

**SECOND AMENDED AND RESTATED  
BY-LAWS  
OF  
PATRIOT COAL CORPORATION  
(As adopted and in effect on December 18, 2013)**

ARTICLE I

MEETING OF STOCKHOLDERS

Section 1.1. Place of Meeting. Meetings of the stockholders of the Corporation shall be held at such place either within or without the State of Delaware as the Board of Directors may determine.

Section 1.2. Annual Meetings. (A) Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”), an annual meeting of stockholders, commencing with the year 2014, shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. Stockholders may, unless the Corporation’s Second Amended and Restated Certificate of Incorporation (as amended and restated from time to time, the “**Charter**”) 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 1.3. Special Meetings. Special meetings of stockholders may be called by the Chief Executive Officer, the Chairman of the Board or by the board of directors of the Corporation (the “**Board of Directors**”) pursuant to a resolution approved by a majority of the then authorized number of directors and shall be called by the Secretary at the request in writing of holders of record of a majority of the outstanding voting power of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 1.4. Notice of Meetings and Adjourned Meetings; Waivers of Notice. (A) Except as otherwise required by law, whenever stockholders are required or permitted to take any action at a meeting of stockholders, whether an annual meeting or a special meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, 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 or purposes for which the meeting is called. Unless otherwise provided by Delaware Law, such notice shall be given not less than 40 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Unless these By-laws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at

the meeting at which the adjournment is taken. 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 30 days, or 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.

(B) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission 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 the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 1.5. Nomination of Directors. Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 1.5, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice and delivery procedures set forth in this Section 1.5. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting is first given by the Corporation. In no event shall the notice of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.5. Such stockholder's notice shall set forth

(A) as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person that is or would be required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 thereunder (and such person's written consent to being named as a nominee and to serving as a director if elected); and

(B) as to the stockholder giving the notice

(i) the name and address, as they appear on the Corporation's books, of such stockholder and

(ii) (a) the class or series and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination.

The Corporation may require any proposed nominee to furnish such other information as it may reasonably require, including the completion of any questionnaires, to determine the eligibility of such proposed nominee to serve as a director of the Corporation and the impact that such service would have on the ability of the Corporation to satisfy the requirements of laws, rules, regulations and listing standards applicable to the Corporation or its directors.

Section 1.6. Notice of Business. At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 1.6, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 1.6. For business to be properly brought before a stockholder meeting by a stockholder, the business must be a proper matter for stockholder action and the stockholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which notice of the date of the meeting is first given by the Corporation. In no event shall the notice of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.6. A stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the meeting

(A) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend the By-laws of the Corporation, the text of the proposed amendment), and the reasons for conducting such business at the meeting and any material interest in such business of such stockholder;

(B) as to the stockholder giving the notice

(i) the name and address, as they appear on the Corporation's books, of such stockholder and

(ii) (a) the class or series and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business.

The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed in accordance with the procedures set forth in these Section 1.5 and Section 1.6, and if any proposed nomination or business is not in compliance with these Sections as applicable, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of these Section 1.5 and Section 1.6, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted,

notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of these Section 1.5 and Section 1.6, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Section 1.7. Quorum. At any meeting of stockholders, the holders of record, present in person or by proxy, of a majority of the voting power of the Corporation's issued and outstanding capital stock and entitled to vote thereat shall constitute a quorum for the transaction of business, except as otherwise provided by applicable law. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. In the absence of a quorum, any officer entitled to preside at or to act as secretary of the meeting shall have the power to adjourn the meeting from time to time until a quorum is present.

Section 1.8. Voting. Except as otherwise provided by applicable law, these By-laws or by the Charter, (a) all matters submitted to a meeting of stockholders, other than the election of directors, shall be decided by vote of the holders of record of a majority of the voting power of the Corporation's issued and outstanding capital stock present in person or represented by proxy at the meeting and entitled to vote on the matter, (b) directors shall be elected by a plurality of the votes of the shares of the Corporation's issued and outstanding capital stock present in person or represented by proxy at the meeting and entitled to vote on the election of directors and (c) each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting. No proxy shall be voted after three (3) years from its date, unless said proxy provides for a longer period.

Section 1.9 Action by Consent. (A) Unless otherwise provided in the Charter, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of 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 capital 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 its registered office in 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. 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 subparagraph (B) of this Section 1.9.

(B) 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 60 days of the earliest dated consent delivered in the manner required by this Section 1.9 and by applicable law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 1.10. General. (A) Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these By-Laws. Except as otherwise provided by law, the Charter or these By-Laws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in these By-Laws and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

(B) For purposes of these By-Laws, no adjournment nor notice of adjournment of any meeting shall be deemed to constitute a new notice of such meeting for purposes of this Article I, and in order for any notification required to be delivered by a stockholder pursuant to this Article I to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting. Subject to applicable law, the Board of Directors may elect to postpone any previously scheduled meeting of stockholders.

Section 1.11. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation 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, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) 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. If the meeting is to be held at a place, then the list shall 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible

electronic network, and the information required to access such list shall be provided with the notice of the meeting.

## ARTICLE II

### DIRECTORS

Section 2.1. Number, Election and Removal of Directors. The number of Directors that shall constitute the Board of Directors shall initially be five (5). Thereafter, within the limits specified in the Charter, the number of Directors shall be determined by the Board of Directors or by the stockholders. The Directors shall be elected by the stockholders at their annual meeting in the manner set forth in the Charter, except as provided in Section 1.2 and Section 2.9 herein, and each director so elected shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors may be removed with or without cause, at any time by the affirmative vote of at least 55 percent in voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting as a single class and vacancies thus created may be filled in accordance with Section 2.9 herein.

Section 2.2. Regular Meetings. After the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given.

Section 2.3 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board or the President and shall be called by the Chairman of the Board, President or Secretary on the written request of three directors. Notice of special meetings of the Board of Directors shall be given to each director at least three days before the date of the meeting in such manner as is determined by the Board of Directors. A meeting of the Board of Directors may be held without notice immediately after the annual meeting of the stockholders.

Section 2.4. Quorum. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board of Directors, the Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until such a quorum is present. Except as otherwise provided by applicable law, the Charter, these By-Laws or any contract or agreement to which the Corporation is a party, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors.

Section 2.5. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the entire Board, designate one or more committees, including without limitation an Executive Committee, to have and exercise such power and authority as the Board of Directors shall specify. 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 he or they constitute a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member.

Section 2.6. Actions without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or a committee thereof may be taken without a meeting if all the members of the board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the board or of such committee. Such consent shall be treated for all purposes as the act of the board or of such committee, as the case may be.

Section 2.7. Participation in Meetings by Conference Telephone. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of such board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other or by any other means permitted by law. Such participation shall constitute presence in person at such meeting.

Section 2.8. Resignation. Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective

Section 2.9. Vacancies. Unless otherwise required by law or provided in the Charter, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all the stockholders having the right to vote as a single class may be filled by (i) a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or (ii) by the affirmative vote or written consent of the holders of a majority of voting power of the outstanding capital stock of the Corporation then entitled to vote at any election of directors. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Charter, vacancies and newly created directorships of such class or classes or series may be filled by a majority of directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. If there are no directors in office, then an election of directors may be held in accordance with the law. Unless otherwise provided in the Charter, when one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies.

Section 2.10. Compensation. In the discretion of the Board of Directors, each director may be paid such fees for his or her services as director (including as a member of one or more committees of the Board of Directors) and be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties as director as the board of directors from time to time may determine. Nothing contained in this Section 2.10 shall be construed to preclude any director from serving the Corporation in any other capacity and receiving reasonable compensation therefor.

Section 2.11. Reliance Upon Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers, employees, agents, committees, or by any other person as to matters the member reasonably believes are within such other person's or persons' professional or expert competence, and who has been selected with reasonable care by or on behalf of the Corporation.

### ARTICLE III

#### CHAIRMAN OF THE BOARD AND OFFICERS

Section 3.1. Chairman of the Board. The Board of Directors shall elect from time to time one of its own members as the Chairman of the Board of Directors (the "Chairman"). The Chairman may also be the Chief Executive Officer or other officer of the Corporation. The Chairman shall preside at the meetings of the Board and may call meetings of the Board and any committee thereof, whenever he deems necessary, and he shall call to order and preside at all meetings of the stockholders of the Corporation. In addition, he shall have such other powers and duties as the Board shall designate from time to time.

Section 3.2. Principal Officers. The principal officers of the Corporation shall consist of a Chief Executive Officer, a President, one or more Executive Vice Presidents, a Secretary, a Treasurer and such other additional officers with such titles (including, without limitation, a Chief Operating Officer and a Chief Financial Officer) as the Board of Directors shall from time to time determine, all of whom shall be elected by and shall serve at the pleasure of the Board of Directors. Subject to applicable law, an officer may hold more than one office, if so elected by the Board of Directors. Such officers shall have the usual powers and shall perform all the usual duties incident to their respective offices. Such officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors. All officers shall be subject to the supervision and direction of the Board of Directors. The Board of Directors may from time to time elect, or the Chief Executive Officer or President may appoint, such other officers (including one or more Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers, and Assistant Controllers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as may be prescribed by the Board of Directors or by the Chief Executive Officer or President, as the case may be. The officers of the Corporation need not be stockholders of the Corporation nor need such officers be directors of the Corporation.

Section 3.3. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after the annual meeting of stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign, but any officer may be removed from office at any time as provided in Section 3.4.

Section 3.4. Removal. Any officer elected, or agent appointed, by the Board of Directors may be removed by resolution adopted by the Board of Directors whenever, in their judgment, the best interests of the Corporation would be served thereby. Any officer or agent appointed by the Chief Executive Officer or the President may be removed by the Chief Executive Officer or the President, as the case may be, whenever, in such officer's judgment, the best interests of the Corporation would be served thereby. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed; *provided* that no elected officer shall have any contractual rights against the Corporation for compensation beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

Section 3.5. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors (or to a principal officer if the Board of Directors has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.6. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors. Any vacancy in an office appointed by the Chief Executive Officer or the President because of death, resignation, or removal may be filled by the Chief Executive Officer or the President.

## ARTICLE IV

### INDEMNIFICATION

Section 4.1. Mandatory Indemnification. The Corporation shall indemnify any person (and such person's heirs, executors or administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative or investigative, and whether formal or informal, including appeals, by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was, serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, limited liability company or other enterprise, for and against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or such heirs, executors or administrators in connection with such action, suit or proceeding, including appeals. The Corporation shall promptly pay expenses incurred by any person described in this Section 4.1 in defending any action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, including appeals, upon presentation of appropriate documentation. Notwithstanding the preceding sentences, the Corporation shall be required to indemnify a person described in such sentences who was not a director or officer of the Corporation as of December 18, 2013 only to the extent that the events precipitating any action, suit or proceeding occurred after July 9, 2012, and the Corporation shall be required to indemnify a person described in such sentences in connection with any action, suit or proceeding (or part thereof) commenced by such person

only if the commencement of such action, suit or proceeding (or part thereof) by such person was authorized by the Board of Directors of the Corporation.

Section 4.2. Permissive Indemnification. The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents, or with respect to an event occurring on or before July 9, 2012 to such of the former directors or officers, of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by the laws of the State of Delaware; *provided* that, for each such former director or officer or current or former employee or agent, the Corporation may indemnify such persons only to the extent of available coverage under an applicable insurance policy (and payable from the proceeds of such insurance policy), unless otherwise required by the laws of the State of Delaware.

Section 4.3. General. The provisions of this Article IV shall be applicable to all actions, claims, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after its adoption. The provisions of this Article IV shall be deemed to be a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article IV and the relevant provisions of the laws of the State of Delaware and other applicable law, if any, are in effect, and any repeal or modification hereof shall not affect any rights or obligations then existing with respect to any state of facts or any action, suit or proceeding then or theretofore existing, or any action, suit or proceeding thereafter brought or threatened based in whole or in part on any such state of facts. If any provision of this Article IV shall be found to be invalid or limited in application by reason of any law or regulation, it shall not affect the validity of the remaining provisions hereof. The rights of indemnification provided in this Article IV shall neither be exclusive of, nor be deemed in limitation of, any rights to which an officer, director, employee or agent may otherwise be entitled or permitted by contract, these By-laws, the Charter, vote of stockholders or directors or otherwise, or as a matter of law, both as to actions in such person's official capacity and actions in any other capacity while holding such office. For purposes of this Article IV references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries.

## ARTICLE V

### GENERAL PROVISIONS

Section 5.1. Fixing the Record Date. (A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for

determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be 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* that the Board of Directors may fix a new record date for the adjourned meeting.

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

(C) 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 of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 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 of Directors adopts the resolution relating thereto.

Section 5.2. Dividends. Subject to limitations contained in applicable law and the Charter, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 5.3. Notices. Whenever any statute, the Charter or these By-Laws require notice to be given to any Director or stockholder, such notice may be given in writing by mail, addressed to such Director or stockholder at his address as it appears on the records of the Corporation, with postage thereon prepaid. Such notice shall be deemed to have been given when it is deposited in the United States mail. Notice to Directors may also be given by telefax or e-mail.

Section 5.4. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board of Directors.

Section 5.5. Amendment. Except as otherwise provided in the Charter, these By-Laws may be adopted, amended or repealed by resolution of the Board of Directors or by vote of 55 percent of the voting power of the stock outstanding and entitled to vote, voting as a single class.