

PUBLIC

HCMO Notice of Material Change
Ambulnz Holdings, LLC d/b/a DocGo /
Hicuity Health, Inc.
Attachment No. 10

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE LIMITED LIABILITY COMPANY UNDER THE NAME OF "AMBULNZ, LLC" TO A DELAWARE CORPORATION, CHANGING ITS NAME FROM "AMBULNZ, LLC" TO "AMBULNZ, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF NOVEMBER, A.D. 2017, AT 1:49 O`CLOCK P.M.



5768376 8100V
SR# 20206067556

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 203226520
Date: 07-06-20

DCGO_000754

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A LIMITED LIABILITY COMPANY TO A
CORPORATION PURSUANT TO SECTION 265 OF
THE DELAWARE GENERAL CORPORATION LAW

1. The jurisdiction where the Limited Liability Company was first formed is Delaware.
2. The jurisdiction immediately prior to filing this Certificate is Delaware.
3. The date of the Limited Liability Company's formation in Delaware is: June 17, 2015.
4. The name of the Limited Liability Company immediately prior to filing this Certificate is: Ambulnz, LLC.
5. The name of the Corporation as set forth in the Certificate of Incorporation is: Ambulnz, Inc.

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the Limited Liability Company have executed this Certificate as of November 1, 2017.

By: 

Name: Stan Vashovsky

Title: Authorized Person

Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF INCORPORATION OF "AMBULNZ, INC.",
FILED IN THIS OFFICE ON THE FIRST DAY OF NOVEMBER, A.D. 2017,
AT 1:49 O`CLOCK P.M.*



5768376 8100
SR# 20206067556

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 203226521
Date: 07-06-20

DCGO_000756

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:49 PM 11/01/2017
FILED 01:49 PM 11/01/2017
SR 20176885447 - File Number 5768376

CERTIFICATE OF INCORPORATION
OF
AMBULNZ, INC.
(a Delaware Corporation)

The undersigned, being the sole incorporator of Ambunlz, Inc., pursuant to Section 103 of the General Corporation Law of the State of Delaware, for the purposes of forming a corporation under the laws of the State of Delaware, does hereby make, file and record the Certificate of Incorporation of the Corporation attached hereto as Exhibit A, which is hereby incorporated herein by this reference (the "Certificate of Incorporation"), and does hereby certify that the facts stated in the Certificate of Incorporation are true as of the date hereof.

IN WITNESS WHEREOF, the undersigned incorporator hereby acknowledges that the foregoing Certificate of Incorporation is his act and deed as of November 1, 2017.

/s/ Glenn L. Stein
By: Glenn L. Stein, Esq., Sole Incorporator

Exhibit A

CERTIFICATE OF INCORPORATION

OF

AMBULNZ, INC.

(a Delaware Corporation)

ARTICLE I.

The name of this corporation is Ambulnz, Inc. (the "Corporation").

ARTICLE II.

The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III.

3.1. Formation; Name; Office. The Corporation has been organized and formed under and pursuant to the General Corporation Law of the State of Delaware and shall conduct its business under the name "Ambulnz, Inc." or such other name as the Corporation's Board of Directors (the "Board") shall determine. The primary business office of the Corporation shall be located at such place as the Board may from time to time designate.

3.2. Purposes. The purpose for which the Corporation has been formed is to engage in any and all lawful acts or activities for which a corporation may be organized under the General Corporation Law of the State of Delaware.

3.3. Incorporation. The incorporator of the Corporation is Glenn L. Stein, Esq. whose mailing address is c/o Chiesa Shahinian & Giantomasi PC, One Boland Drive, West Orange, New Jersey 07052.

ARTICLE IV.

4.1. Authorized Shares.

(a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 100,000 shares of Common Stock, no par value per share (the "Common Stock"), of which 35,597.50 shall be designated "Class A Common Stock," and 64,402.50 shall be designated "Class B Common Stock."

(b) The Class A Common Stock and Class B Common Stock shall be identical in all respects and the Corporation shall treat such shares as if they are part of the same class, except that the Class A Common Stock shall be voting stock, with voting rights as set forth

in this Certificate of Incorporation, and the Class B Common Stock shall be non-voting stock, with no voting rights whatsoever. Except as may otherwise be provided in this Certificate of Incorporation or by applicable law: (i) each holder of Class A Common Stock shall be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; and (ii) no holder of Class B Common Stock shall be entitled to any voting powers in respect thereof.

4.2. Increase/Decrease of Common Stock. Subject to Section 4.5, pursuant to the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding plus the number of shares of Common Stock reserved or required to be reserved by the Corporation from time to time) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation, voting as a single class, with each such share being entitled to such number of votes per share as is provided in Section 4.4.

4.3. Dividends. Dividends may be paid on the Common Stock out of the funds legally available therefor as, if, when and in such amounts declared by the Board.

4.4. Voting Rights.

(a) Except as otherwise required by law or set forth herein, the holders of Common Stock (both Class A Common Stock and Class B Common Stock) shall be entitled to notice of any meeting of stockholders; provided, however, the holders of shares of Class A Common Stock shall have the exclusive right to vote on any matter submitted to the stockholders for a vote, and the holders of shares of Class B Common Stock shall not be entitled to vote (in their capacity as holders of Class B Common Stock) on any matter submitted the stockholders for a vote, but shall be entitled to attend and observe, all special and annual meetings of the stockholders of the Corporation.

(b) So long as any shares of Class B Common Stock are outstanding, the Corporation shall not, without the affirmative vote at a meeting called for that purpose by holders of at least a majority of the outstanding shares of Class B Common Stock, voting as a single and separate class, amend, alter or repeal any provision of this Section 4.4 or any other provision of the Certificate of Incorporation (by any means, including by merger, consolidation, reclassification, or otherwise) so as to, or in a manner that would, disproportionately and adversely affect the preferences, rights, privileges or powers of the Class B Common Stock relative to the preferences, rights, privileges or powers of the Common Stock.

(c) The consent or votes required by subparagraph 4.4(b) hereof shall be in addition to any approval of stockholders of the Corporation which may be required by applicable law or pursuant to any provision of this Certificate of Incorporation.

4.5. Board of Directors.

(a) The holders of the outstanding shares of Class A Common Stock shall have the exclusive right to nominate, elect and remove, from time to time, up to seven

(7) individuals (each a “Director,” and collectively, the “Directors”) to serve on the Corporation’s board of directors (the “Board”).

(b) Notwithstanding any provision of the By-laws of the Corporation to the contrary, the number of Directors may be increased or decreased pursuant to the terms of any stockholders agreement or similar agreement to which holders of Class A Common Stock may from time to time be a party, and otherwise may only be increased or decreased, if so permitted in accordance with the terms of any stockholders agreement or similar arrangement to which holders of Class A Common Stock may from time to time be party, by the affirmative vote or written consent of the holders of all of the then outstanding shares of Class A Common Stock, voting or consenting, as the case may be, together as a single class.

(c) A Director may only be removed as a Director by such Person’s resignation, or for Cause or upon such Person’s death or Disability. The resignation or removal of a Director who is also a stockholder of the Corporation shall not affect such Person’s rights (or the rights of the estate or legal representative of such Person, as the case may be) as a stockholder of the Corporation and shall not constitute a withdrawal of the stockholder. “Cause,” as used herein, shall mean the reasonable, good faith determination by all of the holders of Class A Common Stock, other than the Director being removed (to the extent a stockholder of the Corporation), that the Director has committed an act or acts constituting or resulting in (i) the Person’s conviction of a felony, or (ii) a fraudulent act directly related to the Person’s duties hereunder; provided, however, it shall be a condition precedent to the determination of Cause that, within thirty (30) days following the event(s) alleged to constitute Cause, the holders of Class A Common Stock proposing to remove the Director for Cause shall notify the Director, in writing, setting forth a reasonably detailed explanation for the reasons they believe Cause exists and the Director must fail to cure such event(s) within sixty (60) days following the receipt of such notice.

(d) Upon the resignation, removal for Cause, death or Disability of a Director, a new Director shall be elected by the holders of the Class A Common Stock. Such election shall occur within ninety (90) days of the date of the resignation, removal for Cause, death or Disability, as the case may be, of the Director. For purposes of this Agreement, a “Disability” shall mean a physical or mental ailment or condition that causes a Director to be incapable of rationally making decisions for the Corporation or otherwise unable to carry out such Person’s obligations herein, which ailment or condition shall have existed for a period of sixty (60) consecutive days or for a total of one hundred twenty (120) days during any eighteen (18) consecutive month period. In the event that there is a dispute as to whether or not a Disability of a Director exists, each of (i) the party disputing the claim, and (ii) the remaining Directors (by unanimous consent), shall in good faith select a qualified physician who shall determine whether or not a Disability of a Director exists. If the two physicians agree, then such determination shall be final and binding. If the two physicians do not agree, they shall select a third physician who shall determine whether or not a Disability of a Director exists and such determination shall be final and binding.

(e) In the event of the appointment of a successor to a Director, the predecessor Director shall remain entitled to indemnification from the Corporation with respect to any matter arising prior to the appointment of that Director’s successor and shall

have no liability to the Corporation, or its stockholders, as a director in respect of any matter arising after the appointment of that Person's successor.

(f) Each holder of Class A Common Stock and any Stockholder that has acquired from the Corporation at least \$10,000,000 in shares of Common Stock (valued at the time of acquisition) shall have the right to appoint a Director at any time by providing written notice to the Corporation, which notice shall include the name of the Director so appointed. Such holder of Class A Common Stock shall have the exclusive right to remove or replace such Director at any time and for any reason (or no reason) by providing written notice to the Corporation. At such time, if any, that such holder of Class A Common Stock appoints a Director pursuant to this Section 4.5(f), this Agreement shall be deemed to have been amended to include such appointed Director in the definition of "Director" for all purposes hereunder.

4.6. Restrictions and Limitations. For so long as any shares of Class A Common Stock are outstanding, the Corporation shall not, and shall not authorize or permit any of its Subsidiaries to, take any of the following actions, either directly or indirectly, by merger, consolidation, reorganization or otherwise, without the prior consent by affirmative vote or written consent of the holders of all of the then outstanding shares of Class A Common Stock, voting or consenting as a single class:

(a) voluntarily liquidating or dissolving the Corporation (or any of its subsidiaries) or filing a voluntary petition by the Corporation (or any of its subsidiaries) pursuant to Chapter 7 or Chapter 11 of the Bankruptcy Code of 1978, as amended or failing to contest an involuntary petition under either Chapter or seeking the appointment of a receiver for all of its assets or making a general assignment for the benefit of creditors;

(b) merging, consolidating or reorganizing the Corporation (or any of its subsidiaries) with another Entity;

(c) acquiring all or substantially all of the assets of, or acquiring a controlling interest in, any other Entity, in each case, other than in the ordinary course of business and, where such acquisition is for consideration valued at or in excess of \$5,000,000;

(d) amending the Certificate of Incorporation;

(e) raising additional equity capital through the sale of shares of capital stock or otherwise;

(f) selling or otherwise conveying legal title to all or substantially all of the consolidated assets of the Corporation;

(g) incurring any Indebtedness (other than the incurrence of operating expenses), or otherwise borrowing or loaning any money, guaranteeing the payment of any money or debt of another person or Entity, guaranteeing the performance of any other obligation of another person or Entity or indemnifying any other person or Entity against any losses or damages or costs;

- (h) entering into any transaction between the Corporation and any Director and/or any holder of Common Stock or their respective Affiliates;
- (i) changing the strategic direction of the Corporation;
- (j) entering or changing the lines of business which the Corporation operates;
- (k) increasing or decreasing the number of Directors, or filling vacancies on the Board; or
- (l) agreeing or otherwise committing to take any of the actions set forth in the foregoing subparagraphs (a) through (k).

4.7. Notices. Any notice required or permitted by this Article IV shall be in writing and shall be deemed effectively given: (a) upon actual delivery, when delivered personally, (b) upon receipt when sent by confirmed telegram or fax if sent during normal business hours, and if not, then on the next Business Day; (c) one day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt or (d) five (5) Business Days after being deposited in the U.S. mail, as certified or registered mail, return receipt requested, postage prepaid, addressed to the intended recipient at the recipient's address as it appears on the books of the Corporation.

ARTICLE V.

Except as otherwise specifically provided in this Certificate of Incorporation, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and to add or insert other provisions authorized at such time by the laws of the State of Delaware, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereinafter amended are granted subject to the rights reserved in this Article V.

ARTICLE VI.

6.1. Transfers Generally. No Stockholder may Sell, or permit to be Sold, any Shares held by such Stockholder except as permitted by 6.2, 7.1, 7.2, or 7.3. Any Sale of Shares that does not comply with the provisions of this 6.1 shall be void and shall not be recognized by the Corporation.

6.2. Permitted Transfers. Notwithstanding 6.1, a Stockholder may Sell Shares in a Permitted Transfer to a Permitted Transferee of such Stockholder without complying with the procedures contained in 7.1 and 7.2. In the event of any Permitted Transfer of any Shares, the Permitted Transferee of such Shares shall hold the Shares so acquired with all the rights conferred by, and subject to all the restrictions imposed by, this Agreement. Any change in the beneficiaries of a Family Trust which results in the Family Trust not being primarily for the

benefit of members of the same family as the family previously benefited shall be considered to be a Sale not permitted within the meaning of this 6.2.

ARTICLE VII.

7.1. Right of First Refusal and Obligation to Make First Offer.

(a) **Transfer Offer.** If, at any time a Stockholder (as such, the “**Selling Stockholder**”) desires to Sell all or any of his, her or its Shares pursuant to a bona fide offer from a third party (the “**Proposed Transferee**”), the Selling Stockholder shall submit a written offer (the “**Transfer Offer**”) to sell such Shares (the “**Offered Shares**”) to the Corporation and the remaining Stockholders (individually, a “**Remaining Stockholder**” and, collectively, the “**Remaining Stockholders**”) on terms and conditions not less favorable to the Corporation and the Remaining Stockholders than those on which the Selling Stockholder proposes to Sell such Offered Shares to the Proposed Transferee. The Transfer Offer shall disclose the identity of the Proposed Transferee, the Offered Shares proposed to be Sold, the terms and conditions (including price) of the proposed Sale, and any other material facts relating to the proposed Sale (including without limitation the terms of payment). The Transfer Offer shall further state that the Corporation may acquire, in accordance with the provisions of this Agreement, all or any portion of the Offered Shares for the price at which the Proposed Transferee offered for the Offered Shares, and the Remaining Stockholders may each acquire, in accordance with the provisions of this Agreement, their pro rata portions of the Offered Shares which are not purchased by the Corporation. If the Proposed Transferee offers to purchase the Offered Shares for consideration other than cash, the Corporation and/or the Remaining Stockholders, as the case may be, shall have the right to pay cash to the Selling Stockholder equal in amount to the fair market value (as reasonably determined by the then regularly engaged independent accountant of the Corporation) of any non-cash consideration offered by the Proposed Transferee. The Corporation and/or the Remaining Stockholders, as the case may be, shall have the absolute right to purchase all or any part of the Offered Shares.

(b) **The Corporation’s Right of First Refusal.** If the Corporation desires to purchase all or any portion of the Offered Shares, the Corporation shall communicate in writing its election to purchase to the Selling Stockholder, which communication shall state the number of Offered Shares the Corporation desires to purchase and shall be given to the Selling Stockholder and the Remaining Stockholders within thirty (30) days of the date the Transfer Offer was made. Such communication shall, when taken in conjunction with the Transfer Offer, be deemed to constitute a valid, legally binding and enforceable agreement for the Sale by the Selling Stockholder and the purchase by the Corporation of such Offered Shares; provided, however, that the Selling Stockholder shall not be obligated to Sell the Offered Shares to the Corporation unless the Corporation or the Remaining Stockholders have agreed to purchase all the Offered Shares. The closing of the Sale of the Offered Shares pursuant to this Section 7.1(b) shall be made at the offices of the Corporation on the ninetieth (90th) day following the date the Transfer Offer was made (or if such ninetieth (90th) day is not a Business Day, then on the next succeeding Business Day).

(c) **Stockholders' Right of First Refusal.** If the Corporation does not agree to purchase any or all of the Offered Shares, each Remaining Stockholder shall have the right to purchase such percentage of the Offered Shares, or such Offered Shares as are not purchased by the Corporation (in either case, the "**Remaining Offered Shares**"), which equals (a) the number of Shares held by such Remaining Stockholder divided by (b) the total number of Shares held by all Remaining Stockholders who exercise their right of first refusal provided for under this Section 7.1(c). If so desired, each Remaining Stockholder shall communicate in writing its election to purchase to the Selling Stockholder, which communication shall state the number of Remaining Offered Shares each Remaining Stockholder desires to purchase (up to its pro rata portion) and shall be given to the Selling Stockholder, the other Remaining Stockholders and the Corporation within sixty (60) days of the date the Transfer Offer was made. Such communication shall, when taken in conjunction with the Transfer Offer, be deemed to constitute a valid, legally binding and enforceable agreement for the Sale by the Selling Stockholder and the purchase by each Remaining Stockholder offering to do so of the Remaining Offered Shares; provided, however, that the Selling Stockholder shall not be obligated to sell the Remaining Offered Shares to any Remaining Stockholder unless the Corporation and/or the Remaining Stockholders have agreed to purchase all the Offered Shares. The closing of the Sales of the Remaining Offered Shares pursuant to this Section 7.1(c) (hereinafter referred to as the "**Closing**") shall be made at the offices of the Corporation on the ninetieth (90th) day following the date the Transfer Offer was made (or if such ninetieth (90th) day is not a Business Day, then on the next succeeding Business Day). In addition, to the extent any Remaining Stockholder (i) does not exercise the right of first refusal provided in this Section 7.1(c) or (ii) exercises its right of first refusal provided in this Section 7.1(c) but fails to deliver payment to the Selling Stockholder at Closing and such default is not cured within ten (10) days of the scheduled Closing, then the Remaining Stockholder or Remaining Stockholders, if any, who have exercised the right of first refusal (each such Remaining Stockholder to be referred to herein as an "**Exercising Stockholder**"), shall have the right to purchase, on the same terms and conditions as are set forth in the Transfer Offer, the remaining Offered Shares of the Selling Stockholder, on a pro rata basis with the other Exercising Stockholders, if any, by delivery of written notice to the Selling Stockholder hereof within seventy (70) days of the date the Transfer Offer was made.

(d) **Sale to Proposed Transferee.** If the Corporation and/or the Remaining Stockholders do not purchase all of the Offered Shares, the Selling Stockholder shall have the right to Sell all of the Offered Shares for a period of time commencing upon the expiration of the rights of the Corporation and the other Remaining Stockholders pursuant to Section 7.1(a), (b) and (c) and ending one hundred twenty (120) days after the date the Transfer Offer was made to the Remaining Stockholders. Any such Sale shall be to the Proposed Transferee; provided, however, that the Selling Stockholder shall not Sell any Offered Shares to a Proposed Transferee that is a competitor of the Corporation, as reasonably determined by the Board. The Sale of Offered Shares to the Proposed Transferee shall be at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Transfer Offer. Any Offered Shares not sold within such one hundred twenty (120) day period shall thereafter be subject to the requirements of a new written offer to be made in accordance with Section 7.1(a) above.

(e) **Transfers of Rights under this Section 7.1.** Each Stockholder may transfer its right to purchase Offered Shares pursuant to 7.1 to any Permitted Transferee of such Stockholder.

(f) **Excluded Sales.** The requirements of this 7.1 shall not apply to (i) any Sale of Shares by a Selling Stockholder made pursuant to 7.2(b), (ii) any Sale of Shares by a Stockholder to a Co-Sale Purchaser(s) pursuant to a Co-Sale Offer under 7.2, (iii) any Sale of Shares in accordance with 7.3, (iv) any Sale pursuant to 6.2, or (v) any other Sale as to which Stockholders holding all of the Class A Common Stock waive compliance with this Section 7.1.

7.2. Co-Sale (Tag-Along) Rights. Subject to 6.2 and except as otherwise expressly provided herein, no Selling Stockholder may consummate a Sale of Shares except in accordance with the following procedures:

(a) **Procedure.** Any Selling Stockholder desiring to effect a Sale of Shares to a proposed purchaser or purchasers (the “**Co-Sale Purchaser(s)**”) shall first deliver to each Remaining Stockholder a written notice (the “**Co-Sale Notice**”) which shall (i) specifically identify the Co-Sale Purchaser(s), the amount and type of Shares to be sold (the “**Co-Sale Subject Shares**”), the aggregate purchase price and Per Share Purchase Price therefor and a summary of the other material terms of the proposed Sale to the Co-Sale Purchaser(s) and (ii) contain an offer by the Co-Sale Purchaser(s) to each such Remaining Stockholder, to purchase the Co-Sale Shares of such Remaining Stockholder at the Per Share Price, and upon terms identical in all material respects to those offered by the Co-Sale Purchaser(s) to the Selling Stockholder (the “**Co-Sale Offer**”). The Co-Sale Offer shall remain open for the periods set forth below (and, to the extent the Co-Sale Offer is accepted, until the closing of the Sale contemplated by the Co-Sale Offer). Each such Remaining Stockholder shall have the right and option, for a period of ten (10) days after receipt by it of the Co-Sale Notice (the “**Co-Sale Acceptance Period**”), to accept the Co-Sale Offer with respect to all or a portion of such Selling Stockholder’s Co-Sale Shares. Notice of a Remaining Stockholder’s acceptance of a Co-Sale Offer, in whole or in part, shall be evidenced by a writing signed by such Remaining Stockholder and delivered to the Selling Stockholder prior to the end of the Co-Sale Acceptance Period, setting forth the number and type of Co-Sale Shares that such Remaining Stockholder elects to sell. The amount of Co-Sale Subject Shares proposed to be Sold by the Selling Stockholder to the Co-Sale Purchasers shall be reduced if and to the extent necessary to allow for the Sale of Co-Sale Shares by the Remaining Stockholders electing to exercise their right to Sell Co-Sale Shares under this 7.2. If effective acceptance by any Remaining Stockholder of a Co-Sale Offer has been received pursuant to this 7.2(a), then the Selling Stockholder shall not consummate a Sale of Co-Sale Subject Shares without the participation of such accepting Remaining Stockholders.

(b) **Consummation of Sales.** All Sales to the Co-Sale Purchaser and accepting Remaining Stockholders shall be consummated contemporaneously at the offices of the Corporation on the later of (i) a mutually satisfactory Business Day within twenty (20) days after the expiration of the Co-Sale Acceptance Period or (ii) the fifth Business Day following the receipt of all regulatory approvals, if any applicable to such Sales, or at such other time and/or place as the Co-Sale Purchaser, the Selling Stockholders and the Remaining Stockholders participating in such Sale may agree. The delivery of certificates or other instruments

evidencing such Shares duly endorsed for transfer shall be made on such date against payment of the purchase price for such Shares.

(c) **Transfers of Rights under this Section 7.2.** Each Stockholder may transfer its right to Sell Co-Sale Shares pursuant to 7.2 to any Permitted Transferee of such Stockholder.

(d) **Excluded Sales.** The requirements of this 7.2 shall not apply to (i) any Sale of Shares by a Selling Stockholder to a Remaining Stockholder pursuant to 7.1, (ii) any Sale of Shares in accordance with 7.3, (iii) any Sale pursuant to 6.2, or (iv) any other Sale as to which the Stockholders holding all of the Series A Common Stock waive compliance with this 7.2.

7.3. **Drag Along Rights.**

(a) **Sale Event.** In the event that at any time a proposal by any Stockholder or Stockholders (the “**Drag-Along Sellers**”) to effect a Sale Event to any third party (a “**Third Party Transferee**”) shall have been approved by the affirmative vote or consent of the Stockholders holding all of the Series A Common Stock, then, at the election of such Drag Along Seller(s), each other Stockholder shall be required to (a) sell all of such other Stockholders’ Shares, (b) waive any appraisal or dissenters’ rights that they may have in connection with such Sale Event, (c) if stockholder approval of such Sale Event is required, vote all of such Stockholder’s voting Shares in favor of such Sale Event and (d) take all other necessary actions to effect such Sale Event (any such Sale Event, a “**Drag Along Sale**”).

(b) **Consideration.** The consideration payable to the stockholders in any Drag Along Sale shall be distributed ratably among the Stockholders on a pari passu basis in proportion to the number of outstanding Shares owned by such Stockholders. The rights of first offer described in 7.1 and right of co-sale rights described in 7.2 shall not apply or be effective with respect to sales of Shares by a Stockholder in a Drag Along Sale.

(c) **Procedure.** The applicable Drag Along Seller(s) shall deliver to the Corporation, who shall then deliver to each other Stockholder, a written notice of any contemplated Drag-Along sale to be made pursuant to this 7.3 (a “**Drag Along Notice**”) which notice shall set forth the price per share of Common Stock and all other then outstanding Shares (including options and/or warrants to acquire Common Stock), as the case may be, to be paid by the Third Party Transferee, the number of Shares to be sold by the Drag-Along Seller(s), the number of Shares to be sold by each Stockholder, and the other terms and conditions, if any, of such transaction. Pending consummation of the Drag Along Sale, the Drag-Along Seller(s) shall promptly notify the Corporation, who shall then notify each Stockholder of any changes in the proposed timing for the Drag Along Sale and any other material developments in connection therewith.

(d) **Representations and Warranties; Expenses; Indemnification.** Each Stockholder shall enter into an equity purchase agreement, merger agreement or other similar agreement, substantially similar to the equity purchase agreement, merger agreement or other agreement entered into by the Drag-Along Seller(s), except that each Stockholder shall

only be required to (a) make representations and warranties relating to such Stockholder's ownership of good and valid title and authority to transfer the Shares held by such Stockholder, absence of liens or other encumbrances on such Shares, and the compliance of such transfer with federal and state securities laws and applicable laws and regulations and (b) use its commercially reasonable efforts to agree to any other representations and warranties requested by the Third Party Transferee that are usual and customary for transactions of the nature of such Drag Along Sale; provided, that no Stockholder shall be required to make any representations or warranties concerning the business or operations of the Corporation or concerning any other Stockholder or such other Stockholder's ownership of Shares, covenants and other agreements. The Drag-Along Seller(s) and other Stockholders participating in the Drag Along Sale pursuant to this 7.3 shall pay their own expenses (including, without limitation, investment advisory fees, legal fees and transfer or other taxes, if any) incurred in connection with the preparation, negotiation and delivery of any agreements related to such sale and shall be obligated to join solely on a several and not joint basis in any indemnification or other obligations that the Drag-Along Seller(s) agrees to provide in connection with such Drag Along Sale; provided, however, that no Stockholder (i) shall be obligated in connection with such Drag Along Sale to agree to indemnify or hold harmless any Person for any liability for misrepresentation, breach of warranty or indemnity made by the Corporation or any other Stockholder and (ii) shall have any liability in excess of the net cash proceeds actually received by such Stockholder in connection with the Drag Along Sale.

(e) **Termination.** If, within one hundred eighty days (180) days after the Drag-Along Seller(s) provides the Drag Along Notice or such longer period if needed to address any regulatory matters, no consideration from the consummation of the Sale Event in accordance with the provisions of this 7.3 shall have been received, the Drag Along Sale shall be terminated for purposes hereof.

(f) **Remittance of Consideration.** Simultaneously with the receipt of consideration in connection with a Drag Along Sale pursuant to this 7.3, the Drag-Along Seller(s) shall cause the Third Party Transferee to remit directly to each Stockholder the consideration with respect to such Stockholder's Shares and shall furnish such other evidence of the completion and time of completion of such sale as may reasonably be requested by any Stockholder.

ARTICLE VIII.

8.1. **Right to Participate in Sale of Additional Shares.**

(a) The Corporation hereby covenants and agrees that it shall not issue or Sell, and shall not permit any of its Subsidiaries to issue or Sell any Shares, unless the Corporation shall have first given written notice (the "**Preemptive Rights Notice**") to each Stockholder which shall (i) state the Corporation's intention to issue Shares, the amount of Shares to be issued, the terms of such Shares, the purchase price therefor and a summary of the other material terms of the proposed issuance and the Shares proposed to be issued and (ii) offer to each Stockholder the right to elect to purchase a number of such Shares, if any, equal to the product obtained by multiplying [a] the aggregate amount of Shares by [b] such Stockholder's Preemptive Percentage (as defined below). The Corporation's offer to the Stockholders shall

remain open and irrevocable for a period of thirty (30) days. Promptly upon the expiration of such thirty (30) day period, the Corporation shall, in writing, inform each Stockholder which elects to purchase all the Shares available to it of any other Stockholder's failure to do likewise. During the thirty (30) day period commencing after the receipt of such information, each fully-exercising Stockholder shall have the right to elect to purchase up to its Preemptive Percentage (calculated treating only Stockholders who fully exercise their preemptive rights hereunder as Stockholders) of the Shares not subscribed for by the other Stockholders. Any Shares offered to a Stockholder pursuant to this 8.1(a) which the Stockholders have not elected to purchase within the time fixed herein may, within ninety (90) days after the date for making such election, be sold by the Corporation at not less than the same price and upon terms not less favorable to the Corporation (including purchase price) than were offered to the Stockholder but may not otherwise be sold without renewed compliance with this 8.1(a).

(b) All issuances of Shares to any Stockholder pursuant to this 8.1 shall be consummated contemporaneously at the offices of the Corporation on the later of (i) a Business Day not less than thirty (30) or more than ninety (90) days after the Preemptive Rights Notice or (ii) the fifth Business Day following the receipt of all regulatory approvals, if any, applicable to such Sales, or at such other time and/or place as the parties to such Sales may agree.

(c) Each Stockholder may transfer its right to be offered any such opportunity pursuant to this 8.1 above to any transferee who is a Permitted Transferee of such Stockholder.

(d) Notwithstanding the above, the Corporation may, without having offered such Shares to any Stockholders, issue:

(i) Options exercisable for up to 10,400 shares of Common Stock (as adjusted for splits, reclassifications, recapitalizations or other similar events with respect to the Common Stock) to employees, advisors, consultants or members of the Board in connection with their service as such, their employment by the Corporation or their retention as consultants by the Corporation or any Subsidiary of the Corporation, pursuant to a plan, agreement or arrangement approved by the Board or a compensation committee thereof (the "**Option Plan**");

(ii) shares issued upon exercise of options granted pursuant to clause (i) above;

(iii) shares of Common Stock issued to pay declared dividends on shares of the Common Stock in accordance with the terms Section 4.3; and

(iv) shares issued pursuant to an acquisition of a Person (not including entities formed by the Corporation) whereby the Corporation or any Subsidiary of the Corporation will own more than fifty percent (50%) of the voting power of the acquired Person post-acquisition if such acquisition has been approved by the affirmative vote of the holders of all of the Series A Common Stock.

(e) The rights of the Stockholders to purchase Shares from the Corporation in respect of their holdings of Shares pursuant to this 8.1 may be waived by the written consent of the holders of all of the Series A Common Stock.

8.2. **Redemption.** The Corporation shall not and shall not permit any Subsidiary to redeem any Shares from any Stockholder of the Corporation (other than any redemption of Shares pursuant to and in accordance with the Option Plan unless all other Stockholders of the same class or classes are offered the right to sell to the Corporation at the same time as such Stockholder a pro rata portion of Shares held by such Stockholders on the same terms.

ARTICLE IX.

COVENANTS OF THE COMPANY

9.1. **Information Rights.** As long as any Class A Common Stock remains outstanding, the Corporation shall furnish the following reports to each holder of Class A Common Stock:

(a) as soon as possible after the end of each fiscal year (but in any event within ninety (90) days thereafter), a consolidated audited balance sheet of the Corporation and its Subsidiaries as at the end of such year, together with consolidated audited statements of income, shareholders' equity and cash flows of the Corporation and its Subsidiaries for such year, certified by independent public accountants acceptable to the Board and prepared in accordance with generally accepted accounting principles and practices consistently applied;

(b) within thirty (30) days after the end of each month, a consolidated unaudited balance sheet of the Corporation and its Subsidiaries as at the end of such month and a consolidated unaudited statement of income and cash flows for the Corporation and its Subsidiaries for such month and for the year to date prepared in accordance with generally accepted accounting principles consistently applied (except that such financial statements need not contain footnotes) and fairly reflecting the financial affairs of the Corporation subject to normal year-end audit adjustments; and

(c) prior to the beginning of each fiscal year an annual budget prepared on a monthly basis for the Corporation for such fiscal year (displaying anticipated statements of income and cash flows and balance sheets).

9.2. **D&O Insurance.** The Corporation shall maintain directors and officers' liability insurance coverage, on terms reasonably satisfactory to the Board, of at least \$5,000,000 per occurrence, to the fullest extent permitted by law covering, among other things, violations of federal or state securities laws. The Corporation will pay all premiums due thereon and will not make any material alteration to the terms of, or the coverage provided by, such insurance policy without the prior written consent of the Board. The Corporation shall at all times maintain provisions in the Bylaws of the Corporation and the Charter indemnifying all directors against liability and absolving all directors from liability to the Corporation and its stockholders to the maximum extent permitted under the laws of the State of Delaware.

9.3. Confidentiality.

(a) Each Stockholder hereby acknowledges that he, she or it may have access to confidential information and/or proprietary information regarding the Corporation or any of its Subsidiaries. Each Stockholder, on behalf of itself and its Affiliates, covenants and agrees that, subject to the disclosure of information (i) of a non-technical nature, including financial information, which such holder discloses to its partners, members and/or shareholders generally, (ii) which such Stockholder discloses to such Stockholder's counsel or accountant, or (iii) which such Stockholder discloses to an officer, director, member, partner or other Affiliate of such Stockholder, provided that such Stockholder shall inform the recipient of the confidential nature of such information, and shall instruct the recipient to treat the information as confidential, such Stockholder and such Stockholder's Affiliates shall retain in strict confidence, and shall not use for any purpose, or divulge, disseminate or disclose to any third party (other than in furtherance of the business purposes of the Corporation or as may be required by law) any confidential information and/or proprietary information regarding the Corporation or any of its Subsidiaries and/or their respective clients, including, but not limited to, trade secrets, methods, models, financial information and records, forecasts, agreements and/or contracts between the Corporation or a Subsidiary and their respective clients, client contracts, prospective contracts, creative policies and ideas, public relations and public affairs campaigns, media materials, budgets, practices, concepts, strategies, methods of operation, technical and scientific information, discoveries, developments, formulas, specifications, know-how, design inventions, marketing and business strategies and financial or business projects, and information about or received from clients and other companies with which the Corporation or any of its Subsidiaries does business unless (x) such information is or becomes known to such Stockholder or its Affiliates from a source other than the Corporation or is or becomes publicly known (other than as a result of a breach by such holder of this provision), (y) the holder is required by law, court order or a governmental agency to disclose such information (and such holder has used commercially reasonable efforts to obtain a protective order covering such confidential information), or (z) unless the Corporation gives its written consent to such holder's release of such information. The foregoing restrictions shall apply whether or not any subject information is marked "confidential" and regardless of the form of the subject information.

(b) The restrictions set forth in Section 5.3(a) shall continue to apply to a Stockholder even after the time when a Stockholder shall cease to own any Shares.

(c) Notwithstanding anything contained herein:

(i) each Stockholder may disclose Corporation information:
(A) if such disclosure is reasonably necessary to comply with applicable laws or court orders and
(B) to the extent reasonably necessary in connection with such Stockholder's enforcement of its rights under this Agreement.

(ii) the Corporation and each Stockholder (and each of their respective employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the Corporation or such Stockholder relating to such tax treatment and tax structure.

ARTICLE X.

10.1. **Limitation of Liability.** The Corporation shall indemnify each of the Corporation's directors and officers in each and every situation where, under Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time ("Section 145"), the Corporation is permitted or empowered to make such indemnification. The Corporation may, in the sole discretion of the Board, indemnify any other person who may be indemnified pursuant to Section 145 to the extent the Board deems advisable, as permitted by Section 145. The Corporation shall promptly make or cause to be made any determination required to be made pursuant to Section 145.

No Director shall be liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as director; provided, however, that nothing contained in this Article VI shall eliminate or limit the liability of a director:

- (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders;
- (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;
- (c) under Section 174 of the General Corporation Law of the State of Delaware; or
- (d) for any transaction from which the director derived improper personal benefit.

10.2. To the maximum extent permitted from time to time under the law of the State of Delaware, and only with respect to the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are presented to its officers, directors or stockholders other than those officers, directors or stockholders who are employees of the Corporation.

10.3. No amendment to or repeal of this Article X shall apply to or have any effect on the liability or alleged liability of any Director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

10.4. **Other Activities of the Stockholders.**

(a) Subject to Section 10.5, no Stockholder or any Affiliate thereof shall be prohibited from having other business interests or engaging in other business ventures or business or activity of any nature or description whatsoever, whether currently existing or hereafter created, including, without limitation, those interests, ventures, businesses or activities

which are or may be, directly or indirectly, competitive with the business conducted by the Corporation.

(b) Shares in the Corporation have not been offered to any Stockholder with the intent to influence the judgment of such Stockholder to cause such Stockholder to refer business or individuals to, or utilize the services of, the Corporation. No Stockholder is obligated in any manner to refer business or individuals to the Corporation or otherwise utilize the services of the Corporation. Stockholders are not restricted from making referrals to, or utilizing the Services of, any organization or entity, including without limitation organizations or entities engaged in any aspect of the Business.

(c) No Stockholder, in its capacity as such, or any Affiliate thereof, shall incur any liability to the Corporation or to the other Stockholders as the result of such Stockholder's pursuit of other business interests and ventures, and neither the Corporation nor any of the other Stockholders or any Affiliates thereof shall have any right to participate in such other business interests or ventures or to receive or share in any income or net cash flow derived therefrom by virtue of such Stockholder's status as a Stockholder in the Corporation, this Agreement or the Corporation relationship created hereby. The pursuit of other ventures and activities by each Stockholder or any Affiliates thereof is hereby consented to by the other Stockholders and the Corporation and shall not be deemed wrongful or improper.

(d) No Stockholder nor any of their respective Affiliates shall be obligated to present any particular investment opportunity to the Corporation, even if such opportunity is of a character which, if presented to the Corporation, could be taken by the Corporation, and each Stockholder and each Affiliate thereof shall have the right to take for its own account, or to recommend to others, any such particular investment opportunity without notice or accounting to the Corporation or any other Person.

10.5. Non-Solicitation of Employees and Customers. While each Stockholder is a Stockholder of the Corporation and for thirty-six (36) months thereafter (the "Restricted Period"), such Stockholder agrees, on behalf of itself and its Affiliates, that it will not, directly or indirectly, (i) hire, or otherwise engage the services of, any current or past employee, agent, consultant or representative of the Corporation or any Affiliate thereof; (ii) solicit, encourage or attempt to solicit or encourage any current or past employee, agent, consultant or representative of the Corporation or any Affiliate thereof to terminate his, her, or its relationship with the Corporation or any Affiliate thereof, as applicable, or become an employee, agent, representative or consultant of any other Person; or (iii) persuade or seek to persuade any current or past customer of the Corporation or any Affiliate thereof to cease to do business or to reduce the amount of business which any customer has customarily done or contemplates doing with the Corporation or any Affiliate thereof, as applicable; or (iv) solicit or attempt to solicit any current or past customer of the Corporation or any Affiliate thereof, as applicable with respect to any product or service being furnished, made, sold or leased by any such party; provided, however, that this Section 6.7 shall not apply to any Designated Stockholder.

10.6. Conflicts of Interest. Subject to the approvals required by Section 4.6, any Stockholder or their respective Affiliates, may lend money to, lease real or personal property to and transact other business with the Corporation, on arm's length terms, to be conclusively

determined by the Board. The rights and obligations of a Stockholder or its Affiliates, who lends money to, leases real or personal property to or transacts business with the Corporation in accordance with this Section 10.6 are the same as those of a Person who is not a Stockholder, subject to other applicable law. So long as approval was obtained pursuant to Section 4.6, no transaction with the Corporation shall be voidable solely because a Stockholder or its Affiliates, has a direct or indirect interest in the transaction.

10.7. Activities of the Stockholders. Each Stockholder and its Affiliates shall, in his, her or its individual capacity or otherwise, be free to engage in, to conduct or to participate in any business or activity whatsoever without any accountability, liability or obligation whatsoever to the Corporation or to any other Stockholder.

10.8. Other Activities of the Directors. The Directors are required to devote only such time to the affairs of the Corporation as, in the sole judgment of the Stockholders, may be necessary to manage and operate the Corporation to promote fully the interests of the Corporation, and each officer, employee or representative of the Directors, to the extent not otherwise directed by the Board, may serve any other Person or enterprise in any capacity that it may deem appropriate in its sole discretion. Except as expressly provided herein, nothing in this Agreement will preclude any Director or any of its Affiliates, or any of their respective officers, directors, employees, partners or members from engaging in any activity whatsoever permitted by applicable law.

ARTICLE XI.

The following terms shall have the following respective meanings herein:

“Affiliate” of any Person means any other Person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term **“control”** (including the terms **“controlling,” “controlled by”** and **“under common control with”**) as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Board” has the meaning assigned to it in Section 3.1 hereof.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York.

“Class A Common Stock” has the meaning assigned to it in Section 4.1(a) hereof.

“Class B Common Stock” has the meaning assigned to it in Section 4.1(a) hereof.

“Common Stock” has the meaning assigned to it in Section 4.1(a) hereof.

“Common Stock Equivalents” means all options, warrants and other securities and obligations convertible into, or exchangeable or exercisable for, at any time or upon the

occurrence of any event or contingency and without regard to any vesting or other conditions to which such securities or obligations may be subject, shares of Common Stock.

“Convertible Securities” means any evidences of indebtedness or securities convertible into or exchangeable or exercisable for, directly or indirectly, Common Stock.

“Corporation” has the meaning assigned to it in Article I hereof.

“Designated Stockholder” means any Stockholder that has made, in one or more tranches, equity investments in the Corporation of at least \$10,000,000 in the aggregate.

“Entity” means any partnership, limited liability company, corporation, joint venture, trust, business trusts, cooperative, association or other legal entity.

“Family Member” means any parent, sibling, spouse or descendant of a Stockholder or of any such parent, sibling, spouse or descendant.

“Family Trust” means any trust established by a Stockholder or a Family Member of a Stockholder primarily for the benefit of such Stockholder and/or any Family Member(s) of such Stockholder.

“Governmental Entity” means any national, federal, state, municipal, local, territorial, foreign or other government or any department, commission, board, bureau, agency, regulatory authority or instrumentality thereof, or any court, judicial, administrative or arbitral body or public or private tribunal.

“Indebtedness” of any Person means, without duplication, (i) all indebtedness for borrowed money; (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business on ordinary terms); (iii) all reimbursement or payment obligations, whether matured or not matured, with respect to outstanding all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments; (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (vi) all obligations with respect to capital leases as determined in accordance with United States generally accepted accounting principles; (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance or lien (statutory or other) upon or in property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (viii) all guaranty obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above.

“Option Plan” has the meaning assigned to it in Section 8.1(d)(i).

“Options” means rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities, including the Warrants.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

“Preemptive Percentage” of a Stockholder shall equal the quotient obtained (expressed as a percentage) of (i) the number of shares of Common Stock or Common Stock Equivalents held by such Stockholder upon delivery by the Corporation of the Preemptive Rights Notice, divided by (ii) the number of shares of Common Stock or Common Stock Equivalents held by all Stockholders upon delivery by the Corporation of the Preemptive Rights Notice.

“Sale Event” means: (i) the merger or consolidation of the Corporation into or with another Person (other than (A) a wholly-owned subsidiary of the Corporation in a merger in which the Corporation is the surviving Person and the certificate of incorporation of the Corporation remains unchanged or (B) an acquisition by merger, reorganization or consolidation, in which the Corporation is substantively the surviving Person and operates as a going concern, of another Person that is engaged in a business similar or related to or complementary with the business of the Corporation and which does not involve a recapitalization or reorganization of the Common Stock and does not involve (in a single transaction or series of related transactions) a transfer of more than 50% of the capital stock of the Corporation), (ii) the direct or indirect sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation and/or any of its Subsidiaries of all or substantially all the assets of the Corporation and its Subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation or (iii) any other transaction or series of transactions, the result of which causes a Person or group of affiliated Persons to acquire or hold the capital stock of the Corporation constituting in excess of 50% of the capital stock of the Corporation or any successor entity thereof or acquire or hold in excess of 50% of the assets of the Corporation or any successor entity thereof.

“Section 145” has the meaning assigned to it in Section 10.1 hereof.

“Sell” means, as to any Shares, to sell, or in any other way directly or indirectly transfer, assign, distribute, pledge, encumber or otherwise dispose of, either voluntarily or involuntarily; the terms **“Sale”** and **“Sold”** shall have a meaning correlative to the foregoing

“Shares” means and includes each share of Common Stock and any Common Stock Equivalents.

“Stockholder” means a holder of Common Stock or Common Stock Equivalents.

“Subsidiary” means any Person (i) at least 50% of the outstanding voting securities of which are at the time owned or controlled, directly or indirectly, by the Corporation; or (ii) with respect to which the Corporation possesses, directly or indirectly, the power to direct or cause the direction of the affairs or management of such Person.

BYLAWS
OF
AMBULNZ, INC.

(a Delaware corporation)

ARTICLE I
OFFICES AND BRANCHES

SECTION I.1 REGISTERED OFFICE. The registered office of the Corporation in the State of Delaware shall be located at the address of the individual or entity acting as the Corporation's registered agent, as set forth in the certificate of incorporation of the Corporation.

SECTION I.2 OTHER OFFICES AND OPERATIONS. The Corporation shall have the authority to establish and operate branches and offices and otherwise legally qualify to do business, carry on business operations, and create, manage and participate in subsidiaries, investments, partnerships, funds, joint ventures or any other form of business operation, and to purchase, lease, sell, own and operate property of every description, within or without the State of Delaware and in any and all foreign countries outside of the United States, at such place or places as the Board of Directors may from time to time select.

ARTICLE II
MEETINGS OF STOCKHOLDERS

SECTION II.1 ANNUAL MEETINGS. An annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at such date, time and place, either within or without the State of Delaware, as the Board of Directors shall determine each year.

SECTION II.2 SPECIAL MEETINGS. Special meetings of stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, shall be called at any time by the President or the Secretary, or by the Board of Directors, and may be held at any date, time and place, within or without the State of Delaware, as shall be stated in the notice of meeting. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of special meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

SECTION II.3 NOTICE OF MEETINGS. Written notice of each annual or special meeting of the stockholders, stating the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting,

the purpose of such meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting, at his, her or its address as it appears on the records of the Corporation.

A written waiver, signed by the stockholder entitled to notice, or a waiver by electronic transmission by the stockholder entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business nor the purpose of any meeting need be specified in any waiver. Notice of any meeting of stockholders shall be deemed waived by any stockholder not receiving such notice who nevertheless attends such meeting in person or by proxy, except a stockholder who attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

SECTION II.4 VOTING; PROXIES. Except as otherwise provided by or pursuant to the provisions of the certificate of incorporation of the Corporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the certificate of incorporation of the Corporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the Corporation which are present in person or by proxy and entitled to vote thereon.

SECTION II.5 QUORUM. Except as otherwise required by law, the holders of a majority of the issued and outstanding shares of stock of the Corporation entitled to vote, present in person or by proxy, shall constitute a quorum at all meetings of the stockholders. Shares of its own stock belonging to the Corporation or to another legal entity, if a majority of the voting equity interests entitled to vote in the election of directors (or other corresponding governance body) of such other legal entity 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 II.6 ADJOURNMENT. If a quorum shall not be present at any meeting of stockholders, annual or special, the President of the Corporation or a majority of the holders of the issued and outstanding shares of stock of the Corporation entitled to vote who are present at such meeting, in person or by proxy, shall have the power to adjourn the meeting to another place, date, or time, without notice other than announcement at the meeting; provided, however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

SECTION II.7 ACTION WITHOUT MEETING. Any action required or permitted to be taken at any annual or special meeting of stockholders, including, without limitation, election of directors, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, 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 of stock entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

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 (60) days of the earliest dated consent delivered, written consents signed by a sufficient number of stockholders to take action are delivered to the Corporation by delivery to its registered office in this State, 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 a Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

An 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, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (1) that the electronic transmission was transmitted by the stockholder or proxyholder, or by a person authorized to act for the stockholder or proxyholder, and (2) the date on which such stockholder or proxyholder, or authorized person, 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. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

SECTION II.8 ORGANIZATION. Meetings of stockholders shall be presided over by the Chairperson of the Board of Directors, if any, or in his or her absence by the Vice Chairperson of the Board of Directors, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

SECTION II.9 CONDUCT OF MEETINGS. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION II.10 INSPECTORS OF ELECTION. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall: (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share; (ii) determine the shares of capital stock of the Corporation represented at the

meeting and the validity of proxies and ballots; (iii) count all votes and ballots; (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

SECTION II.11 STOCKHOLDERS LIST. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares of stock registered in his, her or its name shall be open to the examination of any such stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least (10) ten days prior to the meeting, either on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. The stockholders list shall also be kept at the place of the meeting during the whole time thereof and shall be open to the examination of any stockholder who is present. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares of stock held by each of them.

SECTION II.12 FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (iii) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of 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 in accordance with applicable law, or, if prior action

by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION II.13 PARTICIPATION BY TELECONFERENCE. Any one or more of the stockholders or proxyholders may participate in a meeting of the stockholders by means of conference telephone or similar communications equipment that enables all persons participating in the meeting to hear one another, and such participation shall constitute presence in person at such meeting.

ARTICLE III DIRECTORS

SECTION III.1 NUMBER AND TERM. The number of members of the Board of Directors shall be fixed from time to time by action of the stockholders or the Board of Directors. The number of members of the Board of Directors shall be up to seven (7), as determined by the certificate of incorporation of the Corporation, as may be amended and/or restated from time to time. The members of the Board of Directors shall be elected to serve until the next annual meeting of the stockholders and until their respective successors shall be duly elected and qualified, or until their earlier death, resignation, disqualification or removal. Directors need not be stockholders.

SECTION III.2 VACANCIES. Unless otherwise provided by law or the certificate of incorporation of the Corporation, any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, or by a plurality of the votes cast at a meeting of stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor is elected and qualified.

SECTION III.3 REMOVAL. Notwithstanding anything herein to the contrary, any director or directors may be removed with or without cause, and their successors elected, at any time by the affirmative vote of the holders of a majority of all the shares of stock outstanding and entitled to vote.

SECTION III.4 POWERS. The Board of Directors shall exercise all of the powers of the Corporation except any such powers as are conferred upon or reserved to the stockholders of the Corporation pursuant to applicable law, the certificate of incorporation of the Corporation or by these bylaws.

SECTION III.5 MEETINGS; VOTE REQUIRED FOR ACTION; RESTRICTIONS AND LIMITATIONS.

(a) Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware without notice at such dates, times and places as shall be established from time to time by the Board of Directors and publicized among all directors. Special meetings of the Board of Directors may be called by the President, any Vice President or by the Secretary, or by any member of the Board of Directors on at least twenty-four (24) hours notice of the date, time and place thereof given to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting. Action by a majority of the directors present at a regular or special meeting of the Board of Directors at which a quorum is present shall constitute the act of the Board of Directors, except as otherwise required by the certificate of incorporation of the Corporation, these bylaws or by applicable law. In the event of a tie vote or deadlock among the directors present at a regular or special meeting of the Board of Directors at which a quorum is present, the Chairperson of the Board of Directors shall have the ability to cast an additional vote in order to resolve the deadlock and break the tie.

(b) For so long as Stan Vashovsky, Ira Smedra or any of their respective Affiliates or any other Person serving as their replacement Director (for purposes herein, each, a “Founder Director”) is serving as a Director, the Corporation shall not, and shall not authorize or permit any of its Subsidiaries to, take any of the following actions, either directly or indirectly, by merger, consolidation, reorganization or otherwise, without the prior consent by affirmative vote or written consent of a majority of the directors present at a regular or special meeting of the Board of Directors at which a quorum is present, which such majority shall include each Founder Director:

(i) voluntarily liquidating or dissolving the Corporation (or any of its subsidiaries) or filing a voluntary petition by the Corporation (or any of its subsidiaries) pursuant to Chapter 7 or Chapter 11 of the Bankruptcy Code of 1978, as amended or failing to contest an involuntary petition under either Chapter or seeking the appointment of a receiver for all of its assets or making a general assignment for the benefit of creditors;

(ii) merging, consolidating or reorganizing the Corporation (or any of its subsidiaries) with another Entity;

(iii) acquiring all or substantially all of the assets of, or acquiring a controlling interest in, any other Entity, in each case, other than in the ordinary course of business and, where such acquisition is for consideration valued at or in excess of \$5,000,000;

(iv) amending the certificate of incorporation of the Corporation;

(v) raising additional equity capital through the sale of shares of capital stock or otherwise;

(vi) selling or otherwise conveying legal title to all or substantially all of the consolidated assets of the Corporation;

(vii) incurring any Indebtedness (other than the incurrence of operating expenses), or otherwise borrowing or loaning any money, guaranteeing the payment of any money or debt of another person or Entity, guaranteeing the performance of any other obligation of another person or Entity or indemnifying any other person or Entity against any losses or damages or costs;

(viii) entering into any transaction between the Corporation and any Director and/or any holder of Common Stock or their respective Affiliates;

(ix) changing the strategic direction of the Corporation;

(x) entering or changing the lines of business which the Corporation operates;

(xi) increasing or decreasing the number of Directors, or filling vacancies on the Board; or

(xii) agreeing or otherwise committing to take any of the actions set forth in the foregoing subparagraphs (i) through (xi).

(c) Capitalized but undefined terms used in Section 3.05(b) shall have the meanings ascribed to such terms in the certificate of incorporation of the Corporation, as may be amended from time to time.

SECTION III.6 ORGANIZATION. Meetings of the Board of Directors shall be presided over by the Chairperson of the Board of Directors, if any, or in his or her absence by the Vice Chairperson of the Board of Directors, if any, or in his or her absence by the President, or in their absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

SECTION III.7 QUORUM. One-third of the total number of directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board of Directors, a majority of those directors present may adjourn the meeting to another place, date or time, without further notice (other than announcement at the meeting) or waiver thereof.

SECTION III.8 ACTION WITHOUT MEETING. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board, or committee in accordance with applicable law.

SECTION III.9 RESIGNATIONS. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is

conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.

SECTION III.10 PARTICIPATION BY TELECONFERENCE. Any one or more of the directors may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment that enables all persons participating in the meeting to hear one another, and such participation shall constitute presence in person at such meeting.

SECTION III.11 COMPENSATION. Directors may receive such compensation for their services as directors as the Board of Directors shall from time to time determine by resolution.

ARTICLE IV INTERESTED DIRECTORS AND OFFICERS

SECTION IV.1 No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's votes are counted for such purpose, if:

(a) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(b) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

SECTION IV.2 The common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE V COMMITTEES

SECTION V.1 GENERALLY. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation.

The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may by unanimous vote appoint another member of the committee. Any such committee may act in accordance with the resolution establishing such committee or shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, except as limited by law. All acts done by any committee within the scope of its powers and duties pursuant to these bylaws and the resolutions adopted by the Board of Directors shall be deemed to be, and may be certified as being, done or conferred under authority of the Board of Directors. The Secretary or any Assistant Secretary is empowered to certify that any resolution duly adopted by any such committee is binding upon the Corporation and to execute and deliver such certifications from time to time as may be necessary or proper to the conduct of the business of the Corporation.

SECTION V.2 **RESIGNATION.** Any member of a committee may resign at any time. Such resignation shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective unless so specified therein.

SECTION V.3 **QUORUM.** A majority of the members of a committee shall constitute a quorum. The vote of a majority of the members of a committee present at any meeting at which a quorum is present shall be the act of such committee.

SECTION V.4 **RECORD OF PROCEEDINGS.** Each committee shall keep a record of its acts and proceedings, and shall report the same to the Board of Directors when and as required by the Board of Directors.

SECTION V.5 **ORGANIZATION, MEETINGS, NOTICES.** A committee may hold its meetings at the principal office of the Corporation, or at any other place upon which a majority of the committee may at any time agree. Each committee may make such rules as it may deem expedient for the regulation and carrying on of its meetings and proceedings.

SECTION V.6 **COMMITTEE RULES.** Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article III of these bylaws.

ARTICLE VI OFFICERS

SECTION VI.1 **GENERALLY.** The Board of Directors shall elect a President and Secretary, and it may, if it so determines, choose a Chairperson of the Board of Directors and a Vice Chairperson of the Board of Directors from among its members. The Board of Directors

may also choose one or more Vice Presidents, one or more Assistant Secretaries, a Chief Financial Officer or a Treasurer and one or more Assistant Treasurers and such other officers as it shall from time to time deem necessary or desirable. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. None of the officers of the Corporation need be directors. Two or more offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any officer may be removed at any time, with or without cause, by the Board of Directors. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

SECTION VI.2 CHAIRPERSON OF THE BOARD OF DIRECTORS. The Chairperson of the Board of Directors, if any, shall preside at all meetings of the Board of Directors. Except whereby law the signature of the President is required, the Chairperson of the Board of Directors shall possess the same power as the President to sign all documents of the Corporation which the President may be authorized to sign by these bylaws or by the Board of Directors. The Chairperson of the Board of Directors shall see that all orders and resolutions of the Board of Directors are carried into effect and shall from time to time report to the Board of Directors all matters within his or her knowledge which the interests of the Corporation may require to be brought to their notice. During the absence or disability of the President, the Chairperson of the Board of Directors shall exercise all the powers and discharge all the duties of the President unless the Board of Directors shall designate another officer to exercise such powers and discharge such duties. The Chairperson of the Board of Directors shall also perform such other duties and he or she may exercise such other powers as from time to time may be prescribed by these bylaws or by the Board of Directors.

SECTION VI.3 VICE CHAIRPERSON. Each Vice Chairperson shall have such powers and shall perform such duties as shall from time to time be designated by the Board of Directors.

SECTION VI.4 PRESIDENT. The President shall be the chief executive officer of the Company and shall preside at all meetings of the stockholders and, if there be no Chairperson or Vice Chairperson of the Board of Directors, of the Board of Directors. Subject to the provisions of these bylaws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the affairs and business of the Corporation and such other powers which from time to time are delegated to him or her by the Board of Directors. The President shall have power to sign, in the name of the Corporation, all authorized stock certificates, contracts, documents, tax returns, instruments, checks and bonds or other obligations of the Corporation and shall have general supervision and direction of all of the other officers and agents of the Corporation.

SECTION VI.5 VICE PRESIDENTS. Each Vice President shall have such powers and shall perform such duties as shall from time to time be designated by the Board of Directors or the President.

SECTION VI.6 CHIEF FINANCIAL OFFICER OR TREASURER. The Chief Financial Officer or Treasurer shall have the custody of the corporate funds and securities and

shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. The Chief Financial Officer or Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors or the President. The Chief Financial Officer or Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the President, taking proper vouchers for such disbursements. The Chief Financial Officer or Treasurer shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all his or her transactions as Chief Financial Officer or Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Chief Financial Officer or Treasurer shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe.

SECTION VI.7 SECRETARY. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and directors, and all other notices required by law or by these bylaws, and in case of his or her absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the President, directors or stockholders, upon whose requisition the meeting is called as provided in these bylaws. The Secretary shall record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him or her by the Board of Directors or the President. The Secretary shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board of Directors or the President, and attest the same.

SECTION VI.8 ASSISTANT SECRETARIES. Each Assistant Secretary shall have such powers and shall perform such duties as shall from time to time be designated by the Board of Directors.

SECTION VI.9 ADDITIONAL POWERS OF OFFICERS. In addition to the powers specifically provided in these bylaws, each officer (including officers other than those referred to in these bylaws) shall have such other or additional authority and perform such duties as the Board of Directors may from time to time determine.

SECTION VI.10 SALARIES. The salaries of the officers of the Corporation shall be fixed from time to time by the Board of Directors, or by one or more committees of the Board of Directors to the extent so authorized from time to time by the Board of Directors. No officer shall be prevented from receiving a salary by reason of the fact that such officer is also a director of the Corporation.

SECTION VI.11 APPOINTING ATTORNEYS AND AGENTS; VOTING SECURITIES OF OTHER ENTITIES. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairperson of the Board of Directors, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation

or other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this section which may be delegated to an attorney or agent may also be exercised directly by the Chairperson of the Board of Directors, the President or the Vice President.

ARTICLE VII STOCK

SECTION VII.1 CERTIFICATES OF STOCK. Certificates of stock, signed by, or in the name of the Corporation, by the Chairperson or Vice Chairperson of the Board of Directors, or the President or a Vice President, and by the Chief Financial Officer or Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, shall be issued to each stockholder, certifying the number of shares of stock owned by such stockholder of the Corporation. Any of or all the signatures on the certificates may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

SECTION VII.2 LOST, STOLEN OR DESTROYED CERTIFICATES. A new certificate of stock may be issued in the place of any certificate theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, and the Board of Directors may, in its discretion, require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond, in such sum as they may direct, to indemnify the Corporation 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 VII.3 TRANSFER OF SHARES OF STOCK. Transfers of shares of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Upon surrender to the Corporation or its transfer agent of a certificate for shares of stock duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Corporation shall issue or cause its transfer agent to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

ARTICLE VIII MISCELLANEOUS

SECTION VIII.1 DIVIDENDS. Subject to the provisions of the certificate of incorporation of the Corporation, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon the capital stock of the Corporation as and when it deems expedient. Dividends may be paid in cash, in property, or in shares of the capital stock. Before declaring any dividend, there may be set apart out of any

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

SECTION VIII.2 SEAL. The corporate seal shall be circular in form and shall contain the name of the Corporation, the year of its creation and the words “CORPORATE SEAL” and “DELAWARE.” Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

SECTION VIII.3 FISCAL YEAR. The fiscal year of the Corporation shall be determined by the Board of Directors.

SECTION VIII.4 CHECKS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall be determined from time to time by the Board of Directors.

SECTION VIII.5 MANNER OF NOTICE. Any notice to directors and stockholders given by the Corporation shall be in writing and deemed to be sufficient if given by depositing the same in the United States mail, first class mail (airmail if to an address outside of the United States), postage prepaid, addressed to the person entitled thereto at his or her address as it appears on the records of the Corporation, in which case such notice shall be deemed given on the day of such mailing, unless it is notice of a Board of Directors’ meeting, in which case such notice shall be deemed given five (5) days after the date of such mailing. Any notice to stockholders given by the Corporation shall also be deemed to be sufficient if given by a form of electronic transmission consented to by the stockholder to whom the notice is given, including: (1) facsimile telecommunication, (2) electronic mail address, (3) a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice, or (4) any other form of electronic transmission, when directed to the stockholder.

Whenever any notice is required to be given under the provisions of any law or statute applicable to the Corporation, the certificate of incorporation of the Corporation or these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IX AMENDMENTS

These bylaws may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted by the stockholders or by the Board of Directors at any meeting thereof; provided, however, that notice of such alteration, amended, repeal or adoption of new bylaws shall be contained in the notice of such meeting of stockholders or in a notice of such meeting of the Board of Directors, as the case may be. Unless a higher percentage is required by law or by the certificate of incorporation of the Corporation as to any matter which is the subject of these

bylaws, all such amendments must be approved by either the affirmative vote of the holders of shares of stock issued and outstanding entitled to vote thereon representing at least a majority of the votes entitled to be cast thereon or by a majority of the Board of Directors.

ARTICLE X INDEMNIFICATION

SECTION X.1 **RIGHT TO INDEMNIFICATION.** Each person who was or is made a party or is threatened to be made a party to or is involved in or called as a witness in any threatened, pending or completed Proceeding (as hereinafter defined) because he or she is an Indemnified Person (as hereinafter defined), shall be indemnified and held harmless by the Corporation to the fullest extent permitted under the Delaware General Corporation Law (the “DGCL”), as the same now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment). Such indemnification shall cover all expenses incurred by an Indemnified Person (including, but not limited to, attorneys’ fees and other expenses of litigation) and all liabilities and losses (including, but not limited to, judgments, fines, ERISA or other excise taxes or penalties and amounts paid or to be paid in settlement) incurred by such person in connection therewith.

Notwithstanding the foregoing, except with respect to indemnification specified in this Article, the Corporation shall indemnify an Indemnified Person in connection with any threatened, pending or completed Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

For purposes of this Article:

(a) a “Proceeding” is an action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom;

(b) an “Indemnified Person” is a person who is, was, or had agreed to become a director or an officer or a Delegate, as defined herein, of the Corporation or the legal representative of any of the foregoing; and

(c) a “Delegate” is a person serving at the request of the Corporation or a subsidiary of the Corporation as a director, trustee, fiduciary, officer, employee or agent of such subsidiary or of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity.

SECTION X.2 **EXPENSES.** Expenses, including attorneys’ fees, incurred by a person indemnified pursuant to this Article in defending or otherwise being involved in a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding, including any appeal therefrom, upon receipt of an undertaking (the “Undertaking”) by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation; provided, that in connection with a Proceeding (or part thereof) initiated by such person, except a Proceeding authorized by this Article, the Corporation shall pay said expenses in advance of final disposition only if such

Proceeding (or part thereof) was authorized by the Board of Directors. A person to whom expenses are advanced pursuant hereto shall not be obligated to repay pursuant to the Undertaking until the final determination of any pending Proceeding in a court of competent jurisdiction concerning the right of such person to be indemnified or the obligation of such person to repay pursuant to the Undertaking.

SECTION X.3 PROTECTION OF RIGHTS. If a claim under this Article is not promptly paid in full by the Corporation after a written claim has been received by the Corporation or if expenses pursuant to this Article have not been promptly advanced after a written request for such advancement accompanied by the Undertaking has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or the advancement of expenses. If successful, in whole or in part, in such suit, such claimant shall also be entitled to be paid the reasonable expense thereof (including without limitation attorneys' fees). It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required Undertaking has been tendered to the Corporation) that indemnification of the claimant is prohibited by law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination, if required, prior to the commencement of such action that indemnification of the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that indemnification of the claimant is prohibited, shall be a defense to the action or create a presumption that indemnification of the claimant is prohibited.

SECTION X.4 MISCELLANEOUS.

(a) Non-Exclusivity of Rights. The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation of the Corporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The Board of Directors shall have the authority, by resolution, to provide for such indemnification of employees or agents of the Corporation or others and for such other indemnification of directors, officers or Delegates as it shall deem appropriate.

(b) Insurance, Contracts and Funding. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, or agent of, or person serving in any other capacity with, the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expenses, liabilities or losses, whether or not the Corporation would have the power to indemnify such person against such expenses, liabilities or losses under the DGCL. The Corporation may enter into contracts with any director, officer or Delegate of the Corporation in furtherance of the provisions of this Article and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect the advancing of expenses and indemnification as provided in this Article.

(c) Contractual Nature. The provisions of this Article shall be applicable to all Proceedings commenced or continuing after its adoption, whether such arise out of events, acts or omissions which occurred prior or subsequent to such adoption, and shall continue as to a person who has ceased to be a director, officer or Delegate and shall inure to the benefit of the heirs, executors and administrators of such person. This Article shall be deemed to be a contract between the Corporation and each person who, at any time that this Article is in effect, serves or agrees to serve in any capacity which entitles him to indemnification hereunder and any repeal or other modification of this Article or any repeal or modification of the DGCL or any other applicable law shall not limit any Indemnified Person's entitlement to the advancement of expenses or indemnification under this Article for Proceedings then existing or later arising out of events, acts or omissions occurring prior to such repeal or modification, including, without limitation, the right to indemnification for Proceedings commenced after such repeal or modification to enforce this Article with regard to Proceedings arising out of acts, omissions or events occurring prior to such repeal or modification.

(d) Severability. If this Article or any portion hereof shall be invalidated or held to be unenforceable on any ground by any court of competent jurisdiction, the decision of which shall not have been reversed on appeal, such invalidity or unenforceability shall not affect the other provisions hereof, and this Article shall be construed in all respects as if such invalid or unenforceable provisions had been omitted therefrom.