

**SECOND AMENDED AND RESTATED  
BY-LAWS**

**OF**

**ORMET CORPORATION**

**MAY 19, 2010**

## **ARTICLE I. STOCKHOLDERS**

### **Section 1.1 Annual Meetings**

An annual meeting of stockholders 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 place and on a date and at a time as may be determined by the board of directors (the “**Board**”) of Ormet Corporation (the “**Corporation**”). Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

### **Section 1.2 Special Meetings**

Special meetings of stockholders (a) may be called at any time by (i) the Chairman of the Board, if any, (ii) the Vice Chairman of the Board, if any, (iii) the Chief Executive Officer, if any, (iv) a majority of the Board and (b) shall be called by the Chief Executive Officer or Secretary upon the written request of stockholders, which request shall state the purpose of the meeting, who together own of record a majority of the outstanding shares of each class of stock entitled to vote at such meeting. Any special meeting shall be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting.

### **Section 1.3 Notice of Meetings**

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, the record date for determining the stockholders entitled to vote at such meeting (if different from the record date for determining the stockholders entitled to notice of the meeting), and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the written notice of any 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 as of the record date for such meeting. Notice may be given personally, by mail or by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware (the “**DGCL**”). If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder’s address appearing on the books of the Corporation or given by the stockholder for such purpose. Notice by electronic transmission shall be deemed given as provided in Section 232 of the DGCL. An affidavit of the mailing or other means of giving any notice of any stockholders’ meeting, executed by the Secretary, Assistant Secretary or any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice or report. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the “householding” rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

## **Section 1.4 Adjournments**

Any meeting of stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

## **Section 1.5 Quorum**

At each meeting of stockholders, except where otherwise provided by law or the certificate of incorporation or these by-laws, the holders of a majority of the outstanding shares of stock entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting. Where a quorum is once present to organize a meeting, the quorum is not broken by the subsequent withdrawal of any stockholders. In the absence of a quorum, the holders of any class of stock entitled to vote on a matter, by majority vote of the holders of such class so present or represented, may adjourn the meeting of such class from time to time in the manner provided by Section 1.4 of these by-laws until a quorum of such class shall be so present or represented. Shares of its own capital stock belonging on the record date for the meeting to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

## **Section 1.6 Organization**

Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the Chief Executive Officer, or in the absence of the Chief Executive Officer by the President or a Vice President, or in the absence of the foregoing persons by a chairman designated by the Board, or in the absence of such designation by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

## **Section 1.7 Inspectors**

Prior to any meeting of stockholders, the Board or the Chief Executive Officer shall appoint one or more inspectors to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at the 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 faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxy or vote, nor any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted therewith, any information provided by a stockholder who submits a proxy by telegram, cablegram or other electronic transmission from which it can be determined that the proxy was authorized by the stockholder, ballots and the regular books and records of the Corporation, and they may also consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for such purpose, they shall, at the time they make their certification, specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

## **Section 1.8 Voting; Proxies**

Unless otherwise provided in the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one (1) 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 or dissent 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 duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. Voting at meetings of stockholders (including for the election of

directors) need not be by written ballot unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or represented by proxy at such meeting shall so determine. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise provided by law or by the certificate of incorporation or these by-laws, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Where a separate vote by class or classes is required, the affirmative vote of the holders of a majority of the shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class or classes, except as otherwise provided by law or by the certificate of incorporation or these by-laws.

### **Section 1.9 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, the Board 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, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board 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, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date

upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

### **Section 1.10 List of Stockholders Entitled to Vote**

The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting either (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with notice of the meeting, or (b) during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

### **Section 1.11 Consent of Stockholders in Lieu of Meeting**

Unless otherwise provided in the certificate of incorporation or these by-laws, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to (a) its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. 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 in the manner required by this by-law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to (x) its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (y) its principal place of business, or (z) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in this Section 1.11.

**ARTICLE II.  
BOARD OF DIRECTORS**

**Section 2.1 Powers; Number; Qualifications**

The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as may be otherwise provided by law or in the certificate of incorporation. The number of directors may, unless otherwise provided by law or in the certificate of incorporation, be altered from time to time by the Board. Directors need not be stockholders.

**Section 2.2 Election; Term of Office; Resignation; Removal; Vacancies**

Each director shall hold office for a term of one (1) year or until his or her earlier resignation or removal. Any director may resign at any time upon written notice to the Board or to the Chief Executive Officer or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the Board, the Chief Executive Officer or Secretary, as the case may be. Unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. Any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Subject to the terms in the certificate of incorporation (including the terms of one or more classes of preferred stock), vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by the sole remaining director so elected. Any director elected or appointed to fill a vacancy shall hold office until the next annual meeting of the stockholders at which his or her successor is elected and qualified or until his or her earlier resignation or removal.

**Section 2.3 Nomination of Directors**

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the certificate of incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances.

Nominations of persons for election to the Board may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board (or any duly authorized committee thereof) in accordance with the by-laws or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.3 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.3.

In addition to any other applicable requirements for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to, mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than sixty (60) days nor more than ninety (90) days prior to the first anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth:

- (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are Beneficially Owned or held of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (whether or not the Corporation is subject to Section 14 of the Exchange Act); and
- (b) as to the stockholder giving the notice (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are Beneficially Owned or held of record by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (whether or not the Corporation is subject to Section 14 of the Exchange Act.)

Such notice must be accompanied by a written consent of each proposed nominee being named as a nominee and to serve as a director if elected. Subject to the proviso in the first paragraph of this Section 2.3, no person shall be eligible for election as a director of the Corporation unless

nominated in accordance with the procedures set forth in this Section 2.3. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

#### **Section 2.4 Regular Meetings**

Regular meetings of the Board may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given.

#### **Section 2.5 Special Meetings**

Special meetings of the Board may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, if any, by the Vice Chairman of the Board, if any, by the Chief Executive Officer or by any two (2) directors.

#### **Section 2.6 Notice of Meetings**

Except as provided by law, notice of regular meetings need not be given. Notice of the time and place of any special meeting shall be given to each director by the Secretary. Notice of such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business and deposited in a United States post office at least five (5) days before the day on which such meeting is to be held, or shall be sent to such director by facsimile, email electronic transmission or other form of recorded communication, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. The notice of any meeting need not specify the purpose thereof, and, unless indicated in the notice of meeting, any and all business may be transacted at a special meeting.

#### **Section 2.7 Participation in Meetings by Conference Telephone Permitted**

Unless otherwise restricted by the certificate of incorporation or these by-laws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board or of such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at such meeting.

#### **Section 2.8 Quorum; Vote Required for Action**

At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the certificate of incorporation or these by-laws shall require a vote of a greater number. If a quorum is initially present at any meeting of directors, the directors may continue to transact business, notwithstanding the withdrawal of enough directors to leave less than a quorum, upon the resolution of at least a majority of the required quorum for that meeting prior to the loss of such quorum. Whether or not a quorum is present, the Chairman of the meeting or a majority of the members of the Board present may

adjourn the meeting to another time and place from time to time. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

## **Section 2.9 Organization**

Meetings of the Board shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the Vice Chairman of the Board, if any, or in the absence of the Vice Chairman of the Board by the Chief Executive Officer, or in their absence by a chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

## **Section 2.10 Action by Directors Without a Meeting**

Unless otherwise restricted by the certificate of incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

## **Section 2.11 Compensation of Directors**

Unless otherwise restricted by the certificate of incorporation or these by-laws, the Board shall have the authority to fix the compensation of directors.

# **ARTICLE III. COMMITTEES**

## **Section 3.1 Committees**

The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these by-laws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter expressly required by law to be submitted to stockholders for approval, (b) adopting, amending or repealing these by-laws or (c) removing or indemnifying directors.

### **Section 3.2 Committee Rules**

Unless the Board otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these by-laws.

## **ARTICLE IV. OFFICERS**

### **Section 4.1 Officers; Election**

As soon as practicable after the annual meeting of stockholders in each year, the Board shall elect a Chief Executive Officer, a Chief Financial Officer, a President and a Secretary, and it may, if it so determines, elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board may also elect one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as the Board may deem desirable or appropriate and may give any of them such further designations or alternate titles as it considers desirable. Any number of offices may be held by the same person unless the certificate of incorporation or these by-laws otherwise provide.

### **Section 4.2 Term of Office; Resignation; Removal; Vacancies**

Unless otherwise provided in the resolution of the Board electing any officer, each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board or to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board may remove any officer with or without cause at any time. Any such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation, but the election of an officer shall not of itself create contractual rights. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board at any regular or special meeting.

### **Section 4.3 Powers and Duties**

The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these by-laws or in a resolution of the Board which is not inconsistent with these by-laws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

#### **Section 4.4 Chairman of the Board**

The Chairman of the Board, if any, shall preside at all meetings of the Board and of the stockholders at which he or she shall be present and shall have and may exercise such powers as may, from time to time, be assigned to him or her by the Board or as may be provided by law.

#### **Section 4.5 Vice Chairman of the Board**

In the absence of the Chairman of the Board, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board and of the stockholders at which he or she shall be present and shall have and may exercise such powers as may, from time to time, be assigned to him or her by the Board or as may be provided by law.

#### **Section 4.6 Chief Executive Officer**

The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall perform such other duties as the Board may from time to time determine. The Chief Executive Officer shall report directly to the Chairman of the Board. Unless otherwise provided in these by-laws, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board and the Vice Chairman of the Board, preside at meetings of the stockholders and of the Board.

#### **Section 4.7 President**

The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as may, from time to time, be assigned to him or her by the Chief Executive Officer or the Board.

#### **Section 4.8 Chief Financial Officer**

The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as may, from time to time, be assigned to him or her by the Chief Executive Officer or the Board.

#### **Section 4.9 Vice Presidents**

The Vice President shall have such powers and duties as shall be prescribed by his or her superior officer or the Chief Executive Officer. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as may, from time to time, be assigned to him or her by the Chief Executive Officer or the Board.

#### **Section 4.10 Secretary**

The Secretary shall have the duty to record the proceedings of the meetings of the stockholders, the Board and any committees in a book to be kept for that purpose, shall see that all notices are duly given in accordance with the provisions of these by-laws or as required by law, shall be custodian of the records of the Corporation, may affix the corporate seal to any document the execution of which, on behalf of the Corporation, is duly authorized, and when so affixed may attest the same, and, in general, shall perform all duties incident to the office of secretary of a corporation and such other duties as may, from time to time, be assigned to him or her by the Board or the Chief Executive Officer.

#### **Section 4.11 Treasurer**

The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation and shall deposit or cause to be deposited, in the name of the Corporation, all moneys or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by or under authority of the Board. The Treasurer shall keep or cause to be kept full and accurate records of all receipts and disbursements in books of the Corporation, shall render to the Chief Executive Officer and to the Board, whenever requested, an account of the financial condition of the Corporation, and, in general, shall perform all the duties incident to the office of treasurer of a corporation and such other duties as may, from time to time, be assigned to him or her by the Board or the Chief Executive Officer or Chief Financial Officer.

#### **Section 4.12 Other Officers**

The other officers, if any, of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in a resolution of the Board which is not inconsistent with these by-laws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board.

### **ARTICLE V. STOCK**

#### **Section 5.1 Certificates**

The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of stock shall be uncertificated. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice Chairman of the Board, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares of stock in the Corporation owned by such holder. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by

the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock; provided that, except as otherwise provided by law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 5.1 or Sections 156, 202(a) or 218(a) of the DGCL or, with respect to this Section 5.1, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

## **Section 5.2 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates**

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

## **ARTICLE VI. 15C2-11 REPORTING**

### **Section 6.1 Publication of Annual and Quarterly Statements Containing Certain Information Specified by Rule 15c2-11 of the Exchange Act**

Until the earliest of any of (a) the Corporation having a class of securities registered pursuant to Section 12 of the Exchange Act, (b) the Corporation being required to file reports with the U.S. Securities and Exchange Commission pursuant to Section 15(d) of the Exchange Act or (c) a Change of Control, the Corporation shall publish on its website or otherwise make publicly available quarterly and annual information statements that contain the information concerning

the Corporation specified in paragraphs (a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi) of Rule 15c2-11 under the Exchange Act (as such provisions are in effect on May 19, 2010).

The annual financial statements contained in the annual information statements published pursuant to this Section 6.1 shall, to the extent reasonably practicable, be audited. The financial statements contained in the annual and quarterly information statements shall be accompanied by a written narrative discussion of the Corporation's financial condition and results of operations, which discussion need not be prepared in accordance with Item 303 of Regulation S-K promulgated by the U.S. Securities and Exchange Commission.

## **ARTICLE VII. INDEMNIFICATION AND ADVANCEMENT OF EXPENSES**

### **Section 7.1 Right to Indemnification**

Each Person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute mechanism, inquiry, judicial, administrative or legislative hearing, investigation or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "**proceeding**"), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "**indemnitee**"), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith; provided, however, that, except as otherwise required by law, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by (a) such indemnitee, or (b) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board.

### **Section 7.2 Right to Advancement of Expenses**

In addition to the right to indemnification conferred in Section 7.1, an indemnitee shall, to the fullest extent not prohibited by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any proceeding with respect to which indemnification is required under Section 7.1 in advance of its final disposition (hereinafter an "**advancement of expenses**"); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal that

such indemnitee is not entitled to be indemnified for such expenses under this Section 7.2 or otherwise.

### **Section 7.3 Non-Exclusivity of Rights**

The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any Person may have or hereafter acquire under any law, agreement, vote of stockholders or directors, provisions of the certificate of incorporation or these by-laws or otherwise.

### **Section 7.4 Insurance**

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such Person against such expense, liability or loss under the DGCL.

### **Section 7.5 Nature of Rights**

The rights conferred upon indemnitees in this Article VII shall be contract rights that shall vest at the time an individual becomes a director or officer of the Corporation and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

## **ARTICLE VIII. MISCELLANEOUS**

### **Section 8.1 Fiscal Year**

The fiscal year of the Corporation shall be determined by the Board.

### **Section 8.2 Seal**

The Corporation may have a corporate seal which shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

### **Section 8.3 Waiver of Notice of Meetings**

Whenever notice is required to be given by law or under any provision of the certificate of incorporation or these by-laws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance

of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice unless so required by the certificate of incorporation or these by-laws.

#### **Section 8.4 Interested Directors; Quorum**

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 or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if (a) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board 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; or (b) the material facts as to his or her 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, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

#### **Section 8.5 Amendment of By-Laws**

Unless prohibited or otherwise provided herein or in the certificate of incorporation, these by-laws may be amended or repealed, and new by-laws adopted, by the Board, but the stockholders entitled to vote may adopt additional by-laws and may amend or repeal any by-law whether or not adopted by them unless expressly prevented from doing so by the terms hereof or of the certificate of incorporation.

### **ARTICLE IX. DEFINITIONS**

#### **Section 9.1 Definitions**

The following definitions shall apply with respect to these by-laws:

- (a) “**Affiliate**” of any Person means any other Person who either directly or indirectly through one or more intermediaries is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the

ownership of securities, partnership interests or by contract, assignment or otherwise.

- (b) A Person shall be deemed the “**Beneficial Owner**,” and to have “**Beneficial Ownership**” of, and to “**Beneficially Own**,” any securities as to which such Person, or any such Person’s Affiliates, may be deemed to be the beneficial owner pursuant to Rules 13d-3 and 13d-5 under the Exchange Act (as such rules are in effect on the date of these by-laws) as well as any securities as to which such Person, or any of such Person’s Affiliates, has the right to become Beneficial Owner (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions, including a proportionate interest in any pending disputed claims reserves) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a *bona fide* public offering of securities) or upon the exercise of conversion rights, exchange rights, rights, warrants, options or otherwise; provided, however, that no Person shall be deemed the “**Beneficial Owner**” or to have “**Beneficial Ownership**” of, or to “**Beneficially Own**,” any shares of common stock of the Corporation solely because (i) such shares of common stock of the Corporation have been tendered pursuant to a tender or exchange offer made by such Person, or any of such Person’s Affiliates, until such tendered shares of common stock of the Corporation are accepted for payment or exchange or (ii) such Person, or any of such Person’s Affiliates, has or shares the power to vote or direct the voting of such shares of common stock of the Corporation pursuant to a revocable proxy or consent given in response to a public proxy or consent solicitation made pursuant to, and in accordance with, any applicable rules and regulations under the Exchange Act, unless such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Exchange Act (or any similar provision of a comparable or successor report).
- (c) “**Change of Control**” means (i) at any time any Person or “**group**” (as such term is defined in Rule 13d-5 of the Exchange Act) of related Persons Beneficially Owns in excess of 50% of the Total Voting Power or 50% of the Outstanding Shares, (ii) any sale, transfer, lease, conveyance, exchange or other disposition of all or substantially all of the consolidated properties or assets of the Corporation and its subsidiaries or any merger, consolidation, recapitalization or similar transaction involving the Corporation or one or more of its subsidiaries, in each and every case whether effected in a single transaction or through a series of related transactions and following which the holders of common stock of the Corporation immediately prior to such transaction do not collectively Beneficially Own at least a majority of the Total Voting Power and at least a majority of the Outstanding Shares or (iii) a transaction, or series of transactions, that results in the acquisition by any Person of enough shares of the Corporation to allow such Person to cause a “short form merger” under the provisions of Section 253 of the DGCL. Notwithstanding the foregoing, an event described in the foregoing clauses (i) and (ii) shall not be deemed to be a Change of Control as defined herein unless the transaction resulting in such events has been approved by a

majority of the Independent Directors or holders of shares representing 50% of the Total Voting Power or 50% of the Outstanding Shares held by Persons other than the acquiring Person and its Affiliates. In the event of a dispute, the good faith determination of the Board with respect to whether a Change of Control has occurred shall conclusively establish the occurrence or non-occurrence of such event.

- (d) “**Commission**” means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act or the Exchange Act.
- (e) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended or any similar federal statute, and the rules and regulations of the Commission thereunder, all as may be in effect at the time.
- (f) “**Independent Directors**” means those directors of the Board who (i) are not officers of the Corporation or any of its subsidiaries, (ii) qualify as “independent” under Rule 5605(a)(2) of the rules of the National Association of Securities Dealers, Inc. applicable to directors of corporations listed on the NASDAQ Stock Market and (iii) do not Beneficially Own 10% or more of the common stock of the Corporation.
- (g) “**Outstanding Shares**” means the issued and outstanding shares of common stock of the Corporation (excluding any shares of common stock held in treasury and not on behalf of third parties). For the purpose of calculating the number of Outstanding Shares Beneficially Owned by any Person, any securities as to which such Person, or any of such Person’s Affiliates, has the right to become Beneficial Owner (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions, including a proportionate interest in any pending disputed claims reserves) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a *bona fide* public offering of securities) or upon the exercise of conversion rights, exchange rights, rights, warrants, options or otherwise shall be added to the number of, and be deemed to be, Outstanding Shares of the Corporation.
- (h) “**Person**” means any individual or any association, corporation, estate, limited liability company, limited partnership, partnership, venture, trust or other entity.
- (i) “**Securities Act**” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.
- (j) “**Total Voting Power**” means the aggregate number of votes that may be cast by the holders of the issued and outstanding Voting Securities of the Corporation (excluding any such securities held in treasury and not held on behalf of third parties).

- (k) **“Voting Securities”** means any and all classes of securities entitled to vote in the ordinary course in the election of directors or Persons serving in a similar governing capacity of any partnership, limited liability company or other entity, including the voting rights attached to such securities.