the foregoing provisions by the stockholders of the Corporation or otherwise shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VI. The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights herein conferred upon stockholders or directors are granted subject to this reservation.

EXHIBIT 7

Form of By-laws of New Midco

[NEW MIDCO]

BY-LAWS

As adopted on [●]

ARTICLE I

STOCKHOLDERS

Section 1.01. Annual Meetings. Subject to Section 1.10 of these By-Laws, the annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors, by remote electronic communication technologies, at such date and hour, as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice or waiver of notice of the meeting.

Section 1.02. Special Meetings. Special meetings of the stockholders may be called at any time by the Chairman of the Board or by the Board of Directors. A special meeting shall be called by the President (or, in the event of his or her absence or disability, by any Vice President), or by the Secretary, immediately upon receipt of a written request therefor by stockholders holding in the aggregate not less than a majority in voting power of the outstanding shares of the Corporation at the time entitled to vote at any meeting of the stockholders. If such officers or the Board of Directors shall fail to call such meeting within twenty days after receipt of such request, any stockholder executing such request may call such meeting. Such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, by remote electronic communication technologies, as shall be specified in the respective notices or waivers of notice thereof.

Section 1.03. Notice of Meetings; Waiver. The Secretary or any Assistant Secretary shall cause notice of each meeting of stockholders to be given in a manner permitted by the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), not less than ten nor more than sixty days prior to the meeting, to each stockholder of record entitled to vote at such meeting, subject to such exclusions as are then permitted by the DGCL. The notice shall specify the place, if any, date and hour of each meeting of the stockholders, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, to be given personally or by mail. If a stockholder meeting is to be held via electronic communications and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such meeting; and (ii) provide the information required to access the stockholder list.

For notice given by electronic transmission to a stockholder to be effective, such stockholder must consent to the Corporation's giving notice by that particular form of electronic transmission. A stockholder may revoke consent to receive notice by electronic transmission by written notice to the Corporation. A stockholder's consent to notice by electronic transmission is automatically revoked if the Corporation is unable to deliver two consecutive electronic transmission notices and such inability becomes known to the Secretary, Assistant Secretary, any transfer agent or other person responsible for giving notice.

Notices are deemed given (i) if by mail, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the record of stockholders of the Corporation, or, if he or she shall have filed with the Secretary of the Corporation a written request that notices to him or her be mailed to some other address, then directed to him or her at such other address; (ii) if by facsimile, when faxed to a number where the stockholder has consented to receive notice; (iii) if by electronic mail, when mailed electronically to an electronic mail address at which the stockholder consented to receive such notice; (iv) if by posting on an electronic network (such as a website or chatroom) together with a separate notice to the stockholder of such specific posting, upon the later to occur of (A) such posting or (B) the giving of the separate notice of such posting; or (v) if by any other form of electronic communication, when directed to the stockholder in the manner consented to by the stockholder. Such further notice shall be given as may be required by law.

A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice, whether provided before or after the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in a waiver of notice. The attendance of any stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 1.04. Quorum. Except as otherwise required by law or by the Amended and Restated Certificate of Incorporation (as it may be amended from time to time, the "Certificate of Incorporation"), the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business. Once a quorum is established, it may not be broken by the subsequent withdrawal of any stockholders or their proxies. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares

entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.05. Voting. If, pursuant to Section 5.05 of these By-Laws, a record date has been fixed, every holder of record of shares entitled to vote at a meeting of stockholders shall be entitled to the number of votes specified in the Corporation's Certificate of Incorporation for each such share outstanding in his or her name on the books of the Corporation at the close of business on such record date. If no record date has been fixed, then every holder of record of shares entitled to vote at a meeting of stockholders shall be entitled to the number of votes specified in the Corporation's Certificate of Incorporation for each such share of stock outstanding in his or her name on the books of the Corporation at the close of business on the day next preceding the day on which notice of the meeting 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. Except as otherwise required by law or by the Certificate of Incorporation or by these By-Laws, a majority of the votes of shares entitled to vote at a meeting of stockholders represented in person or by proxy at any meeting at which a quorum is present cast in favor of any business shall be sufficient for the transaction of such business at such meeting.

Section 1.06. Voting by Ballot; Voting Lists. No vote of the stockholders need be conducted by inspectors of elections or taken by written ballot or ballot submitted by electronic transmission, unless otherwise required by law. Any vote which need not be taken by written ballot, or by a ballot submitted by electronic transmission, may be conducted in any manner approved by the meeting.

Section 1.07. Adjournment. If a quorum is not present at any meeting of the stockholders, the stockholders present in person or by proxy shall have the power to adjourn any such meeting from time to time until a quorum is present. Notice of any adjourned meeting of the stockholders of the Corporation need not be given if the place, if any, date and hour thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken, provided, however, that if the adjournment is for more than thirty days, or if after the adjournment a new record date for the adjourned meeting is fixed pursuant to Section 5.05 of these By-Laws, a notice of the adjourned meeting, conforming to the requirements of Section 1.03 of these By-Laws, shall be given to each stockholder of record entitled to vote at such meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted on the original date of the meeting.

Section 1.08. Proxies. Subject to the terms of the Securityholders Agreement among [New Holdco] and certain stockholders, dated as of [●] (as amended from time to time, the "Securityholders Agreement"), any stockholder entitled to vote at any meeting of the stockholders or to express consent to or dissent from corporate action in writing without a meeting may authorize another person or persons to vote at any such

meeting and express such consent or dissent for him or her by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature, or by transmitting or authorizing the transmission of an email or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. No such proxy shall be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the stockholder executing it, except in those cases where applicable law provides that a proxy shall be irrevocable. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary. Proxies by electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 1.09. Organization; Procedure. At every meeting of stockholders the presiding officer shall be the Chairman of the Board or, in the event of his or her absence or disability, the President or, in the event of his or her absence or disability, a presiding officer chosen by a majority of the stockholders present in person or by proxy. The Secretary, or in the event of his or her absence or disability, the Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary, an appointee of the presiding officer, shall act as Secretary of the meeting. The Board of Directors may make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to any such rules and regulations, the order of business and all other matters of procedure at every meeting of stockholders may be determined by such presiding officer.

Section 1.10. Consent of Stockholders in Lieu of Meeting. To the fullest extent permitted by law, whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, such action may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having 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 (but not less than the minimum number of votes otherwise prescribed by law) and shall be 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.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by law to the Corporation, written consents signed by a sufficient number of holders to take action are 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.

Section 1.11. Action by Electronic Transmission Consent. An email or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section; provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (A) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (B) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be 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 if, to the extent and in the manner provided by resolution of the board of directors of the Corporation.

ARTICLE II

BOARD OF DIRECTORS

Section 2.01. General Powers. Except as may otherwise be provided by law, by the Certificate of Incorporation or by these By-Laws, the property, affairs and business of the Corporation shall be managed by or under the direction of the Board of Directors and the Board of Directors may exercise all the powers of the Corporation.

Section 2.02. Number and Term of Office. The number of Directors constituting the entire Board of Directors shall be determined in accordance with the Securityholders Agreement. Each Director (whenever elected) shall hold office until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.

Section 2.03. Election of Directors. Except as otherwise provided in Sections 2.12 and 2.13 of these By-Laws, the Directors shall be elected at each annual meeting of the stockholders or by written consent in lieu of an annual meeting pursuant to Section 1.10 of these By-Laws in compliance with the provisions of the Securityholders

Agreement. If the annual meeting for the election of Directors is not held on the date designated therefor, the Directors shall cause the meeting to be held as soon thereafter as convenient. At each meeting of the stockholders for the election of Directors, provided a quorum is present, the Directors shall be elected by a plurality of the votes validly cast in such election.

Section 2.04. Annual and Regular Meetings; Notice. An annual meeting of the Board of Directors may be held for the purpose of electing officers and for the transaction of such other business as may come before the meeting. If any such meeting is to be held, it shall be held as soon as possible following adjournment of the annual meeting of the stockholders either (i) at the place of such annual meeting of the stockholders, in which event notice of such annual meeting of the Board of Directors need not be given, or (ii) at such other time and place as shall have been specified in advance notice given to members of the Board of Directors of the date, place and hour of such meeting. Any such notice shall be given at least twenty-four hours in advance if sent to each Director by facsimile or any form of electronic transmission previously approved by a Director, which approval has not been revoked (“Approved Electronic Transmission”), or delivered to him or her personally, or at least five days’ in advance, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Any such notice need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a waiver of notice, whether before or after such meeting.

The Board of Directors from time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Advance notice of regular meetings need not be given; provided if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each member of the Board of Directors of the place, date and hour of such meetings which shall be at least twenty-four hours’ notice, if such notice is sent by facsimile or Approved Electronic Transmission, to each Director, or delivered to him or her personally, or at least five days’ notice, if such notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Notice of such a meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a waiver of notice, whether before or after such meeting.

Section 2.05. Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board or the President, or in the event of their absence or disability, by any Vice President, at such place (within or without the State of Delaware), date and hour as may be specified in the respective notices or waivers of notice of such meetings. Special meetings of the Board of Directors may be called on twenty-four hours’ notice, if such notice is sent by facsimile or Approved Electronic Transmission, to each Director, or delivered to him or her personally, or on five days’ notice, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Notice of any

special meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a signed waiver of notice (including by electronic transmission), whether before or after such meeting.

Section 2.06. Quorum. A quorum for meetings of the Board shall consist of a majority of the total votes held by the authorized membership of the Board.

Section 2.07. Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, the majority vote of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors

Section 2.08. Adjournment. The majority vote of the Directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place, provided such adjourned meeting is no earlier than twenty-four hours after written notice (in accordance with these By-Laws) of such postponement has been given to the directors (or such notice waived in accordance with these By-Laws), and, at any such postponed meeting, quorum shall consist of a majority of the total votes held by the authorized membership of the Board.

Section 2.09. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by Approved Electronic Transmission, and such writing or writings or Approved Electronic Transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.10. Regulations; Manner of Acting. To the extent consistent with applicable law, the Certificate of Incorporation and these By-Laws, the Board of Directors may adopt such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. The Directors shall act only as a Board, and the individual Directors shall have no power as such.

Section 2.11. Action by Telephonic Communications. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.12. Resignations. Any Director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such Director, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 2.13. Removal and Replacement of Directors. Any Director may be removed at any time, either for or without cause, upon the affirmative vote of the

holders of a majority of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent in accordance with the DGCL and these By-Laws, provided that for so long as the Securityholders Agreement is in effect, the removal of any Director shall instead be governed by the provisions of the Securityholders Agreement.

Section 2.14. Vacancies and Newly Created Directorships. If any vacancies shall occur in the Board of Directors, by reason of death, resignation, removal or otherwise, or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act, and such vacancies and newly created directorships may be filled by a majority of the Directors then in office, although less than a quorum, provided that for so long as the Securityholders Agreement is in effect, any newly created directorship or vacancy on the Board of Directors shall instead be filled in accordance therewith. A Director elected to fill a vacancy or newly created directorship shall hold office until his or her successor has been elected and qualified or until his or her earlier death, resignation or removal. Any such vacancy or newly created directorship may also be filled at any time by vote of the stockholders, provided that for so long as the Securityholders Agreement is in effect, any newly created directorship or vacancy on the Board of Directors shall instead be filled in accordance therewith.

Section 2.15. Director Fees and Expenses. The amount, if any, which each Director shall be entitled to receive as compensation (in the form of cash or equity securities of the Corporation) for his or her services shall be fixed from time to time by the Board of Directors, subject to the Securityholders Agreement (if then in effect). The Corporation will cause each Director serving on the Board of Directors to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him or her in connection with such service.

Section 2.16. Reliance on Accounts and Reports, etc. A Director, or a member of any Committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or Committees designated by the Board of Directors, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE III

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 3.01. How Constituted. The Board of Directors may designate one or more Committees, including an Executive Committee, each such Committee to consist of such number of Directors as from time to time may be fixed by the Board of Directors. The Board of Directors may designate one or more Directors as alternate members of any such Committee, who may replace any absent or disqualified member or members at any meeting of such Committee. Thereafter, members (and alternate

members, if any) of each such Committee may be designated at the annual meeting of the Board of Directors. Any such Committee may be abolished or re-designated from time to time by the Board of Directors. Each member (and each alternate member) of any such Committee (whether designated at an annual meeting of the Board of Directors or to fill a vacancy or otherwise) shall hold office until his or her successor shall have been designated or until he or she shall cease to be a Director, or until his or her earlier death, resignation or removal.

Section 3.02. Powers. Each Committee shall have such powers and responsibilities as the Board may from time to time authorize. During the intervals between the meetings of the Board of Directors, the Executive Committee, except as otherwise provided in this Section 3.02 or required by the DGCL shall have and may exercise all the powers and authority of the Board of Directors in the management of the property, affairs and business of the Corporation. Each such other Committee, except as otherwise provided in this Section 3.02, shall have and may exercise such powers of the Board of Directors as may be provided by resolution or resolutions of the Board of Directors. Neither the Executive Committee nor any such other Committee shall have the power or authority (a) with respect to approving or adopting or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) to adopt, amend or repeal these By-Laws of the Corporation.

The Executive Committee shall have, and any such other Committee may be granted by the Board of Directors, power to authorize the seal of the Corporation to be affixed to any or all papers which may require it.

Section 3.03. Proceedings. Each such Committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time, provided that the Board may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of these By-Laws. Each such Committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board of Directors following any such proceedings.

Section 3.04. Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such Committee, at all meetings of any Committee the presence of members (or alternate members) constituting a majority of the total votes held by the authorized membership of such Committee shall constitute a quorum for the transaction of business. Any act authorized by a majority of the votes held by the members present at any meeting at which a quorum is present shall be the act of such Committee. Any action required or permitted to be taken at any meeting of any such Committee may be taken without a meeting, if all members of such Committee shall consent to such action in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in

electronic form. The members of any such Committee shall act only as a Committee, and the individual members of such Committee shall have no power as such.

Section 3.05. Action by Telephonic Communications. Members of any Committee designated by the Board of Directors may participate in a meeting of such Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 3.06. Absent or Disqualified Members. In the absence or disqualification of a member of any Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 3.07. Resignations. Any member (and any alternate member) of any Committee may resign at any time by delivering a written notice of resignation, signed by such member, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 3.08. Removal. Any member (and any alternate member) of any Committee may be removed from his or her position as a member (or alternate member, as the case may be) of such Committee at any time, either for or without cause, by resolution adopted by a majority of the whole Board of Directors.

Section 3.09. Vacancies. If any vacancy shall occur in any Committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors subject to Section 3.01 of these By-Laws.

ARTICLE IV

OFFICERS

Section 4.01. Number. The officers of the Corporation shall be chosen by the Board of Directors and shall be a Chairman of the Board, the President, one or more Vice Presidents, a Secretary and a Treasurer and any other officers appointed pursuant to Section 4.11. The Board of Directors also may elect one or more Assistant Secretaries and Assistant Treasurers in such numbers as the Board of Directors may determine. Any number of offices may be held by the same person. No officer need be a Director of the Corporation.

Section 4.02. Election. Unless otherwise determined by the Board of Directors, the officers of the Corporation shall be elected by the Board of Directors at the annual meeting of the Board of Directors, and shall be elected to hold office until the next succeeding annual meeting of the Board of Directors. In the event of the failure to elect officers at such annual meeting, officers may be elected at any regular or special meeting

of the Board of Directors. Each officer shall hold office until his or her successor has been elected and qualified, or until his or her earlier death, resignation or removal. For so long as the Securityholders Agreement is in effect, the election of the Chairman of the Board shall instead be governed by the terms of the Securityholders Agreement.

Section 4.03. Salaries. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors.

Section 4.04. Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering notice of resignation, either in writing signed by such officer or by electronic transmission, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by the Board of Directors. For so long as the Securityholders Agreement is in effect, the removal of the Chairman of the Board, and the filling of vacancy in such position, shall be subject to the terms of the Securityholders Agreement.

Section 4.05. Authority and Duties of Officers. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these By-Laws or in a resolution of the Board not inconsistent with these By-Laws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

Section 4.06. The Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders at which he or she is present.

Section 4.07. The President. The President shall preside at all meetings of the stockholders and directors at which he or she is present, shall be the chief executive officer and the chief operating officer of the Corporation, shall have general control and supervision of the policies and operations of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He or she shall manage and administer the Corporation's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer and a chief operating officer of a corporation. He or she shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and other documents and instruments in connection with the business of the Corporation, and together with the Secretary or an Assistant Secretary, conveyances of real estate and other documents and instruments to which the seal of the Corporation is affixed. He or she shall have the authority to cause the employment or appointment of such employees and agents of the Corporation as the conduct of the business of the Corporation may require, to fix their compensation, and to remove or suspend any employee or agent elected or appointed by the President or the Board of Directors. The President shall perform such other duties and have such other powers as the Board of Directors or the Chairman may from time to time prescribe.

Section 4.08. The Vice President. Each Vice President shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the President. In the absence of the President, the duties of the President shall be performed and his or her powers may be exercised by such Vice President as shall be designated by the President, or failing such designation, such duties shall be performed and such powers may be exercised by each Vice President in the order of their earliest election to that office; subject in any case to review and superseding action by the President.

Section 4.09. The Secretary. The Secretary shall have the following powers and duties:

(a) He or she shall keep or cause to be kept a record of all the proceedings of the meetings of the stockholders and of the Board of Directors and all Committees of which a secretary has not been appointed in books provided for that purpose.

(b) He or she shall cause all notices to be duly given in accordance with the provisions of these By-Laws and as required by law.

(c) Whenever any Committee shall be appointed pursuant to a resolution of the Board of Directors, he or she shall furnish a copy of such resolution to the members of such Committee.

(d) He or she shall be the custodian of the records and of the seal of the Corporation and cause such seal (or a facsimile thereof) to be affixed to all certificates representing shares of the Corporation prior to the issuance thereof and to all instruments the execution of which on behalf of the Corporation under its seal shall have been duly authorized in accordance with these By-Laws, and when so affixed he or she may attest the same.

(e) He or she shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, the Certificate of Incorporation or these By-Laws.

(f) He or she shall have charge of the stock books and ledgers of the Corporation and shall cause the stock and transfer books to be kept in such manner as to show at any time the number of shares of stock of the Corporation of each class issued and outstanding, the names (alphabetically arranged) and the addresses of the holders of record of such shares, the number of shares held by each holder and the date as of which each became such holder of record.

(g) He or she shall sign (unless the Treasurer, an Assistant Treasurer or an Assistant Secretary shall have signed) certificates representing shares of the Corporation the issuance of which shall have been authorized by the Board of Directors.

(h) He or she shall perform, in general, all duties incident to the office of secretary and such other duties as may be specified in these By-Laws or as may be assigned to him or her from time to time by the Board of Directors, or the President.

Section 4.10. The Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall have the following powers and duties:

(a) He or she shall have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the Corporation, and shall keep or cause to be kept full and accurate records of all receipts of the Corporation.

(b) He or she shall cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositaries as shall be selected in accordance with Section 8.05 of these By-Laws.

(c) He or she shall cause the moneys of the Corporation to be disbursed by checks or drafts (signed as provided in Section 8.06 of these By-Laws) upon the authorized depositaries of the Corporation and cause to be taken and preserved proper vouchers for all moneys disbursed.

(d) He or she shall render to the Board of Directors or the President, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer, and render a full financial report at the annual meeting of the stockholders, if called upon to do so.

(e) He or she shall be empowered from time to time to require from all officers or agents of the Corporation reports or statements giving such information as he or she may desire with respect to any and all financial transactions of the Corporation.

(f) He or she may sign (unless an Assistant Treasurer or the Secretary or an Assistant Secretary shall have signed) certificates representing stock of the Corporation the issuance of which shall have been authorized by the Board of Directors.

(g) He or she shall perform, in general, all duties incident to the office of treasurer and such other duties as may be specified in these By-Laws or as may be assigned to him or her from time to time by the Board of Directors, or the President.

Section 4.11. Additional Officers. The Board of Directors may appoint such other officers and agents as it may deem appropriate, and such other officers and agents shall hold their offices for such terms and shall exercise such powers and perform such duties as may be determined from time to time by the Board of Directors. The Board of Directors from time to time may delegate to any officer or agent the power to

appoint subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties. Any such officer or agent may remove any such subordinate officer or agent appointed by him or her, for or without cause.

Section 4.12. Security. The Board of Directors may require any officer, agent or employee of the Corporation to provide security for the faithful performance of his or her duties, in such amount and of such character as may be determined from time to time by the Board of Directors.

ARTICLE V

CAPITAL STOCK

Section 5.01. Certificates of Stock, Uncertificated Shares. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until each certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock in the Corporation represented by certificates and upon request every holder of uncertificated shares may at the direction of the Board of Directors receive a certificate signed by, or in the name of the Corporation, by the Chairman of the Board, the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, representing the number of shares registered in certificate form. Such certificate shall be in such form as the Board of Directors may determine, to the extent consistent with applicable law, the Certificate of Incorporation and these By-Laws.

Section 5.02. Signatures; Facsimile. All signatures on the certificate referred to in Section 5.01 of these By-Laws may be in facsimile, engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose facsimile, engraved or printed signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.03. Lost, Stolen or Destroyed Certificates. The Board of Directors may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon delivery to the Board of Directors of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Board of Directors may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL. Subject to the provisions of the Certificate of Incorporation and these By-Laws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation.

Section 5.05. Record Date. In order to 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, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty nor less than ten days before the date of such meeting. 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.

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 law, 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 law, 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.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which 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 5.06. Registered Stockholders. Prior to due surrender of a certificate for registration of transfer, the Corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate, and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in such shares on the part of any other person, whether or not the Corporation shall have notice of such claim or interests. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the Corporation to do so.

Section 5.07. Transfer Agent and Registrar. The Board of Directors may appoint one or more transfer agents and one or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

ARTICLE VI

INDEMNIFICATION

Section 6.01. Nature of Indemnity. The Corporation shall indemnify, to the fullest extent authorized by the DGCL, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a Director, officer, employee or manager of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, and may indemnify any person who was or is a party or is threatened to be made a party to such an action, suit or proceeding by reason of the fact that he or she is or was or has agreed to become a director, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf in connection with such action, suit or proceeding and any appeal therefrom; provided that in the case of an action or suit by or in the right of the Corporation to procure a judgment in its favor (1) such indemnification shall be limited to expenses (including attorneys' fees) actually and reasonably incurred by such person in the defense or settlement of such action or suit, and (2) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Delaware Court of

Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Notwithstanding the foregoing, but subject to Section 6.04 of these By-Laws, the Corporation shall not be obligated to indemnify a Director or officer of the Corporation in respect of a Proceeding (or part thereof) instituted by such Director or officer, unless such Proceeding (or part thereof) has been authorized by the Board of Directors or the Corporation has separately agreed to indemnify such Director or officer pursuant to an agreement authorized by the Board of Directors.

Section 6.02. Successful Defense. To the extent that a present or former Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.01 of these By-Laws or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 6.03. Advance Payment of Expenses. Expenses (including attorneys' fees) incurred by a present Director or officer in defending any civil, criminal, administrative or investigative 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 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 as authorized in this Article. Such expenses (including attorneys' fees) incurred by former Directors and officers may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate. The Corporation or, in respect of a present Director or officer, the Board of Directors may authorize the Corporation's counsel to represent such present or former Director or officer in any action, suit or proceeding, whether or not the Corporation is a party to such action, suit or proceeding.

Section 6.04. Procedure for Indemnification of Directors and Officers. Any indemnification of a Director or officer of the Corporation under Sections 6.01 and 6.02 of these By-Laws, or advance of costs, charges and expenses to such person under Section 6.03 of these By-Laws, shall be made promptly, and in any event within thirty days, upon the written request of such person. If the Corporation fails to respond within sixty days to a written request for indemnity, the Corporation shall be deemed to have approved such request. If the Corporation denies a written request for indemnity or advancement of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty days, the right to indemnification or advances as granted by this Article shall be enforceable by such person in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. The Corporation shall have the burden of proving that such person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.05. Survival; Preservation of Other Rights. The foregoing indemnification provisions shall be deemed to be a contract between the Corporation and each Director and officer who serves in any such capacity at any time while these provisions as well as the relevant provisions of the DGCL are in effect and any repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such a “contract right” may not be modified retroactively without the consent of such Director or officer.

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.06. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her or on his or her behalf 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, provided that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the entire Board of Directors.

Section 6.07. Severability. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Director or officer and may indemnify each employee or agent of the Corporation as to costs, charges and expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VII

OFFICES

Section 7.01. Registered Office. The registered office of the Corporation in the State of Delaware is at [Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801.] The name of its registered agent at such address is [The Corporation Trust Company].

Section 7.02. Other Offices. The Corporation may maintain offices or places of business at such other locations within or without the State of Delaware as the Board of Directors may from time to time determine or as the business of the Corporation may require.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01. Dividends. Subject to any applicable provisions of law and the Certificate of Incorporation, dividends upon the shares of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property, or shares of the Corporation's capital stock.

A member of the Board of Directors, or a member of any Committee designated by the Board of Directors shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or Committees of the Board of Directors, or by any other person as to matters the Director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 8.02. Reserves. There may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may similarly modify or abolish any such reserve.

Section 8.03. Execution of Instruments. The President, any Vice President, the Secretary or the Treasurer may enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. The Board of Directors or the President may authorize any other officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization may be general or limited to specific contracts or instruments.

Section 8.04. Corporate Indebtedness. No loan shall be contracted on behalf of the Corporation, and no evidence of indebtedness shall be issued in its name, unless authorized by the Board of Directors, the President, or, to the extent the Executive Committee has the power to authorize such loan or evidence of indebtedness, the Executive Committee. Such authorization may be general or confined to specific

instances. Loans so authorized may be effected at any time for the Corporation. All bonds, debentures, notes and other obligations or evidences of indebtedness of the Corporation issued for such loans shall be made, executed and delivered as the Board of Directors, the President or the Executive Committee, as the case may be, shall authorize. When so authorized, any part of or all the properties, including contract rights, assets, business or good will of the Corporation, whether then owned or thereafter acquired, may be mortgaged, pledged, hypothecated or conveyed or assigned in trust as security for the payment of such bonds, debentures, notes and other obligations or evidences of indebtedness of the Corporation, and of the interest thereon, by instruments executed and delivered in the name of the Corporation.

Section 8.05. Deposits. Any funds of the Corporation may be deposited from time to time in such banks, trust companies or other depositaries as may be determined by the Board of Directors, the Chairman of the Board or the President, or by such officers or agents as may be authorized by the Board of Directors, the Chairman of the Board or the President to make such determination.

Section 8.06. Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such agent or agents of the Corporation, and in such manner, as the Board of Directors, the Chairman of the Board or the President Officer from time to time may determine.

Section 8.07. Sale, Transfer, etc. of Securities. To the extent authorized by the Board of Directors, the Chairman of the Board or by the President, any Vice President, the Secretary or the Treasurer or any other officers designated by the Board of Directors, the Chairman of the Board or the President may sell, transfer, endorse, and assign any shares of stock, bonds or other securities owned by or held in the name of the Corporation, and may make, execute and deliver in the name of the Corporation, under its corporate seal, any instruments that may be appropriate to effect any such sale, transfer, endorsement or assignment.

Section 8.08. Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chairman of the Board, the President or any Vice President shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders of any corporation in which the Corporation may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock. Such officers acting on behalf of the Corporation shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section 8.09. Fiscal Year. The fiscal year of the Corporation shall be a 52 or 53 week fiscal year that shall end each year on the Saturday nearest to March 31 of that calendar year.

Section 8.10. Seal. The seal of the Corporation shall be circular in form and shall contain the name of the Corporation, the year of its incorporation and the words “Corporate Seal” and “Delaware”. The form of such seal shall be subject to alteration by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced, or may be used in any other lawful manner.

Section 8.11. Books and Records; Inspection. Except to the extent otherwise required by law, the books and records of the Corporation shall be kept at such place or places within or without the State of Delaware as may be determined from time to time by the Board of Directors.

ARTICLE IX

AMENDMENT OF BY-LAWS

Section 9.01. Amendment. Subject to the provisions of the Certificate of Incorporation, these By-Laws may be amended, altered or repealed

(a) by resolution adopted by a majority of the Board of Directors at any special or regular meeting of the Board if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting; or

(b) at any regular or special meeting of the stockholders if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting;

provided, that the by-laws may not be amended, altered or repealed or new by-laws adopted to the extent inconsistent with the Securityholders Agreement.

ARTICLE X

CONSTRUCTION

Section 10.01. Construction. In the event of any conflict between the provisions of these By-Laws as in effect from time to time and the provisions of the Certificate of Incorporation of the Corporation as in effect from time to time, the provisions of such Certificate of Incorporation shall be controlling.

[NEW MIDCO]

BY-LAWS

As Adopted on [●]

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EXHIBIT 8

Form of Certificate of Incorporation of New OTC

CERTIFICATE OF INCORPORATION

OF

[NEW OTC]

ARTICLE I. The name of the corporation is [New OTC] (the “Corporation”).

ARTICLE II. The Corporation’s registered office in the State of Delaware is at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III. The nature of the business of the Corporation and its purpose is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE IV. The total number of shares of stock which the Corporation shall have authority to issue is 100 shares of Common Stock, par value \$0.01 per share. Pursuant to section 1123(a)(6) of title 11 of the United States Code, notwithstanding any other provision contained herein to the contrary, the Corporation shall not issue non-voting equity securities.

ARTICLE V. The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation and for the purpose of creating, defining, limiting and regulating the powers of the Corporation and its directors and stockholders:

(a) The number of directors of the Corporation shall be fixed and may be altered from time to time in the manner provided in the By-Laws, and vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of directors may be filled, and directors may be removed, as provided in the By-Laws.

(b) The election of directors may be conducted in any manner approved by the stockholders at the time when the election is held and need not be by written ballot.

(c) All corporate powers and authority of the Corporation (except as at the time otherwise provided by law or by this Certificate of Incorporation) shall be vested in and exercised by the Board of Directors.

(d) The Board of Directors shall have the power without the assent or vote of the stockholders to adopt, amend, alter or repeal the By-Laws of the Corporation, except to the extent that the By-Laws or this Certificate of Incorporation otherwise provide.

(e) A director of the Corporation shall owe no fiduciary duty to the Corporation or any stockholder, except as expressly provided by applicable law, and shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty except where the acts or omissions of such director constitute for purposes of 102(b)(7) of the DGCL (i) breach of the director’s

duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law or (iii) a transaction from which the director derived any improper personal benefit. If in the future the DGCL is amended or modified to authorize corporate action further eliminating or limiting the personal liability of directors, then the provisions of this clause (e) shall be deemed to be automatically amended or modified to provide for the elimination or limitation of the personal liability of the directors of the Corporation to such greater extent. Any repeal or modification of the foregoing provisions by the stockholders of the Corporation or otherwise shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VI. The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights herein conferred upon stockholders or directors are granted subject to this reservation.

EXHIBIT 9

Form of By-laws of New OTC

[NEW OTC]

BY-LAWS

As adopted on [●]

ARTICLE I

STOCKHOLDERS

Section 1.01. Annual Meetings. Subject to Section 1.10 of these By-Laws, the annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors, by remote electronic communication technologies, at such date and hour, as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice or waiver of notice of the meeting.

Section 1.02. Special Meetings. Special meetings of the stockholders may be called at any time by the Chairman of the Board or by the Board of Directors. A special meeting shall be called by the President (or, in the event of his or her absence or disability, by any Vice President), or by the Secretary, immediately upon receipt of a written request therefor by stockholders holding in the aggregate not less than a majority in voting power of the outstanding shares of the Corporation at the time entitled to vote at any meeting of the stockholders. If such officers or the Board of Directors shall fail to call such meeting within twenty days after receipt of such request, any stockholder executing such request may call such meeting. Such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, by remote electronic communication technologies, as shall be specified in the respective notices or waivers of notice thereof.

Section 1.03. Notice of Meetings; Waiver. The Secretary or any Assistant Secretary shall cause notice of each meeting of stockholders to be given in a manner permitted by the General Corporation Law of the State of Delaware, as amended from time to time (the “DGCL”), not less than ten nor more than sixty days prior to the meeting, to each stockholder of record entitled to vote at such meeting, subject to such exclusions as are then permitted by the DGCL. The notice shall specify the place, if any, date and hour of each meeting of the stockholders, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, to be given personally or by mail. If a stockholder meeting is to be held via electronic communications and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such meeting; and (ii) provide the information required to access the stockholder list.

For notice given by electronic transmission to a stockholder to be effective, such stockholder must consent to the Corporation's giving notice by that particular form of electronic transmission. A stockholder may revoke consent to receive notice by electronic transmission by written notice to the Corporation. A stockholder's consent to notice by electronic transmission is automatically revoked if the Corporation is unable to deliver two consecutive electronic transmission notices and such inability becomes known to the Secretary, Assistant Secretary, any transfer agent or other person responsible for giving notice.

Notices are deemed given (i) if by mail, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the record of stockholders of the Corporation, or, if he or she shall have filed with the Secretary of the Corporation a written request that notices to him or her be mailed to some other address, then directed to him or her at such other address; (ii) if by facsimile, when faxed to a number where the stockholder has consented to receive notice; (iii) if by electronic mail, when mailed electronically to an electronic mail address at which the stockholder consented to receive such notice; (iv) if by posting on an electronic network (such as a website or chatroom) together with a separate notice to the stockholder of such specific posting, upon the later to occur of (A) such posting or (B) the giving of the separate notice of such posting; or (v) if by any other form of electronic communication, when directed to the stockholder in the manner consented to by the stockholder. Such further notice shall be given as may be required by law.

A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice, whether provided before or after the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in a waiver of notice. The attendance of any stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 1.04. Quorum. Except as otherwise required by law or by the Amended and Restated Certificate of Incorporation (as it may be amended from time to time, the "Certificate of Incorporation"), the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business. Once a quorum is established, it may not be broken by the subsequent withdrawal of any stockholders or their proxies. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares

entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.05. Voting. If, pursuant to Section 5.05 of these By-Laws, a record date has been fixed, every holder of record of shares entitled to vote at a meeting of stockholders shall be entitled to the number of votes specified in the Corporation's Certificate of Incorporation for each such share outstanding in his or her name on the books of the Corporation at the close of business on such record date. If no record date has been fixed, then every holder of record of shares entitled to vote at a meeting of stockholders shall be entitled to the number of votes specified in the Corporation's Certificate of Incorporation for each such share of stock outstanding in his or her name on the books of the Corporation at the close of business on the day next preceding the day on which notice of the meeting 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. Except as otherwise required by law or by the Certificate of Incorporation or by these By-Laws, a majority of the votes of shares entitled to vote at a meeting of stockholders represented in person or by proxy at any meeting at which a quorum is present cast in favor of any business shall be sufficient for the transaction of such business at such meeting.

Section 1.06. Voting by Ballot; Voting Lists. No vote of the stockholders need be conducted by inspectors of elections or taken by written ballot or ballot submitted by electronic transmission, unless otherwise required by law. Any vote which need not be taken by written ballot, or by a ballot submitted by electronic transmission, may be conducted in any manner approved by the meeting.

Section 1.07. Adjournment. If a quorum is not present at any meeting of the stockholders, the stockholders present in person or by proxy shall have the power to adjourn any such meeting from time to time until a quorum is present. Notice of any adjourned meeting of the stockholders of the Corporation need not be given if the place, if any, date and hour thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken, provided, however, that if the adjournment is for more than thirty days, or if after the adjournment a new record date for the adjourned meeting is fixed pursuant to Section 5.05 of these By-Laws, a notice of the adjourned meeting, conforming to the requirements of Section 1.03 of these By-Laws, shall be given to each stockholder of record entitled to vote at such meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted on the original date of the meeting.

Section 1.08. Proxies. Subject to the terms of the Securityholders Agreement among [New Holdco] and certain stockholders, dated as of [●] (as amended from time to time, the "Securityholders Agreement"), any stockholder entitled to vote at any meeting of the stockholders or to express consent to or dissent from corporate action in writing without a meeting may authorize another person or persons to vote at any such

meeting and express such consent or dissent for him or her by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature, or by transmitting or authorizing the transmission of an email or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. No such proxy shall be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the stockholder executing it, except in those cases where applicable law provides that a proxy shall be irrevocable. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary. Proxies by electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 1.09. Organization; Procedure. At every meeting of stockholders the presiding officer shall be the Chairman of the Board or, in the event of his or her absence or disability, the President or, in the event of his or her absence or disability, a presiding officer chosen by a majority of the stockholders present in person or by proxy. The Secretary, or in the event of his or her absence or disability, the Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary, an appointee of the presiding officer, shall act as Secretary of the meeting. The Board of Directors may make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to any such rules and regulations, the order of business and all other matters of procedure at every meeting of stockholders may be determined by such presiding officer.

Section 1.10. Consent of Stockholders in Lieu of Meeting. To the fullest extent permitted by law, whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, such action may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having 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 (but not less than the minimum number of votes otherwise prescribed by law) and shall be 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.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by law to the Corporation, written consents signed by a sufficient number of holders to take action are 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.

Section 1.11. Action by Electronic Transmission Consent. An email or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section; provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (A) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (B) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be 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 if, to the extent and in the manner provided by resolution of the board of directors of the Corporation.

ARTICLE II

BOARD OF DIRECTORS

Section 2.01. General Powers. Except as may otherwise be provided by law, by the Certificate of Incorporation or by these By-Laws, the property, affairs and business of the Corporation shall be managed by or under the direction of the Board of Directors and the Board of Directors may exercise all the powers of the Corporation.

Section 2.02. Number and Term of Office. The number of Directors constituting the entire Board of Directors shall be determined in accordance with the Securityholders Agreement. Each Director (whenever elected) shall hold office until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.

Section 2.03. Election of Directors. Except as otherwise provided in Sections 2.12 and 2.13 of these By-Laws, the Directors shall be elected at each annual meeting of the stockholders or by written consent in lieu of an annual meeting pursuant to Section 1.10 of these By-Laws in compliance with the provisions of the Securityholders

Agreement. If the annual meeting for the election of Directors is not held on the date designated therefor, the Directors shall cause the meeting to be held as soon thereafter as convenient. At each meeting of the stockholders for the election of Directors, provided a quorum is present, the Directors shall be elected by a plurality of the votes validly cast in such election.

Section 2.04. Annual and Regular Meetings; Notice. An annual meeting of the Board of Directors may be held for the purpose of electing officers and for the transaction of such other business as may come before the meeting. If any such meeting is to be held, it shall be held as soon as possible following adjournment of the annual meeting of the stockholders either (i) at the place of such annual meeting of the stockholders, in which event notice of such annual meeting of the Board of Directors need not be given, or (ii) at such other time and place as shall have been specified in advance notice given to members of the Board of Directors of the date, place and hour of such meeting. Any such notice shall be given at least twenty-four hours in advance if sent to each Director by facsimile or any form of electronic transmission previously approved by a Director, which approval has not been revoked (“Approved Electronic Transmission”), or delivered to him or her personally, or at least five days’ in advance, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Any such notice need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a waiver of notice, whether before or after such meeting.

The Board of Directors from time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Advance notice of regular meetings need not be given; provided if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each member of the Board of Directors of the place, date and hour of such meetings which shall be at least twenty-four hours’ notice, if such notice is sent by facsimile or Approved Electronic Transmission, to each Director, or delivered to him or her personally, or at least five days’ notice, if such notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Notice of such a meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a waiver of notice, whether before or after such meeting.

Section 2.05. Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board or the President, or in the event of their absence or disability, by any Vice President, at such place (within or without the State of Delaware), date and hour as may be specified in the respective notices or waivers of notice of such meetings. Special meetings of the Board of Directors may be called on twenty-four hours’ notice, if such notice is sent by facsimile or Approved Electronic Transmission, to each Director, or delivered to him or her personally, or on five days’ notice, if notice is mailed to each Director, addressed to him or her at his or her usual place of business or other designated address. Notice of any

special meeting need not be given to any Director who attends such meeting without protesting the lack of notice to him or her, prior to or at the commencement of such meeting, or to any Director who submits a signed waiver of notice (including by electronic transmission), whether before or after such meeting.

Section 2.06. Quorum. A quorum for meetings of the Board shall consist of a majority of the total votes held by the authorized membership of the Board.

Section 2.07. Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, the majority vote of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors

Section 2.08. Adjournment. The majority vote of the Directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place, provided such adjourned meeting is no earlier than twenty-four hours after written notice (in accordance with these By-Laws) of such postponement has been given to the directors (or such notice waived in accordance with these By-Laws), and, at any such postponed meeting, quorum shall consist of a majority of the total votes held by the authorized membership of the Board.

Section 2.09. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by Approved Electronic Transmission, and such writing or writings or Approved Electronic Transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.10. Regulations; Manner of Acting. To the extent consistent with applicable law, the Certificate of Incorporation and these By-Laws, the Board of Directors may adopt such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. The Directors shall act only as a Board, and the individual Directors shall have no power as such.

Section 2.11. Action by Telephonic Communications. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.12. Resignations. Any Director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such Director, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 2.13. Removal and Replacement of Directors. Any Director may be removed at any time, either for or without cause, upon the affirmative vote of the

holders of a majority of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent in accordance with the DGCL and these By-Laws, provided that for so long as the Securityholders Agreement is in effect, the removal of any Director shall instead be governed by the provisions of the Securityholders Agreement.

Section 2.14. Vacancies and Newly Created Directorships. If any vacancies shall occur in the Board of Directors, by reason of death, resignation, removal or otherwise, or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act, and such vacancies and newly created directorships may be filled by a majority of the Directors then in office, although less than a quorum, provided that for so long as the Securityholders Agreement is in effect, any newly created directorship or vacancy on the Board of Directors shall instead be filled in accordance therewith. A Director elected to fill a vacancy or newly created directorship shall hold office until his or her successor has been elected and qualified or until his or her earlier death, resignation or removal. Any such vacancy or newly created directorship may also be filled at any time by vote of the stockholders, provided that for so long as the Securityholders Agreement is in effect, any newly created directorship or vacancy on the Board of Directors shall instead be filled in accordance therewith.

Section 2.15. Director Fees and Expenses. The amount, if any, which each Director shall be entitled to receive as compensation (in the form of cash or equity securities of the Corporation) for his or her services shall be fixed from time to time by the Board of Directors, subject to the Securityholders Agreement (if then in effect). The Corporation will cause each Director serving on the Board of Directors to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him or her in connection with such service.

Section 2.16. Reliance on Accounts and Reports, etc. A Director, or a member of any Committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or Committees designated by the Board of Directors, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE III

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 3.01. How Constituted. The Board of Directors may designate one or more Committees, including an Executive Committee, each such Committee to consist of such number of Directors as from time to time may be fixed by the Board of Directors. The Board of Directors may designate one or more Directors as alternate members of any such Committee, who may replace any absent or disqualified member or members at any meeting of such Committee. Thereafter, members (and alternate

members, if any) of each such Committee may be designated at the annual meeting of the Board of Directors. Any such Committee may be abolished or re-designated from time to time by the Board of Directors. Each member (and each alternate member) of any such Committee (whether designated at an annual meeting of the Board of Directors or to fill a vacancy or otherwise) shall hold office until his or her successor shall have been designated or until he or she shall cease to be a Director, or until his or her earlier death, resignation or removal.

Section 3.02. Powers. Each Committee shall have such powers and responsibilities as the Board may from time to time authorize. During the intervals between the meetings of the Board of Directors, the Executive Committee, except as otherwise provided in this Section 3.02 or required by the DGCL shall have and may exercise all the powers and authority of the Board of Directors in the management of the property, affairs and business of the Corporation. Each such other Committee, except as otherwise provided in this Section 3.02, shall have and may exercise such powers of the Board of Directors as may be provided by resolution or resolutions of the Board of Directors. Neither the Executive Committee nor any such other Committee shall have the power or authority (a) with respect to approving or adopting or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) to adopt, amend or repeal these By-Laws of the Corporation.

The Executive Committee shall have, and any such other Committee may be granted by the Board of Directors, power to authorize the seal of the Corporation to be affixed to any or all papers which may require it.

Section 3.03. Proceedings. Each such Committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time, provided that the Board may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of these By-Laws. Each such Committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board of Directors following any such proceedings.

Section 3.04. Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such Committee, at all meetings of any Committee the presence of members (or alternate members) constituting a majority of the total votes held by the authorized membership of such Committee shall constitute a quorum for the transaction of business. Any act authorized by a majority of the votes held by the members present at any meeting at which a quorum is present shall be the act of such Committee. Any action required or permitted to be taken at any meeting of any such Committee may be taken without a meeting, if all members of such Committee shall consent to such action in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in

electronic form. The members of any such Committee shall act only as a Committee, and the individual members of such Committee shall have no power as such.

Section 3.05. Action by Telephonic Communications. Members of any Committee designated by the Board of Directors may participate in a meeting of such Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 3.06. Absent or Disqualified Members. In the absence or disqualification of a member of any Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 3.07. Resignations. Any member (and any alternate member) of any Committee may resign at any time by delivering a written notice of resignation, signed by such member, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section 3.08. Removal. Any member (and any alternate member) of any Committee may be removed from his or her position as a member (or alternate member, as the case may be) of such Committee at any time, either for or without cause, by resolution adopted by a majority of the whole Board of Directors.

Section 3.09. Vacancies. If any vacancy shall occur in any Committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors subject to Section 3.01 of these By-Laws.

ARTICLE IV

OFFICERS

Section 4.01. Number. The officers of the Corporation shall be chosen by the Board of Directors and shall be a Chairman of the Board, the President, one or more Vice Presidents, a Secretary and a Treasurer and any other officers appointed pursuant to Section 4.11. The Board of Directors also may elect one or more Assistant Secretaries and Assistant Treasurers in such numbers as the Board of Directors may determine. Any number of offices may be held by the same person. No officer need be a Director of the Corporation.

Section 4.02. Election. Unless otherwise determined by the Board of Directors, the officers of the Corporation shall be elected by the Board of Directors at the annual meeting of the Board of Directors, and shall be elected to hold office until the next succeeding annual meeting of the Board of Directors. In the event of the failure to elect officers at such annual meeting, officers may be elected at any regular or special meeting

of the Board of Directors. Each officer shall hold office until his or her successor has been elected and qualified, or until his or her earlier death, resignation or removal. For so long as the Securityholders Agreement is in effect, the election of the Chairman of the Board shall instead be governed by the terms of the Securityholders Agreement.

Section 4.03. Salaries. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors.

Section 4.04. Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering notice of resignation, either in writing signed by such officer or by electronic transmission, to the Chairman of the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by the Board of Directors. For so long as the Securityholders Agreement is in effect, the removal of the Chairman of the Board, and the filling of vacancy in such position, shall be subject to the terms of the Securityholders Agreement.

Section 4.05. Authority and Duties of Officers. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these By-Laws or in a resolution of the Board not inconsistent with these By-Laws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

Section 4.06. The Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders at which he or she is present.

Section 4.07. The President. The President shall preside at all meetings of the stockholders and directors at which he or she is present, shall be the chief executive officer and the chief operating officer of the Corporation, shall have general control and supervision of the policies and operations of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He or she shall manage and administer the Corporation's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer and a chief operating officer of a corporation. He or she shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and other documents and instruments in connection with the business of the Corporation, and together with the Secretary or an Assistant Secretary, conveyances of real estate and other documents and instruments to which the seal of the Corporation is affixed. He or she shall have the authority to cause the employment or appointment of such employees and agents of the Corporation as the conduct of the business of the Corporation may require, to fix their compensation, and to remove or suspend any employee or agent elected or appointed by the President or the Board of Directors. The President shall perform such other duties and have such other powers as the Board of Directors or the Chairman may from time to time prescribe.

Section 4.08. The Vice President. Each Vice President shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the President. In the absence of the President, the duties of the President shall be performed and his or her powers may be exercised by such Vice President as shall be designated by the President, or failing such designation, such duties shall be performed and such powers may be exercised by each Vice President in the order of their earliest election to that office; subject in any case to review and superseding action by the President.

Section 4.09. The Secretary. The Secretary shall have the following powers and duties:

(a) He or she shall keep or cause to be kept a record of all the proceedings of the meetings of the stockholders and of the Board of Directors and all Committees of which a secretary has not been appointed in books provided for that purpose.

(b) He or she shall cause all notices to be duly given in accordance with the provisions of these By-Laws and as required by law.

(c) Whenever any Committee shall be appointed pursuant to a resolution of the Board of Directors, he or she shall furnish a copy of such resolution to the members of such Committee.

(d) He or she shall be the custodian of the records and of the seal of the Corporation and cause such seal (or a facsimile thereof) to be affixed to all certificates representing shares of the Corporation prior to the issuance thereof and to all instruments the execution of which on behalf of the Corporation under its seal shall have been duly authorized in accordance with these By-Laws, and when so affixed he or she may attest the same.

(e) He or she shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, the Certificate of Incorporation or these By-Laws.

(f) He or she shall have charge of the stock books and ledgers of the Corporation and shall cause the stock and transfer books to be kept in such manner as to show at any time the number of shares of stock of the Corporation of each class issued and outstanding, the names (alphabetically arranged) and the addresses of the holders of record of such shares, the number of shares held by each holder and the date as of which each became such holder of record.

(g) He or she shall sign (unless the Treasurer, an Assistant Treasurer or an Assistant Secretary shall have signed) certificates representing shares of the Corporation the issuance of which shall have been authorized by the Board of Directors.

(h) He or she shall perform, in general, all duties incident to the office of secretary and such other duties as may be specified in these By-Laws or as may be assigned to him or her from time to time by the Board of Directors, or the President.

Section 4.10. The Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall have the following powers and duties:

(a) He or she shall have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the Corporation, and shall keep or cause to be kept full and accurate records of all receipts of the Corporation.

(b) He or she shall cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositaries as shall be selected in accordance with Section 8.05 of these By-Laws.

(c) He or she shall cause the moneys of the Corporation to be disbursed by checks or drafts (signed as provided in Section 8.06 of these By-Laws) upon the authorized depositaries of the Corporation and cause to be taken and preserved proper vouchers for all moneys disbursed.

(d) He or she shall render to the Board of Directors or the President, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer, and render a full financial report at the annual meeting of the stockholders, if called upon to do so.

(e) He or she shall be empowered from time to time to require from all officers or agents of the Corporation reports or statements giving such information as he or she may desire with respect to any and all financial transactions of the Corporation.

(f) He or she may sign (unless an Assistant Treasurer or the Secretary or an Assistant Secretary shall have signed) certificates representing stock of the Corporation the issuance of which shall have been authorized by the Board of Directors.

(g) He or she shall perform, in general, all duties incident to the office of treasurer and such other duties as may be specified in these By-Laws or as may be assigned to him or her from time to time by the Board of Directors, or the President.

Section 4.11. Additional Officers. The Board of Directors may appoint such other officers and agents as it may deem appropriate, and such other officers and agents shall hold their offices for such terms and shall exercise such powers and perform such duties as may be determined from time to time by the Board of Directors. The Board of Directors from time to time may delegate to any officer or agent the power to

appoint subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties. Any such officer or agent may remove any such subordinate officer or agent appointed by him or her, for or without cause.

Section 4.12. Security. The Board of Directors may require any officer, agent or employee of the Corporation to provide security for the faithful performance of his or her duties, in such amount and of such character as may be determined from time to time by the Board of Directors.

ARTICLE V

CAPITAL STOCK

Section 5.01. Certificates of Stock, Uncertificated Shares. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until each certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock in the Corporation represented by certificates and upon request every holder of uncertificated shares may at the direction of the Board of Directors receive a certificate signed by, or in the name of the Corporation, by the Chairman of the Board, the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, representing the number of shares registered in certificate form. Such certificate shall be in such form as the Board of Directors may determine, to the extent consistent with applicable law, the Certificate of Incorporation and these By-Laws.

Section 5.02. Signatures; Facsimile. All signatures on the certificate referred to in Section 5.01 of these By-Laws may be in facsimile, engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose facsimile, engraved or printed signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.03. Lost, Stolen or Destroyed Certificates. The Board of Directors may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon delivery to the Board of Directors of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Board of Directors may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) or 218(a) of the DGCL. Subject to the provisions of the Certificate of Incorporation and these By-Laws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation.

Section 5.05. Record Date. In order to 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, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty nor less than ten days before the date of such meeting. 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.

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 law, 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 law, 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.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which 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 5.06. Registered Stockholders. Prior to due surrender of a certificate for registration of transfer, the Corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate, and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in such shares on the part of any other person, whether or not the Corporation shall have notice of such claim or interests. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the Corporation to do so.

Section 5.07. Transfer Agent and Registrar. The Board of Directors may appoint one or more transfer agents and one or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

ARTICLE VI

INDEMNIFICATION

Section 6.01. Nature of Indemnity. The Corporation shall indemnify, to the fullest extent authorized by the DGCL, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a Director, officer, employee or manager of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, and may indemnify any person who was or is a party or is threatened to be made a party to such an action, suit or proceeding by reason of the fact that he or she is or was or has agreed to become a director, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf in connection with such action, suit or proceeding and any appeal therefrom; provided that in the case of an action or suit by or in the right of the Corporation to procure a judgment in its favor (1) such indemnification shall be limited to expenses (including attorneys' fees) actually and reasonably incurred by such person in the defense or settlement of such action or suit, and (2) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Delaware Court of

Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Notwithstanding the foregoing, but subject to Section 6.04 of these By-Laws, the Corporation shall not be obligated to indemnify a Director or officer of the Corporation in respect of a Proceeding (or part thereof) instituted by such Director or officer, unless such Proceeding (or part thereof) has been authorized by the Board of Directors or the Corporation has separately agreed to indemnify such Director or officer pursuant to an agreement authorized by the Board of Directors.

Section 6.02. Successful Defense. To the extent that a present or former Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.01 of these By-Laws or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 6.03. Advance Payment of Expenses. Expenses (including attorneys' fees) incurred by a present Director or officer in defending any civil, criminal, administrative or investigative 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 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 as authorized in this Article. Such expenses (including attorneys' fees) incurred by former Directors and officers may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate. The Corporation or, in respect of a present Director or officer, the Board of Directors may authorize the Corporation's counsel to represent such present or former Director or officer in any action, suit or proceeding, whether or not the Corporation is a party to such action, suit or proceeding.

Section 6.04. Procedure for Indemnification of Directors and Officers. Any indemnification of a Director or officer of the Corporation under Sections 6.01 and 6.02 of these By-Laws, or advance of costs, charges and expenses to such person under Section 6.03 of these By-Laws, shall be made promptly, and in any event within thirty days, upon the written request of such person. If the Corporation fails to respond within sixty days to a written request for indemnity, the Corporation shall be deemed to have approved such request. If the Corporation denies a written request for indemnity or advancement of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty days, the right to indemnification or advances as granted by this Article shall be enforceable by such person in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. The Corporation shall have the burden of proving that such person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.05. Survival; Preservation of Other Rights. The foregoing indemnification provisions shall be deemed to be a contract between the Corporation and each Director and officer who serves in any such capacity at any time while these provisions as well as the relevant provisions of the DGCL are in effect and any repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such a “contract right” may not be modified retroactively without the consent of such Director or officer.

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.06. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her or on his or her behalf 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, provided that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the entire Board of Directors.

Section 6.07. Severability. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Director or officer and may indemnify each employee or agent of the Corporation as to costs, charges and expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VII

OFFICES

Section 7.01. Registered Office. The registered office of the Corporation in the State of Delaware is at [Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801.] The name of its registered agent at such address is [The Corporation Trust Company].

Section 7.02. Other Offices. The Corporation may maintain offices or places of business at such other locations within or without the State of Delaware as the Board of Directors may from time to time determine or as the business of the Corporation may require.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01. Dividends. Subject to any applicable provisions of law and the Certificate of Incorporation, dividends upon the shares of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property, or shares of the Corporation's capital stock.

A member of the Board of Directors, or a member of any Committee designated by the Board of Directors shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or Committees of the Board of Directors, or by any other person as to matters the Director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 8.02. Reserves. There may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may similarly modify or abolish any such reserve.

Section 8.03. Execution of Instruments. The President, any Vice President, the Secretary or the Treasurer may enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. The Board of Directors or the President may authorize any other officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization may be general or limited to specific contracts or instruments.

Section 8.04. Corporate Indebtedness. No loan shall be contracted on behalf of the Corporation, and no evidence of indebtedness shall be issued in its name, unless authorized by the Board of Directors, the President, or, to the extent the Executive Committee has the power to authorize such loan or evidence of indebtedness, the Executive Committee. Such authorization may be general or confined to specific

instances. Loans so authorized may be effected at any time for the Corporation. All bonds, debentures, notes and other obligations or evidences of indebtedness of the Corporation issued for such loans shall be made, executed and delivered as the Board of Directors, the President or the Executive Committee, as the case may be, shall authorize. When so authorized, any part of or all the properties, including contract rights, assets, business or good will of the Corporation, whether then owned or thereafter acquired, may be mortgaged, pledged, hypothecated or conveyed or assigned in trust as security for the payment of such bonds, debentures, notes and other obligations or evidences of indebtedness of the Corporation, and of the interest thereon, by instruments executed and delivered in the name of the Corporation.

Section 8.05. Deposits. Any funds of the Corporation may be deposited from time to time in such banks, trust companies or other depositaries as may be determined by the Board of Directors, the Chairman of the Board or the President, or by such officers or agents as may be authorized by the Board of Directors, the Chairman of the Board or the President to make such determination.

Section 8.06. Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such agent or agents of the Corporation, and in such manner, as the Board of Directors, the Chairman of the Board or the President Officer from time to time may determine.

Section 8.07. Sale, Transfer, etc. of Securities. To the extent authorized by the Board of Directors, the Chairman of the Board or by the President, any Vice President, the Secretary or the Treasurer or any other officers designated by the Board of Directors, the Chairman of the Board or the President may sell, transfer, endorse, and assign any shares of stock, bonds or other securities owned by or held in the name of the Corporation, and may make, execute and deliver in the name of the Corporation, under its corporate seal, any instruments that may be appropriate to effect any such sale, transfer, endorsement or assignment.

Section 8.08. Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chairman of the Board, the President or any Vice President shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders of any corporation in which the Corporation may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock. Such officers acting on behalf of the Corporation shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section 8.09. Fiscal Year. The fiscal year of the Corporation shall be a 52 or 53 week fiscal year that shall end each year on the Saturday nearest to March 31 of that calendar year.

Section 8.10. Seal. The seal of the Corporation shall be circular in form and shall contain the name of the Corporation, the year of its incorporation and the words “Corporate Seal” and “Delaware”. The form of such seal shall be subject to alteration by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced, or may be used in any other lawful manner.

Section 8.11. Books and Records; Inspection. Except to the extent otherwise required by law, the books and records of the Corporation shall be kept at such place or places within or without the State of Delaware as may be determined from time to time by the Board of Directors.

ARTICLE IX

AMENDMENT OF BY-LAWS

Section 9.01. Amendment. Subject to the provisions of the Certificate of Incorporation, these By-Laws may be amended, altered or repealed

(a) by resolution adopted by a majority of the Board of Directors at any special or regular meeting of the Board if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting; or

(b) at any regular or special meeting of the stockholders if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting;

provided, that the by-laws may not be amended, altered or repealed or new by-laws adopted to the extent inconsistent with the Securityholders Agreement.

ARTICLE X

CONSTRUCTION

Section 10.01. Construction. In the event of any conflict between the provisions of these By-Laws as in effect from time to time and the provisions of the Certificate of Incorporation of the Corporation as in effect from time to time, the provisions of such Certificate of Incorporation shall be controlling.

[NEW OTC]

BY-LAWS

As Adopted on [●]

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EXHIBIT 10

Form of Certificate of Formation of Fun Express LLC

ARTICLES OF ORGANIZATION
OF
FUN EXPRESS LLC

Article 1
Name

The name of this limited liability company is FUN EXPRESS LLC.

Article 2
Duration

The Company shall have perpetual existence.

Article 3
Purpose and Powers

3.1 Purposes. The purposes for which the Company is organized are to engage in any and all lawful businesses for which a limited liability company may be organized under the laws of the State of Nebraska.

3.2 Powers. The Company shall have and exercise all powers and rights conferred upon a limited liability company by the Nebraska Limited Liability Company Act (the “Act”), and any enlargement of such powers conferred by subsequent legislative acts.

Article 4
Principal Place of Business

The Company’s principal place of business in Nebraska is 5455 South 90th Street, Omaha, Nebraska 68127.

Article 5
Registered Office and Registered Agent

5.1 Office. The initial registered office of the Company is 5455 South 90th Street, Omaha, Nebraska 68127.

5.2 Agent. The name of the initial registered agent of the Company at such address is Robert R. Siffring.

Article 6
Stated Capital

The total amount of cash and a description and agreed value of all property, other than cash, initially contributed by the Members as a basis for capitalization of the Company are described below:

Property Contributed

Agreed Value

Cash

\$1,000

Article 7
Additional Capital Contributions

No Member shall be required to make any additional contributions of capital to the Company nor shall any additional contributions of capital of the Company be made except at such times and in such amounts as a majority in interest of the Members of the Company shall consent to in writing.

Article 8
Admission of Additional Members

Additional Members may be admitted to the Company only upon the written consent of a majority in interest of the Members.

Article 9
Transfer or Assignment of Membership

No Member may transfer, assign, pledge, hypothecate, or encumber by contract or operation of law all or any portion of such Member's interest in the Company except as provided in the Operating Agreement.

Article 10
Issuance of Non-Voting Equity Securities

Pursuant to section 1123(a)(6) of title 11 of the United States Code, notwithstanding any other provision contained herein to the contrary, the Company shall not issue non-voting equity securities.

Article 11
Withdrawal Of Capital

Members shall not be entitled to withdraw from the Company and shall not be entitled to return as such Member's capital without the unanimous written consent of the remaining Members.

Article 12
Management of the Company

The management of the Company shall be vested in one or more Managers, who shall hold the offices for the term and have the responsibilities accorded to them by the Members as set forth in the Operating Agreement. The names and addresses of the initial Manager is:

Steven G. Mendlik
5455 South 90th Street
Omaha, NE 68127

Any successor or additional Manager shall be appointed in the manner provided in the Operating Agreement.

Article 13 **Dissolution**

The Company may be dissolved upon the unanimous written consent of all Members of the Company.

Article 14 **Amendments**

These Articles may be amended only upon the affirmative vote of all of the Members of the Company. Any amendment which affects a Member's right to vote or receive distributions must be approved by such Member.

Article 15 **Merger or Consolidation**

The Company may not be a party to a merger or consolidation with any other entity unless the Plan of Merger or consolidation is authorized and approved by all of the Members of the Company.

The undersigned, being all the initial Members of the Company, hereby adopt and sign these Articles of Organization for the purpose of forming the Company under the Act.

Dated this ____ day of _____, 201[].

SOLE MEMBER:

FUN EXPRESS, INC.

By: _____

Its: _____

EXHIBIT 11

Form of Operating Agreement of Fun Express LLC

**OPERATING AGREEMENT
OF
FUN EXPRESS LLC**

**Article I
Purpose**

- 1.1 **Purpose.** The purpose of Fun Express LLC (“Company”) shall be:
- (a) To engage in any and all lawful business for which a limited liability company may be organized under the laws of the State of Nebraska.
 - (b) To exercise all other powers necessary to or reasonably connected with the Company’s business which may be legally exercised by limited liability companies under the Nebraska Limited Liability Company Act (the “Act”) and any enlargement of such powers conferred by subsequent legislative acts.
 - (c) To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

**Article II
Management**

2.1 **Management Board.** The Members of the Company vest the management of the Company in a Management Board, which shall have sole power and authority to conduct the affairs of the Company except to the extent management powers are expressly reserved to the Members by this Operating Agreement, the Articles, or the Nebraska Limited Liability Company Act, found at Nebraska Revised Statutes §§ 21-2601 and following (the “Act”) or any subsequent applicable legislation. The Management Board shall be comprised of one or more Managers who shall serve until such Manager’s death, resignation, or removal.

2.2 **Initial Manager.** Steve Mendlik shall serve as the initial Manager. In the event that he is removed as a manager, or resigns from office, the successor Manager(s) shall be selected at a meeting of the Members by the affirmative vote of a majority in interest of the Members.

2.3 **Liabilities of Managers.** In carrying out their duties under this Operating Agreement (“Agreement”), the Managers shall not be liable to the Company or to any Member for any actions taken in good faith and reasonably believed by them to be in the best interest of the Company or in reliance on the provisions of this Agreement or the Articles, or for good faith errors of judgment, but shall only be liable for willful misconduct, gross negligence, or breach of this Agreement in the performance of their duties as Managers. The Managers shall not be expected to devote their full time and attention to the affairs of the Company, but shall devote

such amounts of time and attention as are reasonable and appropriate in their good faith judgment under the circumstances prevailing from time to time.

2.4 **Contracting Authority.** The Managers shall have the power and authority, on behalf of the Company to:

- (a) acquire property from any person or entity as the Managers may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such person or entity shall not prohibit the Managers from dealing with that person or entity;
- (b) borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in Company property to secure repayment of the borrowed sums;
- (c) purchase liability and other insurance to protect the Company's property and business;
- (d) hold and own any Company real and/or personal properties in the name of the Company;
- (e) invest any Company funds (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper, stocks, bonds, marketable securities or other investments;
- (f) execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of Company Property; assignments; bills of sale; leases; partnership agreements, operating (or limited liability company) agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the conduct of the business of the Company;
- (g) employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;
- (h) enter into any and all other agreements on behalf of the Company, with any other person for any purpose, in such forms as the Managers may approve;
- (i) execute and file such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or

agency thereof, to effectuate, implement, continue and defend the valid existence of the Company;

- (j) cause the Company to be a party to a reorganization;
- (k) establish the compensation, if any, to be paid to employees of the Company, including to a Member or Manager in exchange for such person's services to the Company which shall be fixed from time to time by the Management Board in its sole discretion.
- (l) do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business;
- (m) compromise or settle any claim against or inuring to the benefit of the Company; and
- (n) cause the Company to commence a voluntary case as a debtor under the United States Bankruptcy Code.

2.5 **Right to Rely on Managers.** Any person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

- (a) The identity of any Manager or Member;
- (b) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by any Manager or which are in any other manner germane to the affairs of the Company;
- (c) The persons or entities who are authorized to execute and deliver any instrument or document of the Company; or
- (d) Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

2.6 **General Indemnity Provision.** The Company may indemnify any person or entity who is a party (or is threatened to be made a party) to any action, suit, or proceeding (whether civil, criminal, administrative, or investigative), if such person or entity is a party by reason of the fact that he, she, or it is or was a Manager, Member, employee, or agent of the Company, or is or was serving at the request of the Company as a Member, Manager, director, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise. Such person or entity may be indemnified against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him, her, or it in connection with such action, suit, or proceeding.

2.7 **Insurance.** The Company may purchase and maintain insurance on behalf of any person or entity who is or was a Manager, Member, employee, or agent of the Company or is or was serving at the request of the Company as a Manager, Member, officer, director, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against such person or entity and incurred in any such capacity or arising out of his, her, or its status as such.

2.8 **Fiduciary Duty of Managers.** In carrying out their duties under this Agreement, the Managers owe to the Company and the Members the same standard of fiduciary care that a general partner owes to a limited partnership and its limited partners. The Managers shall manage the Company using their best efforts to carry out the provisions of this Agreement and to conduct the affairs of the Company for the benefit of the Company and all of the Members.

2.9 **Removal.** At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time by (a) a vote of two-thirds majority in interest of all the Members, or (b) for gross negligence, fraud, deceit or intentional misconduct which had a material adverse effect on the Company, or if the Manager is adjudicated incompetent by a Court of competent jurisdiction, by the affirmative vote of Members holding a majority in interest determined without regard to any voting interest held by the Manager. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

2.10 **Manager Titles.** In performing management functions for the Company, Managers may use the title "Manager" or such other title or titles (including, without limitation the title "President" or "Chief Executive Officer") as the Members may determine from time to time by an affirmative vote of Members holding a majority in interest.

Article III **Meetings**

3.1 **No Required Meetings.** The Members and Managers may, but shall not be required to hold any annual, periodic, or other formal meetings. However, meetings of the Members and/or Managers may be called as provided in this Article III.

3.2 **Meetings of Members.** Meetings of Members of the Company may be called by any Manager or Member and shall be held at the principal place of business of the Company, or elsewhere as the notice of such meeting shall direct. A majority in interest of the Members shall constitute a quorum for purposes of transacting business. Members may attend any such meeting in person, by proxy, or by telephonic or video conference call. Except as otherwise provided in this Agreement, the Articles, or the Act, the vote of a majority in interest of the Members present at a duly convened meeting of the Members at which a quorum is present shall constitute the act of the Members.

3.3 **Meetings of the Management Board.** Meetings of the Management Board consisting of all Managers may be called by any Manager and shall be held at the principal place

of business of the Company, or elsewhere as the notice of such meeting shall direct. Attendance by a majority of the Managers shall constitute a quorum for purposes of transacting business. Managers may attend any such meeting in person or by telephonic or video conference call. Except as otherwise expressly provided in this Agreement, the Articles, or the Act, the affirmative vote of a majority of the Managers present at a duly convened meeting of the Management Board at which a quorum is present shall constitute the act of the Management Board.

3.4 **Proxies.** At all meetings of the Members, a Member may vote by proxy executed in writing by such Member. Such proxy shall be filed with the Management Board before or at the time of the meeting.

3.5 **Consent to Action Without Meeting.** Unless otherwise provided by law, any action required to be or which may be taken at any meeting of the Members or the Management Board, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members or Managers entitled to vote with respect to such action.

3.6 **Notice of Members' Meetings.** Written notice of every meeting of the Members of the Company, stating the place, date, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered by the Manager or Member calling the meeting to each Member at least ten (10) days prior to this meeting, unless such notice is waived in accordance with Section 3.8 or 3.9 below. Any written notice must meet the requirements of Section 10.2 of this Agreement.

3.7 **Management Board Meetings.** Written or oral notice of every meeting of the Management Board, stating the place, date, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given by the Manager calling the meeting to each other Manager at least twenty-four (24) hours prior to this meeting, unless such notice is waived in accordance with Section 3.8 or 3.9 below. Any written notice must meet the requirements of Section 10.2 of this Agreement.

3.8 **Written Waiver.** Whenever any notice is required to be given under the provisions of this Agreement or under the provisions of the Articles or the Act, waiver of such notice in writing, signed by the person or persons entitled to such notice, whether before or after the time for such notice, shall be deemed equivalent to the giving of such notice.

3.9 **Waiver By Attendance.** Presence of a Member at any Members' meeting or any Manager at a Management Board meeting shall be deemed to be a waiver of the notice otherwise required for such meeting, unless such Member or Manager, as the case may be, is present solely to protest inadequate notice of such meeting.

Article IV

Contributions to Capital

4.1 **Initial Contributions.** Each Member agrees to make on the date of this Agreement the initial contribution to the capital of the Company described on the attached Exhibit “A.” No Member may make any additional, voluntary contributions to the capital of the Company except with the prior written consent of the Management Board of the Company.

4.2 **Voting by Membership Units.** The ownership rights in the Company are reflected in units. Each Member shall own the number of units as shown on Exhibit “A”. On matters subject to vote of members, each unit has one vote. For purposes of this Agreement and the Articles of Organization, the term “majority in interest” means Members holding a majority of the outstanding units entitled to vote on the particular matter. Only units held by Members entitled to vote shall be included in both the numerator and denominator in determining whether the requisite approval was received.

4.3 **Additional Contributions.** No Member shall be required to make any additional contributions to the capital of the Company, except to the extent expressly set forth in this Agreement or the Articles or established by a vote of the majority in interest of the Members. Any requirement to contribute additional funds to the capital of the Company shall be imposed upon the Members pro rata, based upon the percentage interest owned except to the extent that all Members agree to the contrary.

Article V

Maintenance of Capital Accounts

5.1 **Capital Contribution.** For purposes of this Agreement, “capital contribution” means, with respect to any Member, the amount of money and the fair market value of any property (as reasonably agreed by the Members in good faith) contributed to the Company with respect to the interest held by such Member.

5.2 **Maintenance Provisions.** A Capital Account shall be maintained on the books and records of the Company with respect to each Member, such that:

- (a) To each Member's Capital Account there shall be credited:
 - (1) any capital contributions of such Member;
 - (2) such Member's allocable share of profits, and any items of income or gain which are specially allocated to the Member; and
 - (3) the amount of any Company liabilities assumed by such Member or which are secured by any property of the Company distributed to such Member.

The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note shall not be credited to the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and only to the extent) principal payments are made on the note.

- (b) To each Member's Capital Account there shall be debited:
- (1) the amount of cash and the fair market value of any property (as reasonably agreed by the Members in good faith) of the Company distributed to such Member;
 - (2) such Member's allocable share of losses and any items of expense or loss which are specially allocated to the Member; and
 - (3) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

5.3 **Transfer of Capital Accounts.** In the event all or a portion of an interest in the Company is transferred in accordance with the terms of the Articles and Agreement, the transferee shall succeed to that portion of the Capital Account of the transferor which is allocable to the transferred interest.

Article VI

Allocations of Profits and Losses

6.1 **Allocations.** The Company's profits or losses for any fiscal year shall be allocated among the Members in accordance with the percentage interest owned by each Member. The Member's percentage interest shall be equal to the percentage of the outstanding units owned by such Member ("Percentage Interest").

6.2 **Records and Reports.** At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

- (a) A current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;
- (b) A copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the four (4) most recent Fiscal Years;
- (d) Copies of the Company's currently effective written Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three (3) most recent Fiscal Years;

- (e) Minutes of every annual meeting, special meeting, and court-ordered meeting;
- (f) Any written consents obtained from Members for actions taken by Members without a meeting.

6.3 **Returns and other Elections.** The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Internal Revenue Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Fiscal Year.

All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion; provided, however, that the Managers shall make any tax election requested by Members owning a majority interest.

6.4 **Tax Matters Partner.** Any Manager selected by a vote of the Managers, so long as the Manager so selected is also a Member, is hereby designated the Tax Matters Partner (“TMP”) as defined in Section 6231(a)(7) of the Code. The TMP and the other Members shall use their reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including any Regulations promulgated thereunder), and in doing so shall incur no liability to any other Member.

6.5 **Fiscal Year.** The fiscal year of the Company shall end on the Saturday closest to March 31 each year.

6.6 **Other Allocation Rules.**

- (a) For purposes of determining the profits, losses, or any other items allocable to any period, profits, losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Managers, using any permissible method under Internal Revenue Code Section 706 and the Regulations thereunder.
- (b) The Members are aware of the income tax consequences of the allocations made by Article VI and hereby agree to be bound by the provisions of Article VI in reporting their shares of Company income and loss for income tax purposes.

Article VII

Non Liquidating Distributions

7.1 **Discretionary Distributions.** Consistent with the purposes of the Company and to the extent that the Company's assets exceed its liabilities (other than liabilities to Members on account of their capital contributions), the Company, with the approval of the Management Board, may make nonliquidating distributions of cash or other property to Members from time to

time on a pro rata basis in accordance with the Members' respective percentage interests. In making decisions relative to the distributions to the Members, the Management Board shall consider the general needs of the Company for working capital and additional investment, the preservation of Company assets, prudent reserves for contingencies, the advisability of reducing or eliminating debt, and their fiduciary duties both to the Company and the Members. The primary source of distributions shall be distributable cash received from Company income.

Article VIII

Transferability of Interests

8.1 **Restrictions on Transfer.** No Member may transfer or assign by contract or operation of law all or any portion of the Member's interest in the Company and no additional Members of the Company may be admitted to the Company without the prior written consent of the majority in interest of the Members.

8.2 **Nonmember Transferees.** Except for transfers permitted in Section 8.1 above, if an interest in the Company is transferred by operation of law or by voluntary or involuntary transfer to a nonmember, the nonmember transferee shall not become a Member of the Company unless the nonmember transferee is admitted as a Member of the Company by written consent of a majority in interest of the Members other than the transferring Member. Nonmember transferees shall have no right to participate in the management of the business and affairs of the Company or to vote on any matter to be voted on by the Members. The nonmember transferee shall be entitled to receive the share of profits and the return of capital to which the transferring Member would otherwise be entitled.

8.3 **Admission of Additional Members.** Additional Members shall be admitted only upon an affirmative vote of a majority in interest of the Members of the Company.

8.4 **Expenses.** Except as otherwise expressly provided in this Agreement, all expenses of the Company incident to the admission of a transferee to the Company as a Member shall be charged to and paid by the transferring Member.

Article IX

Dissolution and Winding Up

9.1 **Liquidating Events.** The Company shall dissolve and commence winding up and liquidating upon the unanimous written agreement of all the Members to dissolve, wind up, and liquidate the Company ("Liquidation"). The Members agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Liquidation. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidation, the Members agree to continue the business of the Company without a winding up or liquidation until the occurrence of a Liquidation.

9.2 **Winding Up.** Upon the occurrence of a Liquidation, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and

satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary or appropriate for, winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the assets of the Company have been distributed pursuant to this Section 9.2 and the Company has terminated. The Management Board shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the Company's liabilities and assets, shall cause the assets to be liquidated as promptly as is consistent with obtaining the fair market value for any assets sold, and shall cause all sale proceeds, to the extent sufficient therefor, to be applied and distributed in the manner required by the Act. In the discretion of the Management Board, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 9.2 may be:

- (a) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Management Board, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Section 9.2; or
- (b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

9.3 **Distribution of Assets.** The Management Board shall proceed to liquidate the Company assets and properties, discharge the Company's obligations, and wind up the Company's business and affairs as promptly as is consistent with obtaining the fair value thereof. The proceeds of the Company's assets, to the extent sufficient therefor, shall be applied and distributed as follows:

- (a) First, to the payment and discharge of all of the Company's debts and liabilities, except those owing to Members, and to the establishment of any reasonable reserves for contingent or unliquidated debts and liabilities;
- (b) Second, to the payment of any debts and liabilities owing to Members;
- (c) Third, to the Members in accordance with their positive Capital Account balances.

If a Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all fiscal years, including the year during which such liquidation occurs), such Member shall have no obligation to make any

capital contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other person for any purpose whatsoever.

9.4 **Withdrawal.** No Member may withdraw any capital or any other assets of the Company without the written consent of the majority in interest of the Members other than the withdrawing Member and upon further compliance with the Act, as amended from time to time.

Article X

Miscellaneous

10.1 **Successors.** This Agreement and all of the terms and provisions of this Agreement shall be binding upon the Members and any new Members and their respective legal representatives, heirs, successors, and permitted assigns.

10.2 **Notices.** All notices or other communications under this Agreement shall be in writing (unless otherwise expressly provided in this Agreement) and shall be considered properly given if delivered by hand or mailed by first class United States Mail, postage prepaid, addressed in care of the respective Members or Managers at their last-known address. Notice may also be delivered by means of a confirmed facsimile or telecopy, provided the original of the notice is also promptly deposited in the United States Mail, first class, postage prepaid, addressed to the Members or Managers at such address. Notice of change of address shall be given to the Company by hand delivery or first class United States Mail, after the date of receipt of which notice, the change of address shall be effective. Unless actual receipt of a notice is required by an express provision of this Agreement, any such notice shall be deemed to be effective as of the earliest of (a) the date of delivery or confirmed facsimile or telecopy, or (b) the third business day following the date of deposit with the United States Post Office or in a regularly maintained receptacle for the deposit of United States Mail. Any refusal to accept delivery of any such communication shall be considered successful delivery of such communication.

10.3 **Applicable Law.** This Agreement and the rights and obligations of the Members of the Company shall be construed and interpreted under the laws of the State of Nebraska.

10.4 **Amendments.** This Agreement may be amended only upon the affirmative vote of a majority in interest of the Members of the Company. Any amendment to this Agreement or to the Articles of Organization which affects a Member's right to vote or receive distributions must be approved by such Member.

10.5 **Waiver of Partition.** Each of the Members of the Company irrevocably waives any right to maintain any action for partition with respect to the property of the Company.

10.6 **Company Property.** The legal title to any real or personal property or interest in such property at any time acquired by the Company shall be owned, held, or operated in the

name of the Company, and no Member, individually, shall have any ownership interest in such property.

10.7 **Acceptance of Prior Acts by New Members.** Each person becoming a Member, by becoming a Member, ratifies all action duly taken by the Company, pursuant to the terms of this Agreement, prior to the date such person becomes a Member.

10.8 **Section Headings.** The division of this Agreement into sections, subsections, and exhibits is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

10.9 **Severability.** In the event that one or more of the provisions contained in this Agreement, or any portions of this Agreement, are unenforceable or are declared invalid for any reason whatsoever, such enforceability or invalidity shall not affect the enforceability or validity of the remaining terms or portions of this Agreement. Each such unenforceable or invalid portion of this Agreement shall be severable from the remainder of this Agreement and the remainder of this Agreement shall be interpreted as if such unenforceable or invalid provision or portion had not been included as a part of this Agreement.

10.10 **Agreement for Further Execution.** At any time or times, upon the request of any Member, the other Members agree to sign and swear to any certificate required by the Act, to sign and swear to any amendment to or cancellation of such certificate whenever such amendment or cancellation is required by law or by this Agreement, and to cause the filing of any of the same of record wherever such filing is required by law.

10.11 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute as an original and all of which, taken together, shall constitute a single agreement.

10.12 **Time.** Time is an essential element to the performance of this Agreement by each Member.

10.13 **Contracts with Related Parties.** Nothing in this Agreement or in law shall prevent or be construed to prevent any of the Members, or any person related to any Member, from dealing with the Company as to any matter whatever, provided the terms of such dealing are fair and reasonable to the Company as determined by a majority in interest of the other Members.

10.14 **Copies Reliable and Admissible.** This Agreement shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original or of a counterpart which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Agreement or of a counterpart shall be admissible into evidence in any proceeding as though such document were an original Agreement.

10.15 **Entire Agreement.** This Agreement, together with the Articles of Organization, contain the entire agreement among the parties concerning its subject matter and replaces all other agreements among them, whether written or oral, concerning this subject matter.

IN WITNESS WHEREOF, this Operating Agreement is executed this ____ day of _____, 201[].

SOLE MEMBER:

FUN EXPRESS, INC.

By: _____

Its: _____

**FUN EXPRESS LLC
OPERATING AGREEMENT**

Exhibit “A”

<u>Member</u>	<u>Property Contributed</u>	<u>Agreed Value</u>	<u>Units</u>
FUN EXPRESS, INC.	Cash	\$1,000	10
TOTAL:		\$1,000	10

EXHIBIT 12

List of Excluded Assets

List of Excluded Assets

1. AIG Executive Liability Insurance; National Union Fire Insurance of Pittsburgh, PA; Directors, Officers and Private Company Liability Insurance, Employment Practice Liability Insurance and Fiduciary Liability Insurance; Policy No. 06-505-28-42
2. U.S. Specialty Insurance Company; Excess Indemnity Policy; Policy No. 14-MGU-09-A19609
3. Liberty Mutual Insurance Company; Excess Follow Form Policy; Policy No. DO4N480764004
4. Zurich American Insurance Company; Directors and Officers Liability and Reimbursement Excess Policy; Policy No. DOC 9261386 02
5. Any and all equity securities of any Debtor within the meaning of Section 101(16) of the Bankruptcy Code.

EXHIBIT 13

List of Executory Contracts and Unexpired Leases to be Rejected

Contract ID	Contract Description	Counterparty	Date
180	2009/10 Symphony Sponsorship	Omaha Symphony 1605 Howard Street Omaha, NE, 68102	10/03/09
5	Acclaim Customer Agreement	Cenveo Corporation d/b/a Acclaim I.D. Products Acclaim I.D. Products, 321 So. 74th Street Omaha, NE 68114	12/01/07
615	Amended and Restated OTC Holdings Corporation Stock Incentive Plan	Employees and Eligible Directors Varies	04/12/07
16	AmSan Service Agreement	AmSan 6260 Abbot Drive Omaha, NE 68110	04/04/10
255	Application Services Provider Agreement	Vurv Technology 7660 Centurion Parkway, Suite 100 Jacksonville, FL, 32256	04/27/07
29	ASC Master Agreement	ASC Information Technology, Inc. 2809 South 72nd Street, Suite 201 Omaha, NE 68130	Feb. 2009
473	Buying Agency Agreement	Dependable Traders 20/F., Lokville Commercial Building, 27 Lok Road Tsimshatsui, Kowloon, Hong Kong	09/08/00
474	Buying Agency Agreement	Ensor Flat A, 7th Floor, 72 Hennessey Road Wanchai, Hong Kong	09/11/00
475	Buying Agency Agreement	GT Plus Limited 4th Floor, Kowloon Centre, 29-43, Ashley Road Tsimshatsui, Kowloon, Hong Kong	09/04/00
479	Buying Agency Agreement	Main Key Trading 28/F., Laws Commercial Plaza, 788 Cheung Sha Wan Road Kin, Hong Kong	09/02/00
480	Buying Agency Agreement	Melcosa Phillipines Trade Company 201-202 Midway Court Building 241 E. de los Santos Ave Manduluyong City, Phillipines	09/22/00
36	Confidentiality and Non-Disclosure Agreement	Baker Communications 4610 South 133rd Street Omaha, NE 68137	01/10/07

Contract ID	Contract Description	Counterparty	Date
310	Consulting Agreement	Brentwood Private Equity III, LLC (BAPE III) Attn: Matt Whelan 11150 Santa Monica Boulevard, Suite 1200 Los Angeles, CA 90025	07/31/06
310	Consulting Agreement	Brentwood Private Equity IV, LLC (BAPE IV) 11150 Santa Monica Boulevard, Suite 1200 Los Angeles, CA 90025	07/31/06
518	Consulting Agreement	Rick Huetson 6616 South 163rd Street Omaha, NE 68135	04/12/10
310	Consulting Agreement	T.C. Group IV , L.L.C. (Carlyle) 1001 Pennsylvania Avenue NW #200 Washington D.C., 20004	07/31/06
360	Consulting Services Agreement	The Wyse Group, LLC 1125 17th Street, Suite 2220 Denver, CO 80202	10/03/07
367	Customer Agreement	Artic Circle 411 W. 7200 St., #103 Midvale, UT 84047	07/01/10
369	Customer Agreement	Caribbean Restaurants, LLC 165 Road Km 2.6, Zona Industrial Catano, PR 00962	06/20/07
370	Customer Agreement	Casino Montelago 8 Strada Di Villaggio Henderson, NV 89011	04/24/06
371	Customer Agreement	Children's Treasures 7222 Elizabeth Avenue Rockaway Beach, NY 11692	06/26/06
373	Customer Agreement	Clearly Fun Soap 151 N. Expressway Griffin, GA 30223	01/09/06
378	Customer Agreement	FORBA Holdings, Inc. 618 Church Street, Suite 520 Nashville, TN 37219	09/04/07
379	Customer Agreement	Gems Girls' Club 1333 Alger Street SE Grand Rapids, MI 49507	01/24/07

Contract ID	Contract Description	Counterparty	Date
382	Customer Agreement	Great Events Publishing 2 Skyline Drive Hawthorne, NY 10532	05/01/07
414	Customer Agreement	Group Publishing, Inc. P.O. Box 366 Loveland, CO 80539	10/13/05
384	Customer Agreement	HDOS Enterprises 5601 Palmer Way Carlsbad, CA 92010	11/28/05
385	Customer Agreement	Highsmith, Inc. 401 S. Wright Road, P.O. Box 5210 Janesville, WI 53547	05/18/07
386	Customer Agreement	Highsmith, Inc. 401 S. Wright Road, P.O. Box 5210 Janesville, WI 53547	07/25/05
416	Customer Agreement	Idle Eyes 1533 W Aster Drive Phoenix, AZ 85029	08/23/06
387	Customer Agreement	Image Seller 420 Corporate Circle, Suite Q Golden, CO 80401	08/09/05
417	Customer Agreement	Incentive Innovations 18226 Ventura Blvd Tarzana, CA 91356	02/10/06
418	Customer Agreement	Innisbrook Wraps 422 N Chimney Rich Rd. Greensboro, NC 27460	05/01/08
422	Customer Agreement	Jreck Subs, Inc. 20714 St. Lawrence Park Road Alex Bay, NY 13607	01/25/07
424	Customer Agreement	Kaiser Permanente Educational Theatre 3650 Steve Reynolds Boulevard Duluth, GA 30096	12/18/07
425	Customer Agreement	Kosher Krafts 1270 36th Street Brooklyn, NY 11218	05/08/07

Contract ID	Contract Description	Counterparty	Date
426	Customer Agreement	Kunze Promotions 6307 Tupper Place Brentwood, TN 32027	05/19/06
428	Customer Agreement	League Design Partners, Inc. 4270 U.S. Route 1 Monmouth Junction, NJ 08852	03/30/07
388	Customer Agreement	Lisa-Anne Byers 41 East Woodbine Drive Freeport, NY 11520	06/21/06
393	Customer Agreement	Moguls Inc. 1162 Spring Street Yorkville, IL 60560	03/03/06
439	Customer Agreement	Mr. Goodcents Franchise Systems, Inc. 8997 Commerce Drive De Soto, KS 66018	12/02/05
394	Customer Agreement	Nalani Toys 4417 18th Avenue, Suite 410 St. Cloud, FL 34769	09/01/07
397	Customer Agreement	Oogles N Googles 9640 N. Augusta, Suite 435 Carmel, IN 46032	11/04/08
401	Customer Agreement	Premiums by Nancy, Inc. 12 Canyon Woods Court Holmdel, NJ 07733	08/29/05
403	Customer Agreement	ProForma R.M. Hines Group Inc. 8309 Dunwoody Place, Building One Atlanta, GA 30350	12/12/05
400	Customer Agreement	Pump it Up Management, LLC 1249 Quarry Lane, Suite 150 Pleasanton, CA 94566	06/29/09
429	Customer Agreement	Rein Designs, Inc. 2400 Central Avenue, Suite 1 Boulder, CO 80301	01/14/08
430	Customer Agreement	Rich Ideas 31 Commercial Blvd., #C Novato, CA 94949	01/28/08

Contract ID	Contract Description	Counterparty	Date
375	Customer Agreement	S.B. Restaurant Company 14241 Firestone Boulevard, #315 La Mirada, CA 92646	10/28/05
406	Customer Agreement	Simon Property Group L.P. 115 West Washington Street, 14 South Indianapolis, IN 46204	11/04/05
408	Customer Agreement	The Crazy Parrot 12430 East Lake Road North East, PA 16428	08/09/05
398	Customer Agreement	The Parade Company 9500 Mt. Elliot, Studio A Detroit, MI 48211	07/28/05
435	Customer Agreement	Triko, Inc. 115 Beckford Rd. Apex. NC 27539	04/12/06
436	Customer Agreement	UCF Hotels d/b/a Loews Hotels 6800 Lakewood Plaza Drive Orlando, FL 32819	03/21/06
438	Customer Agreement	Westcor 11411 N. Tatum Blvd. Phoenix, AZ 85028	08/19/05
614	Engagement Letter	Gleacher & Company Securities, Inc. 1290 Avenue of the Americas, 4th Floor New York, NY 10104	04/22/10
219	Exit Interview Services Agreement	The Search Professionals 7507 South 137 Avenue, P.O. Box 391001 Omaha, NE 68138	10/05/09
94	Exl Master Agreement	ExlService Holdings, Inc. 10 Exchange Place, 22nd Floor Jersey City, NJ 07302	03/19/10
482	Extension Amendment to Statements of Work	Kenexa Technology, Inc. 650 East Swedesford Road, 2nd Floor Wayne, PA 19087	08/09/10
497	Guarantee Agreement	Anthony Choe 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09

Contract ID	Contract Description	Counterparty	Date
517	Guarantee Agreement	Doreen Wright 1270 Taylorsville Road Washington Crossing, PA 18977	02/10/09
501	Guarantee Agreement	Mark Fasold 15 Casco Street Freeport, ME 04033	02/10/09
509	Guarantee Agreement	Rakesh Kaul 1 Bridge Plaza, Suite 275 Fort Lee, NJ 07024	02/10/09
505	Guarantee Agreement	Sandra J. Horbach 520 Madison Avenue New York, NY 10022	02/10/09
513	Guarantee Agreement	Seymour Taylor 5455 South 90th Street Omaha, NE 68127	02/10/09
493	Guarantee Agreement	William M. Barnum, Jr. 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09
123	Hitwise Service Agreement	Hitwise Pty Ltd 300 Park Avenue South, 9th Floor New York, NY 10010	07/01/09
272	Iliopoulos Consulting Agreement	Nick Iliopoulos 1362 South Abington Lane Round Lake, IL 60073	08/24/09
494	Indemnification Agreement	Anthony Choe 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09
495	Indemnification Agreement	Anthony Choe 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09
496	Indemnification Agreement	Anthony Choe 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09
514	Indemnification Agreement	Doreen Wright 1270 Taylorsville Road Washington Crossing, PA 18977	02/10/09

Contract ID	Contract Description	Counterparty	Date
515	Indemnification Agreement	Doreen Wright 1270 Taylorsville Road Washington Crossing, PA 18977	02/10/09
516	Indemnification Agreement	Doreen Wright 1270 Taylorsville Road Washington Crossing, PA 18977	02/10/09
498	Indemnification Agreement	Mark Fasold 15 Casco Street Freeport, ME 04033	02/10/09
499	Indemnification Agreement	Mark Fasold 15 Casco Street Freeport, ME 04033	02/10/09
500	Indemnification Agreement	Mark Fasold 15 Casco Street Freeport, ME 04033	02/10/09
506	Indemnification Agreement	Rakesh Kaul 1 Bridge Plaza, Suite 275 Fort Lee, NJ 07024	02/10/09
507	Indemnification Agreement	Rakesh Kaul 1 Bridge Plaza, Suite 275 Fort Lee, NJ 07024	02/10/09
508	Indemnification Agreement	Rakesh Kaul 1 Bridge Plaza, Suite 275 Fort Lee, NJ 07024	02/10/09
502	Indemnification Agreement	Sandra J. Horbach 520 Madison Avenue New York, NY 10022	02/10/09
503	Indemnification Agreement	Sandra J. Horbach 520 Madison Avenue New York, NY 10022	02/10/09
504	Indemnification Agreement	Sandra J. Horbach 520 Madison Avenue New York, NY 10022	02/10/09
510	Indemnification Agreement	Seymour Taylor 5455 South 90th Street Omaha, NE 68127	02/10/09

Contract ID	Contract Description	Counterparty	Date
511	Indemnification Agreement	Seymour Taylor 5455 South 90th Street Omaha, NE 68127	02/10/09
512	Indemnification Agreement	Seymour Taylor 5455 South 90th Street Omaha, NE 68127	02/10/09
490	Indemnification Agreement	William M. Barnum, Jr. 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	Not Stated
491	Indemnification Agreement	William M. Barnum, Jr. 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09
492	Indemnification Agreement	William M. Barnum, Jr. 11150 Santa Monica Blvd., Suite 1200 Los Angeles, CA 90025	02/10/09
277	Johnson Consulting Agreement	Rita Johnson 9087 Salvatore Street Las Vegas, NV 89148	01/01/07
136	K Line Service Contract and Final Contract Boilerplate	K Line America Inc 8730 Stony Point Parkway, Suite 300 Richmond, VA, 23233	06/30/09
604	Lease Agreement	Packaging Corporation of America Inc 36596 Treasury Center Chicago, IL 60694	03/12/09
573	Letter of Intent to Purchase Underwood facility	New Street Properties, LLC c/o Grubb & Ellis Pacific Realty 6464 Center Street, Suite 200 Omaha, NE 68106	09/03/10
342	Master Consulting Agreement	eSymbiosis Solutions International, LLC, a Prokarma Company 10832 Old Mill Road, Suite 5 Omaha, NE 68154	11/14/05
34	Master Customer Agreement	Baker Communications 4610 South 133rd Street Omaha, NE 68137	03/29/05
383	Non-Disclosure Agreement	Group Publishing, Inc. P.O. Box 366 Loveland, CO 80539	12/28/05

Contract ID	Contract Description	Counterparty	Date
295	NuBridges Professional Services Agreement	NuBridges, Inc. P.O. Box 933137 Atlanta, GA 31193	04/23/10
407	Preferred Vendor Agreement	Simon Services, Inc. 115 West Washington Street, 14 South Indianapolis, IN 46204	01/01/08
409	Product Purchase Agreement	Brown - Forman Beverages Worldwide 420 Corporate Circle, Suite Q Golden, CO 80401	09/13/04
176	Professional Services Agreement	NuBridges LLC P O Box 933137 Atlanta, GA, 31193	03/06/07
200	Professional Services Agreement - Solution Vendor Second Round Selection Review	The Proven Method Inc 470 East Paces Ferry Road Atlanta, GA, 30305	07/14/09
547	Redemption Primary Supplier Program Agreement	Las Vegas Mini Gran Prix c/o Barton Racing Inc., 7816 Purple Mountain Ave Las Vegas, NV 89131	08/05/09
312	Registration of Rights Agreement	BAPE III Executive Fund, L.P. 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
312	Registration of Rights Agreement	Brentwood Associates Co-Investors IV OTC LLC 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
312	Registration of Rights Agreement	Brentwood Associates Private Equity III, L.P. 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
312	Registration of Rights Agreement	Brentwood Associates Private Equity III-A, L.P. 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
312	Registration of Rights Agreement	Carlyle Partners IV, L.P. 520 Madison Avenue New York, NY 10022	07/31/06
312	Registration of Rights Agreement	CP IV Coinvestment 520 Madison Avenue New York, NY 10022	07/31/06

Contract ID	Contract Description	Counterparty	Date
312	Registration of Rights Agreement	Seymour Taylor 5455 South 90th Street Omaha, NE 68127	07/31/06
63	Repack Agreement	Cornhusker State Industries/Nebraska Department of Correctional Services 800 Pioneers Boulevard Lincoln, NE 68502	06/13/05
218	Scholastic Educational Materials Agreement	Scholastic Inc 557 Broadway New York, NY. 10012	04/28/09
88	Settlement Agreement & Insertion Order 2009	Entertainment Publications, LLC 1414 East Maple Road Troy, MI 48083	04/22/09
221 & 222	Shipment Trackers Inc Service and Non-Disclosure Agreements	Shipment Trackers Inc 47 North Duke Street York, PA, 17401	01/29/07
224	Simon Property Advertising Contract	Simon Property Group L.P. 225 West Washington Street Indianapolis, Indiana, 46204	Not Stated
313	Stockholders Agreement	BAPE III Executive Fund, L.P. 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
313	Stockholders Agreement	Brentwood Associates Co-Investors IV OTC LLC 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
313	Stockholders Agreement	Brentwood Associates Private Equity III, L.P. 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
313	Stockholders Agreement	Brentwood Associates Private Equity III-A, L.P. 11150 Santa Monica Blvd, Suite 1200 Los Angeles, CA 90025	07/31/06
313	Stockholders Agreement	Carlyle Partners IV, L.P. 520 Madison Avenue New York, NY 10022	07/31/06
313	Stockholders Agreement	CP IV Coinvestment 520 Madison Avenue New York, NY 10022	07/31/06

Contract ID	Contract Description	Counterparty	Date
552	Vendor Agreement	Duckwall-ALCO Stores, Inc. 401 Cottage Street Abilene, KS 67410	Not Stated
395	Vendor Agreement	Northwest Natural Products 6350 NE Campus Drive Vancouver, WA 98661	02/26/08
250	Verizon Wireless Major Account Agreement	Verizon Wireless One Verizon Way Basking Ridge, NJ, 07920	12/27/06
253	Vision Solutions Master Business Agreement & Statement of Work	Vision Solutions, Inc 15300 Barranca Parkway Irvine, CA, 92618	12/28/09
35	Voice Projects Agreement	Baker Communications 4610 South 133rd Street Omaha, NE 68137	03/29/05
	Restricted Stock Agreement	Steve Mendlik 3619 South 170th Court Omaha, NE 68130-2264	4/27/2007
	Registration of Rights	Steve Mendlik 3619 South 170th Court Omaha, NE 68130-2264	4/27/2007
	Stockholders Agreement	Steve Mendlik 3619 South 170th Court Omaha, NE 68130-2264	4/27/2007
	Restricted Stock Agreement	James Gould 2140 South 109th Street Omaha, NE 68144	4/27/2007
	Registration of Rights	James Gould 2140 South 109th Street Omaha, NE 68144	4/27/2007
	Stockholders Agreement	James Gould 2140 South 109th Street Omaha, NE 68144	4/27/2007
	Restricted Stock Agreement	Brian Moen 18114 Leavenworth Street Elkhorn, NE 68022	4/27/2007

Contract ID	Contract Description	Counterparty	Date
	Registration of Rights	Brian Moen 18114 Leavenworth Street Elkhorn, NE 68022	4/27/2007
	Stockholders Agreement	Brian Moen 18114 Leavenworth Street Elkhorn, NE 68022	4/27/2007
	Restricted Stock Agreement	Neal Patrick 12446 Read Street Omaha, NE 68142	4/27/2007
	Registration of Rights	Neal Patrick 12446 Read Street Omaha, NE 68142	4/27/2007
	Stockholders Agreement	Neal Patrick 12446 Read Street Omaha, NE 68142	4/27/2007
	Restricted Stock Agreement	Robert Siffring 5502 Farnam Street Omaha, NE 68132	4/27/2007
	Registration of Rights	Robert Siffring 5502 Farnam Street Omaha, NE 68132	4/27/2007
	Stockholders Agreement	Robert Siffring 5502 Farnam Street Omaha, NE 68132	4/27/2007
	Restricted Stock Agreement	Leisa Hillman 16520 Adams Cir. Omaha, NE 68135	4/27/2007
	Registration of Rights	Leisa Hillman 16520 Adams Cir. Omaha, NE 68135	4/27/2007
	Stockholders Agreement	Leisa Hillman 16520 Adams Cir. Omaha, NE 68135	4/27/2007
	Restricted Stock Agreement	Steve Isenberg 903 Wicklow Road Papillion, NE 68046	4/27/2007

Contract ID	Contract Description	Counterparty	Date
	Registration of Rights	Steve Isenberg 903 Wicklow Road Papillion, NE 68046	4/27/2007
	Stockholders Agreement	Steve Isenberg 903 Wicklow Road Papillion, NE 68046	4/27/2007
	Restricted Stock Agreement	Eric Kyser 5205 Izard Street Omaha, NE 68132	4/27/2007
	Registration of Rights	Eric Kyser 5205 Izard Street Omaha, NE 68132	4/27/2007
	Stockholders Agreement	Eric Kyser 5205 Izard Street Omaha, NE 68132	4/27/2007
	Restricted Stock Agreement	Deon Wagner 1108 Brock Lane Plattsmouth, NE 68048	4/27/2007
	Registration of Rights	Deon Wagner 1108 Brock Lane Plattsmouth, NE 68048	4/27/2007
	Stockholders Agreement	Deon Wagner 1108 Brock Lane Plattsmouth, NE 68048	4/27/2007
	Restricted Stock Agreement	Jerry Venner 6008 S. 166th Ave Omaha, NE 68135	4/27/2007
	Registration of Rights	Jerry Venner 6008 S. 166th Ave Omaha, NE 68135	4/27/2007
	Stockholders Agreement	Jerry Venner 6008 S. 166th Ave Omaha, NE 68135	4/27/2007
	Director's Restricted Stock Agreement	Rakesh Kaul 1 Bridge Plaza Suite 275 Fort Lee, NJ 07024	7/31/2007

Contract ID	Contract Description	Counterparty	Date
	Registration of Rights	Rakesh Kaul 1 Bridge Plaza Suite 275 Fort Lee, NJ 07024	7/31/2007
	Stockholders Agreement	Rakesh Kaul 1 Bridge Plaza Suite 275 Fort Lee, NJ 07024	7/31/2007
	Restricted Stock Agreement	Bin Gao 19608 Sewar Street Elkhorn, NE 68022	6/10/2008
	Registration of Rights	Bin Gao 19608 Sewar Street Elkhorn, NE 68022	6/10/2008
	Stockholders Agreement	Bin Gao 19608 Sewar Street Elkhorn, NE 68022	6/10/2008
	Restricted Stock Agreement	Matt Novak 709 N Polk Street Papillion, NE 68046	6/10/2008
	Registration of Rights	Matt Novak 709 N Polk Street Papillion, NE 68046	6/10/2008
	Stockholders Agreement	Matt Novak 709 N Polk Street Papillion, NE 68046	6/10/2008
	Director's Restricted Stock Agreement	Mark Fasold 709 N Polk Street Papillion, NE 68046	6/10/2008
	Registration of Rights	Mark Fasold 65 Starboard Reach Yarmouth, ME 04096	6/10/2008
	Stockholders Agreement	Mark Fasold 65 Starboard Reach Yarmouth, ME 04096	6/10/2008
	Restricted Stock Agreement	Robert Goldsmith Robert D. Goldsmith Trust of 2006 17531 Howard Street Omaha, NE 68118	4/27/2007

Contract ID	Contract Description	Counterparty	Date
	Registration of Rights	Robert Goldsmith Robert D. Goldsmith Trust of 2006 17531 Howard Street Omaha, NE 68118	4/27/2007
	Stockholders Agreement	Robert Goldsmith Robert D. Goldsmith Trust of 2006 17531 Howard Street Omaha, NE 68118	4/27/2007
	Restricted Stock Agreement	Robert Hafner 13111 Lafayette Avenue Omaha, NE 68154	4/27/2007
	Registration of Rights	Robert Hafner 13111 Lafayette Avenue Omaha, NE 68154	4/27/2007
	Stockholders Agreement	Robert Hafner 13111 Lafayette Avenue Omaha, NE 68154	4/27/2007
	Restricted Stock Agreement	David Pavelka 4816 South 174th Avenue Omaha, NE 68135	4/27/2007
	Registration of Rights	David Pavelka 4816 South 174th Avenue Omaha, NE 68135	4/27/2007
	Stockholders Agreement	David Pavelka 4816 South 174th Avenue Omaha, NE 68135	4/27/2007
	Restricted Stock Agreement	Paul Knutson 1722 S 84 St Omaha, NE 68124	4/27/2007
	Registration of Rights	Paul Knutson 1722 S 84 St Omaha, NE 68124	4/27/2007
	Stockholders Agreement	Paul Knutson 1722 S 84 St Omaha, NE 68124	4/27/2007
	Restricted Stock Agreement	Ken Wine 395 Woodland Cir Madison WI 53704	4/27/2007

Contract ID	Contract Description	Counterparty	Date
	Registration of Rights	Ken Wine 395 Woodland Cir Madison WI 53704	4/27/2007
	Stockholders Agreement	Ken Wine 395 Woodland Cir Madison WI 53704	4/27/2007
	Restricted Stock Agreement	Steve Fortson 17754 Bay Wood Dr. Omaha, NE 68130	4/27/2007
	Registration of Rights	Steve Fortson 17754 Bay Wood Dr. Omaha, NE 68130	4/27/2007
	Stockholders Agreement	Steve Fortson 17754 Bay Wood Dr. Omaha, NE 68130	4/27/2007
	Restricted Stock Agreement	Kate Brown 4669 Pacific Street Omaha, NE 68106	4/27/2007
	Registration of Rights	Kate Brown 4669 Pacific Street Omaha, NE 68106	4/27/2010
	Stockholders Agreement	Kate Brown 4669 Pacific Street Omaha, NE 68106	4/27/2010

EXHIBIT 14

Disclosure Under Section 1129(a)(5) of Bankruptcy Code

**Disclosures with Respect to Directors, Officers and Insiders in Accordance
with Section 1129(a)(5) of the Bankruptcy Code**

1. Identity and affiliation of each individual proposed to serve as a director of New Holdco.¹
 - a. Sam Taylor. Mr. Taylor has been the Debtors' President and Chief Executive Officer since 2008. Prior to being employed by the Debtors, Mr. Taylor served as Senior Vice President of Consumer Direct and HP.com for Hewlett-Packard Co. from 2006 through 2007. From 2004 through 2006, Mr. Taylor served as Senior Vice President of Online Stores and Marketing for Best Buy. Prior to joining Best Buy, Mr. Taylor was the Vice President of E-commerce and International for Lands' End from 2000 through 2004. From 1995 through 2000, Mr. Taylor worked for The Walt Disney Company, first as Director of Strategic Planning for Disney Consumer Products, then as European Regional Director of The Disney Catalog and The Disney Store Online. Mr. Taylor was also a consultant with Bain and Company from 1986 through 1995, working in the retail, consumer products, and customer retention practice areas. In addition, Mr. Taylor served on the Board of Directors of Shop.org, the National Retail Federation's digital division, from 2004 through 2008. Mr. Taylor earned an MBA with honors from Harvard Business School and graduated summa cum laude with a B.S. degree in Chemical Engineering from Brigham Young University.
 - b. William T. Allen. Mr. Allen has served since August, 2007 as the President and Chief Executive Officer of Werner Co, the largest manufacturer and marketer of ladders and other climbing products in North America, and became Chairman of the Board in April, 2009. Prior to joining Werner Co., Mr. Allen was the principal at Allen Partners, Inc., a consulting firm providing leadership and interim Chief Executive Officer services for distressed organizations. From 2001 to 2004, Mr.

¹ Any director designated above will be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. Section 5.5(a) of the Plan provides that the New Board will consist initially of up to 7 members, up to 6 of whom will be designated by the First Lien Steering Committee and 1 of whom will be the chief executive officer of New Holdco. Please note that the final agreement of the initial designees listed above to serve on the New Board is conditioned upon completion of due diligence by and of the initial designees to the New Board, confirmation of the Plan, occurrence of the Effective Date and final agreement on director compensation. Prior to the Confirmation Hearing, the Debtors will disclose any changes to the initial designees to the New Board as disclosed herein.

Allen served as the Chief Executive Officer of a \$500 million contract manufacturer, a \$100 million manufacturer of electronic enclosures, Apollo Packaging, Inc., a General Electric joint venture in Mexico, Precision Tool, Die and Machine Co., Aerovox de Mexico, and multiple other interim Chief Executive Officer positions in his capacity as a Managing Director of The Recovery Group, Inc., a turnaround and crisis management firm. Mr. Allen has also worked in various industries, including power generation, oil/petrol-chemical, automotive, industrial equipment, steel fabrication, plastic injection molding, and contract manufacturing and has either run companies or run operating units in fourteen countries. Mr. Allen currently sits on the Board of Directors of Werner Co., Ames Taping Tools, Inc., Hines Nurseries LLC, Running Aces Harness Park LLC, and United Subcontractors, Inc.

- c. Michael Sherman. Mr. Sherman has served as a Senior Advisor to the Peter J. Solomon Company, an investment banking advisory firm, since joining the firm in 2007. Mr. Sherman has spent over twenty-five years in multichannel retailing as a senior executive and attorney. In 2002, Mr. Sherman founded Crosstown Traders Inc. and served as Vice Chairman until its sale to Charming Shoppes, Inc. in 2005. From 1996 through 2002, Mr. Sherman served in various capacities, including as President, of Fingerhut Companies. Mr. Sherman also practiced corporate and securities law for the predecessor firm of Nixon Peabody from 1977 to 1980, served as the assistant corporate counsel for Joseph E. Seagram & Sons and held various senior executive positions at Hanover Direct (previously Horn & Hardart Co.), including executive vice president of corporate affairs, general counsel and secretary. Mr. Sherman currently serves as a Trustee for the Direct Marketing Education Foundation, a Director of 5.11 Tactical, Inc, and Vermont Country Store, Inc. Mr. Sherman has previously served as Chairman of the Board for the Direct Marketing Association, the Vice Chairman of Factory Motor Parts, Inc, and a Director of Cinram International, Inc., The J Jill Group Inc., and The Metris Companies, Inc. Mr. Sherman received his J.D. degree from Rutgers Law School and his A.B. from Syracuse University.
- d. Jason Breaux. Mr. Breaux joined Trust Company of the West in 2000. Previously, Mr. Breaux worked at Robertson Stephens where he served in the mergers and acquisitions group. Prior to joining Robertson Stephens, Mr. Breaux worked at Salomon Brothers in the investment banking department, specializing in high yield capital raising assignments. Mr. Breaux is a director of Brown Jordan International, Natural Products Group and Werner Holding Company. Mr. Breaux earned his MBA from

the Darden Graduate School of Business Administration at the University of Virginia and his AB from Georgetown University.

- e. Robert B. Burke. Mr. Burke is the Founder and Chief Executive Officer of Par-Four Investment Management. Previously, Mr. Burke held the position of Global Head of High Yield, Distressed, and Leveraged Loan Sales at Lehman Brothers. Prior joining Lehman Brothers, Mr. Burke worked at both Kidder Peabody and Dean Witter in high yield sales, trading and capital markets. Mr. Burke currently serves as a Director of US Shipping Corp. Mr. Burke graduated from Villanova University in 1983 with a BS in Accountancy.
 - f. Rickardo Francis. Mr. Francis joined the Cerberus Companies in 1999 and currently serves as a Managing Director. Prior to joining the Cerberus Companies, Mr. Francis worked on a variety of corporate finance transactions in the investment banking group of Donaldson, Lufkin & Jenrette. Mr. Francis is a 1997 graduate of the University of Florida.
2. Identity and affiliation of each individual proposed to serve as a director of the New Companies other than New Holdco.
- a. Pursuant to Section 5.5(b) of the Plan, the New Board will appoint directors of the New Companies other than New Holdco to serve in their respective capacities after the Effective Date until replaced or removed in accordance with each New Company's respective governing documents.
3. Identity and affiliation of each individual proposed to serve as an officer of the New Companies.

As of the Effective Date, the current officers of the Debtors listed below will serve as officers of the New Companies:

- a. Sam Taylor. Mr. Taylor is currently Chief Executive Officer of the Debtors and will continue to serve in that capacity after the Effective Date with respect to the New Companies.
- b. Steven Mendlik. Mr. Mendlik is currently Chief Financial Officer of the Debtors and the sole director of debtor Fun Express, Inc. Mr. Mendlik will continue to serve as Chief Financial Officer after the Effective Date with respect to the New Companies.
- c. Dana Fuller. Mr. Fuller is currently Senior Vice President, Chief Operating Officer and Chief Information Officer of the Debtors and will

continue to serve in those capacities after the Effective Date with respect to the New Companies.

- d. Sydney Johnson. Mr. Johnson is currently Senior Vice President and Chief Talent Officer of the Debtors and will continue to serve in those capacities after the Effective Date with respect to the New Companies.
 - e. Chris Merritt. Mr. Merritt is currently Senior Vice President, Supply Chain Operations of the Debtors and will continue to serve in that capacity after the Effective Date with respect to the New Companies.
 - f. Brian Moen. Mr. Moen is currently Senior Vice President, E-Commerce of the Debtors and will continue to serve in that capacity after the Effective Date with respect to the New Companies.
 - g. David Johnson. Mr. Johnson is currently Senior Vice President, Marketing of the Debtors and will continue to serve in that capacity after the Effective Date with respect to the New Companies.
 - h. Carol Norman. Ms. Norman is currently Vice President, Merchandising of the Debtors and will continue to serve in that capacity after the Effective Date with respect to the New Companies.
 - i. John Lanman. Mr. Lanman is currently Vice President and General Manager for debtor Fun Express, Inc. and will continue to serve in those capacities after the Effective Date with respect to Fun Express LLC.
 - j. Robert Siffring. Mr. Siffring is currently Vice President and General Counsel for the Debtors and the sole director of debtor Oriental Trading Marketing, Inc. Mr. Siffring will continue to serve as Vice President and General Counsel after the Effective Date with respect to the New Companies.
 - k. Brian Breen. Mr. Breen is currently Treasurer for the Debtors and will continue to serve in that capacity after the Effective Date with respect to the New Companies.
4. Identity of each insider, as defined in section 101(31) of the Bankruptcy Code, that will be employed or retained by the New Companies and the nature of their compensation.

The officers of the Debtors who will be employed or retained by the New Companies are identified in paragraph 3 above. Such officers are anticipated to continue to receive the same compensation and benefits as such officers received prior to the

Effective Date, including those benefits listed in an exhibit to the second volume of the Plan Supplement to be filed on December 7, 2010 (as amended). In addition, such officers may be entitled to participate in the Management Incentive Plan under which up to 10% of the New Holdco Common Stock outstanding on the Effective Date may be granted, in each case in the sole and absolute discretion of the New Board, as set forth in Section 5.6(a) of the Plan.

5. Identity and affiliation of each individual proposed to serve as a director or an officer of the Debtors or the identity of an insider, as defined in section 101(31) of the Bankruptcy Code, that will be employed or retained by the Debtors and the nature of their compensation.
 - a. Pursuant to Section 5.4 of the Plan, on the Effective Date each Debtor will be dissolved and therefore, none of the Debtors will have any director or officer. Nor will the Debtors employ or retain any insider.