
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **February 19, 2018**

Waste Management, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

1-12154
(Commission File Number)

73-1309529
(IRS Employer Identification No.)

1001 Fannin, Houston, Texas
(Address of Principal Executive Offices)

77002
(Zip Code)

Registrant's Telephone number, including area code: **(713) 512-6200**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On February 20, 2018, the Management Development and Compensation Committee (the "Committee") of the Board of Directors of Waste Management, Inc. (the "Company") granted equity awards under the Company's 2014 Stock Incentive Plan to each of the Company's currently-serving named executive officers and the Company's principal financial officer elected in 2017 (collectively, the "Executives").

Each of the Executives, which includes James C. Fish, Jr., President and Chief Executive Officer; Devina A. Rankin, Senior Vice President and Chief Financial Officer; James E. Trevathan, Jr., Executive Vice President and Chief Operating Officer; Jeff M. Harris, Senior Vice President — Operations and John J. Morris, Jr., Senior Vice President — Operations, received performance share units and stock options. The number of performance share units granted to each of the Executives is as follows: Mr. Fish — 55,172; Ms. Rankin — 15,632; Mr. Trevathan — 20,414; Mr. Harris — 22,298 and Mr. Morris — 16,552. The material terms of the performance share units are described below.

Performance Share Units

Performance Calculation Date ("PCD")

As of December 31, 2020; award (if any) paid out after completion of the audit of the

Company's 2020 year-end financial statements and certification by the Committee of actual level of achievement ("payment date").

Performance Measure	50% of the PSUs will have an adjusted free cash flow performance measure, and 50% of the PSUs will have a total shareholder return relative to the S&P 500 performance measure, in each case as set forth in the award agreement filed as an exhibit hereto.
Range of Possible Awards	0 — 200% of targeted amount, plus accrued dividend equivalents, based on actual results achieved.
Termination of Employment	
Death or Disability before PCD	Payable in full on payment date based on actual results as if participant had remained an active employee through PCD.
Involuntary Termination for Cause or Voluntary Resignation before PCD	Immediate forfeiture.
Involuntary Termination other than for Cause before PCD	Payable on payment date based on actual results, prorated based on portion of performance period completed prior to termination of employment.
Retirement (as defined in the award agreement) before PCD	If Retirement occurs on or after December 31, 2018, payable in full on payment date based on actual results as if participant had remained an active employee through PCD. If Retirement occurs before December 31, 2018, payable on payment date based on actual results, prorated based on the number of days worked during 2018 (the first year of the performance period) divided by 365.

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Change in Control before PCD	Performance measured prior to the change in control and paid on prorated basis on actual results achieved up to such date. Thereafter, participant also generally receives a replacement award of restricted stock units in the successor entity generally equal to the number of PSUs that would have been earned had no change in control occurred and target performance levels had been met from the time of the change of control through December 31, 2020, adjusted for any conversion factors in the change in control transaction. The new restricted stock units in the successor entity would vest on December 31, 2020.
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The Committee also granted stock options to the Executives to purchase the following number of shares of the Company's common stock: Mr. Fish — 98,684; Ms. Rankin — 27,961; Mr. Trevathan — 36,513; Mr. Harris — 29,605 and Mr. Morris — 29,605. The material terms of the stock options are described below.

Stock Options

Vesting Schedule	25% on first anniversary; 25% on second anniversary; and 50% on third anniversary.
Term	10 years from date of grant.
Exercise Price	Fair Market Value on date of grant - \$85.34.
Termination of Employment	
Death or Disability	All options immediately vest and remain exercisable for one year, but in no event later than the original term.
Qualifying Retirement	Continued vesting and exercisability for three years, but in no event later than the original term.
Involuntary Termination other than for Cause or Voluntary Resignation	All vested options remain exercisable for 90 days, but in no event later than the original term.
Involuntary Termination for Cause	All options are forfeited, whether or not exercisable.
Involuntary Termination or Resignation for Good Reason following a Change in Control	All options immediately vest and remain exercisable for three years, but in no event later than the original term.

The form of award agreement for the equity awards granted to Messrs. Fish, Trevathan, Harris and Morris and Ms. Rankin is filed as Exhibit 10.1 to this report. The descriptions of the material terms of the awards are qualified in their entirety by reference to the award agreement, incorporated herein by reference.

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Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On February 19, 2018, the Board of Directors amended and restated the Company’s by-laws (the “Amended and Restated By-laws”) to include a new Section 11.7, which provides that, unless the Company consents to the selection of an alternative forum in writing, Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of the Company to the Company or its stockholders; (iii) any action asserting a claim pursuant to any provision of the Delaware General Corporation Law (“DGCL”) or the Company’s certificate of incorporation or by-laws or as to which the DGCL confers jurisdiction upon the Court of Chancery of the State of Delaware; or (iv) any action asserting a claim governed by the internal affairs doctrine. The Amended and Restated By-laws provide that any person or entity purchasing, otherwise acquiring or retaining any interest in shares of capital stock of the Company are deemed to have notice of and to have consented to Section 11.7.

The above description is qualified in its entirety by reference to the Amended and Restated By-Laws, a copy of which is filed as Exhibit 3.2 to this report and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Index

Exhibit Number	Description
3.2	Amended and Restated By-Laws of Waste Management, Inc. as of February 19, 2018
10.1	Form of 2018 Senior Leadership Team Award Agreement

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

WASTE MANAGEMENT, INC.

Date: February 23, 2018

By: /s/ Charles C. Boettcher
Charles C. Boettcher
Senior Vice President and Chief Legal Officer

AMENDED AND RESTATED BY-LAWS

OF

WASTE MANAGEMENT, INC.

AS OF FEBRUARY 19, 2018

ARTICLE I

OFFICES

SECTION 1.1. Registered Office. The registered office of the Corporation required by the General Corporation Law of the State of Delaware to be maintained in the State of Delaware shall be the registered office named in the original Certificate of Incorporation of the Corporation, or such other office as may be designated from time to time by the Board of Directors in the manner provided by law. Should the Corporation maintain a principal office or place of business within the State of Delaware, such registered office need not be identical to such principal office or place of business of the Corporation.

SECTION 1.2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 2.1. Meetings. All meetings of the stockholders shall be held at the principal office of the Corporation, or at such other place, if any, either within or without the State of Delaware and at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice or waivers of notice of the meeting.

SECTION 2.2. List of Stockholders Entitled to Vote. The Corporation shall prepare, at least 10 days before every meeting of stockholders (provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting), a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order for each class of stock, 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, at least 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 meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at

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a place, then 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. 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. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.2 or to vote in person or by proxy at any meeting of stockholders.

SECTION 2.3. Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

SECTION 2.4. Special Meetings.

(a) General. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by the General Corporation Law of the State of Delaware, shall be called by the Secretary at the written request of the Chairman of the Board (if any) or the Chief Executive Officer, or may be called by written order of a majority of the Board of Directors (each, a "Special Meeting Request"). A special meeting of stockholders shall be called by the Secretary upon the written request of the record holders having an aggregate "net long position" of at least twenty-five percent (25%) of the outstanding common stock of the Corporation, and having held such "net long position" continuously for at least one year, as of the date of such request (the "Requisite Percent"), subject to Subsection (b) of this Section 2.4 (a "Stockholder Requested Special Meeting"). "Net long position" shall be determined with respect to each requesting holder in accordance with the definition thereof set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provided that (x) for purposes of such definition, in determining such holder's "short position," the reference in such Rule to "the date the tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Special Meeting Request and all dates in the one year period prior thereto, and the reference to the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the Corporation's common stock on the New York Stock Exchange on such corresponding date (or, if such date is not a trading day, the next succeeding trading day) and (y) the net long position of such holder shall be reduced by the number of shares as to which such holder does not, or will not, have the right to vote or direct the vote at the Special Meeting or as to which such holder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting holders have complied with the requirements of this Article and related provisions of the By-laws shall be determined in good faith by the Board, which determination shall be conclusive and binding on the Corporation and the stockholders.

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(b) **Stockholder Requested Special Meetings.** In order for a Stockholder Requested Special Meeting to be called, one or more requests for a special meeting (each, a “Stockholder Special Meeting Request,” and collectively, the “Stockholder Special Meeting Requests”) must be signed by the Requisite Percent of record holders (or their duly authorized agents) and must be delivered to the Secretary. The Stockholder Special Meeting Request(s) shall be delivered to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. Each Stockholder Special Meeting Request shall (i) set forth a statement of the specific purpose(s) of the meeting and the matters proposed to be acted on at it, (ii) bear the date of signature of each such stockholder (or duly authorized agent) signing the Stockholder Special Meeting Request, (iii) set forth (A) the name and address, as they appear in the Corporation’s stock ledger, of each stockholder signing such request (or on whose behalf the Stockholder Special Meeting Request is signed), (B) the class or series, if applicable, and the number of shares of common stock of the Corporation that are owned of record and beneficially by each such stockholder as to which such stockholder has a “net long position” and (C) include documentary evidence of the fact and duration of such stockholder’s record and beneficial ownership of such stock, (iv) set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case, pursuant to Regulation 14A under the Exchange Act (v) contain the information required by Section 2.13 of these by-laws and (vi) an acknowledgment by each stockholder (and any duly authorized agent) that any disposition of shares of common stock of the Corporation as to which such stockholder has a net long position as of the date of delivery of the Stockholder Special Meeting Request and prior to the record date for the proposed meeting requested by such stockholder shall constitute a revocation of such request with respect to such shares. In addition, the stockholder (and any duly authorized agent) shall promptly provide any other information reasonably requested by the Corporation to allow it to satisfy its obligations under applicable law. Any requesting stockholder may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary at the principal executive offices of the Corporation, and if, following such revocation, there are un-revoked requests from stockholders holding in the aggregate less than the Requisite Percent, the Board of Directors, in its discretion, may cancel the special meeting.

(c) **Calling of a Special Meeting.** Notwithstanding the foregoing, the Secretary shall not be required to call a special meeting of stockholders if (i) the Board of Directors has called or calls an annual or special meeting of stockholders to be held not later than sixty (60) days after the date on which a valid Special Meeting Request or Stockholder Special Meeting Request(s) have been delivered to the Secretary (the “Delivery Date”); or (ii) the Special Meeting Request or the Stockholder Special Meeting Request(s) (A) is received by the Secretary during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (B) contains an identical or substantially similar item (a “Similar Item”) to an item that was presented at any meeting of stockholders held within one hundred and twenty (120) days prior to the Delivery Date (and, for purposes of this clause (B) the election of directors shall be deemed a “Similar Item” with respect to all items of business involving the election or removal of directors); (C) relates to an item of business that is not a proper subject for action by the party requesting the special meeting under applicable law; (D) was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; or (E) does not comply with the provisions of this Section 2.4.

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(d) **Holding a Special Meeting.** Except as provided in the next sentence, any special meeting shall be held at such date and time as may be fixed by the Board of Directors in accordance with these by-laws and the General Corporation Law of the State of Delaware. In the case of a Stockholder Requested Special Meeting, such meeting shall be held at such date and time as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than sixty (60) days after the record date for such meeting (the “Meeting Record Date”), which shall be fixed in accordance with Section 2.12 of these by-laws; provided further that, if the Board of Directors fails to designate, within ten (10) days after the Delivery Date, a date and time for a Stockholder Requested Special Meeting, then such meeting shall be held at 9:00 a.m. local time on the 60th day after the Meeting Record Date (or, if that day shall not be a business day, then on the next preceding business day); and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder Requested Special Meeting within ten (10) days after the Delivery Date, then such meeting shall be held at the Corporation’s principal executive offices. In fixing a date and time for any Stockholder Requested Special Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting.

(e) **Business Transacted at a Special Meeting.** Business to be transacted at a special meeting may only be brought before the meeting pursuant to the Corporation’s notice of meeting. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Stockholder Special Meeting Request(s); provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Stockholder Requested Special Meeting. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders.

(f) In determining whether a special meeting of stockholders has been requested by the record holders of shares with net long position of at least the same amount of securities owned by such record holders for at least one year as of the date of such request and representing the Requisite Percent as of the date of such written request to the Secretary, multiple special meeting requests delivered to the Secretary will be considered together only if (i) each request identifies substantially the same purpose or purposes of the proposed special meeting and substantially the same matter proposed to be acted on at the proposed special meeting, and (ii) such request(s) have been dated and delivered to the Secretary within sixty (60) days of the earliest dated Special Meeting Request.

SECTION 2.5. Notice of Meeting. Whenever stockholders are required or permitted to take any action at a meeting, notice of the meeting stating the place, if any, date and time of the meeting, the means of remote communication, if any, the record date for determining the stockholders entitled to vote at the meeting (if such date is 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, shall be given. Unless otherwise provided by law, the Certificate of Incorporation or these by-laws, the notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of

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the meeting. Such notice may be delivered either personally or by mail. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. Without limiting the foregoing, any notice to stockholders given by

the Corporation pursuant to this Section 2.5 shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation and shall also be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or Assistant Secretary of the Corporation, the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by a form of electronic transmission in accordance with these by-laws shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by another form of electronic transmission, when directed to the stockholder. For purposes of these by-laws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient.

Without limiting the foregoing, any notice to stockholders given by the Corporation may be given by a single written notice to stockholders who share an address if consented to by the stockholders at such address to whom such notice is given. Any such consent shall be revocable by the stockholders by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send the single notice as set forth in this Section 2.5 shall be deemed to have consented to receiving such single written notice.

SECTION 2.6. Quorum; Adjournment. The holders of a majority in voting power of the stock issued and outstanding and entitled to vote at a meeting of stockholders, present in person or represented by proxy, shall constitute a quorum at such meeting for the transaction of business except as otherwise provided by law or the Certificate of Incorporation. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Notwithstanding the other provisions of the Certificate of Incorporation or these by-laws, the chairman of the meeting or the holders of a majority in voting power of the shares of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, although not constituting a quorum, shall have power to adjourn, postpone, or recess the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned, postponed, or recessed meeting. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If

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after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

SECTION 2.7. Voting. When a quorum is present at any meeting of the stockholders, the vote of the holders of a majority of the stock having voting power, present in person or represented by proxy, and entitled to vote thereon shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes, of the rules and regulations of any stock exchange applicable to the Corporation, of any regulation applicable to the Corporation or its securities, of the Certificate of Incorporation, or of these by-laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Where a separate vote by class is required and when a quorum is present, the affirmative vote of the majority of shares of such class present in person or represented by proxy at the meeting shall be the act of such class. Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder having the right to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting shall be entitled to vote in person, or may authorize another person to act for such stockholder by proxy, bearing a date not more than three years prior to voting, unless such proxy provides for a longer period, and filed with the Secretary of the Corporation, or such other officer as the Board of Directors may from time to time determine by resolution, before, or at the time of, the meeting. A stockholder may revoke a proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Each proxy shall be revocable unless expressly provided therein to be irrevocable and coupled with an interest sufficient in law to support an irrevocable power. If such instrument shall designate two or more persons to act as proxies, unless such instrument shall provide the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one, or, if an even number attend and a majority do not agree on any particular issue, each proxy so attending shall be entitled to exercise such powers with respect to the portion of shares for which he was appointed to act as proxy.

SECTION 2.8. Voting of Stock of Certain Holders; Elections; Inspectors. Shares held in the name of another entity, domestic or foreign, may be voted by such officer, agent, authorized person or proxy as the organizational documents of such entity may prescribe, or in the absence of such provision, as the board of directors or other governing body of such entity may determine. Shares held in the name of a deceased person may be voted by the executor or administrator of such deceased person, either in person or by proxy. Shares held in the name of a guardian, conservator or trustee may be voted by such fiduciary, either in person or by proxy, but no fiduciary shall be entitled to vote shares held in such fiduciary capacity without a transfer of such shares into the name of such fiduciary. Shares held in the name of a receiver may be voted

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by such receiver. A stockholder whose shares are pledged shall be entitled to vote such shares, unless in the transfer by the pledgor on the books of the Corporation, he has expressly empowered the pledgee to vote such shares, in which case only the pledgee, or his proxy, may represent the stock and vote such shares.

If shares (or other securities having voting power) are held of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting

the same shares, unless the Secretary of the Corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (a) If only one votes, his act binds all;
- (b) If more than one vote, the act of the majority so voting binds all; or
- (c) If more than one vote, but the vote is evenly split on any particular matter, each fraction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the Delaware Court of Chancery or such other court as may have jurisdiction to appoint an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by such court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

All voting of stockholders shall be conducted as may be required under any procedures established for the meeting. All proxies submitted to the Corporation may be voted by a master ballot.

Unless otherwise provided in the Certificate of Incorporation, cumulative voting for the election of directors shall be prohibited.

SECTION 2.9. Inspector of Elections. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of

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the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

SECTION 2.10. Conduct of Meeting. The meetings of the stockholders shall be presided over by the Chairman of the Board (if any), or if he is not present, by the Chairman of the Nominating and Governance Committee of the Board, or if neither the Chairman of the Board (if any) nor the Chairman of the Nominating and Governance Committee is present, by the Chief Executive Officer, or if neither the Chairman of the Board (if any), the Chairman of the Nominating and Governance Committee nor the Chief Executive Officer is present, by a chairman designated by the Board of Directors. The Secretary of the Corporation, if present, shall act as secretary of such meetings, or if he is not present, an Assistant Secretary shall so act; if neither the Secretary nor an Assistant Secretary is present, then a secretary shall be appointed by the chairman of the meeting. The chairman of any meeting of stockholders shall determine the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at the meeting and, unless otherwise determined by the Board of Directors, the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order. Unless the Board of Directors or the chairman of the meeting of stockholders shall otherwise determine, the order of business shall be as follows:

- (a) Calling of meeting to order.
- (b) Appointment of a secretary if necessary.
- (c) Presentation of proof of the due calling of the meeting.
- (d) Presentation and examination of proxies and determination of a quorum.
- (e) Reading and settlement of the minutes of the previous meeting.
- (f) Reports of officers and committees.
- (g) The election of directors if an annual meeting, or a meeting called for that purpose.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

Without limiting the foregoing, except to the extent inconsistent with any rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to

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stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 2.11. Treasury Stock. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

SECTION 2.12. Fixing Record Date; Action by Written Consent.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action (other than action by consent 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 record date: (1) in the case of determination of stockholders entitled to notice of any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting; and (2) in the case of any other action (other than action by consent in writing without a meeting), shall not be more than 60 days prior to such other action. If the Board of Directors so fixes a date for determining stockholders entitled to notice of the meeting, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date for determining stockholders entitled to notice of the meeting, that a later date on or before the date of the meeting shall be the date for determining stockholders entitled to vote at the meeting. If no record date is fixed: (1) 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; and (2) the record date for determining stockholders for any other purpose (other than action by consent in writing without a meeting) shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(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. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request that the Board of Directors fix a record

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date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such written notice is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 2.12(b)). If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 2.12(b) or otherwise within 10 days after the date on which such written notice is received, 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 applicable 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 to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 2.12(b) or otherwise within 10 days after the date on which such written notice is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting if prior action by the Board of Directors is required by applicable law shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

(c) In the event of the delivery, in the manner provided by this Section 2.12 and applicable law, to the Corporation of written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage independent inspectors of elections for the purpose of performing promptly a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent and without a meeting shall be effective until such inspectors have completed their review, determined that the requisite number of valid and unrevoked consents delivered to the Corporation in accordance with this Section 2.12 and applicable law have been obtained to authorize or take the action specified in the consents, and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders. Nothing contained in this Section 2.12(c) shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(d) No written consent shall be effective to take the corporate action referred to therein unless a valid written consent or valid written consents signed by a sufficient number of stockholders to take such action are delivered to the Corporation in the manner prescribed in this Section 2.12 and applicable law, and not revoked, within 60 days of the first date on which a written consent is so delivered to the Corporation.

SECTION 2.13 Stockholder Proposals. At an annual meeting of the stockholders, only such business (other than nominations of persons for election to the Board of Directors) shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business (other than nominations of persons for election to the Board of Directors) must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Chairman of the Board, the Chief Executive Officer, or the Board of

Directors or any committee thereof, (b) otherwise properly brought before the meeting by or at the direction of the Chairman of the Board, the Chief Executive Officer, or the Board of Directors or any committee thereof, or (c) otherwise properly brought before the meeting by a stockholder of the Corporation of record at the time the notice provided for in this Section 2.13 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who otherwise complies with the notice procedures set forth in this Section 2.13. For any proposed business to be properly brought before an annual meeting of stockholders pursuant to clause (c) above of this paragraph, the proposed business must constitute a proper matter for stockholder action.

No proposal (other than nominations of persons for election to the Board of Directors) by a stockholder shall be presented at an annual meeting of stockholders unless such stockholder shall provide the Board of Directors or the Secretary of the Corporation with timely written notice of his, her or its intention to present a proposal for action at the forthcoming meeting of stockholders, which notice shall include as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (a) the name and address of such stockholder as they appear on the Corporation's books, and of such beneficial owner, (b) the class or series and number of voting securities of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (c) a description of any agreement, arrangement or understanding with respect to the proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (d) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, (e) a brief description of the business desired to be brought before the meeting, the text of the proposal to be presented at the meeting (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these by-laws, the language of the proposed amendment), (f) a statement in support of the proposal, (g) any material interest of the stockholder or the beneficial owner, if any, in such proposal, (h) 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, (i) a representation whether the stockholder or the beneficial owner intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (2) otherwise solicit proxies from stockholders in support of such proposal, and (j) any other information relating to such stockholder and beneficial owner required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. To be timely, a stockholder's notice (other than for the nominations of persons for election to the Board of Directors) with respect to an annual meeting of stockholders must be delivered to or mailed and received at the principal executive offices of the Corporation, not less than 120 days nor more than 150 days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in

the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting or not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement 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 above. For purposes of these by-laws, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Section 2.13 shall be deemed satisfied by a stockholder with respect to business (other than nominations of persons for election to the Board of Directors) if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual or special meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual or special meeting.

This provision shall not prevent the presentation at a meeting of stockholders of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such meeting unless properly brought before the meeting in accordance with this Section 2.13 with respect to annual meetings or Section 2.4 of these by-laws with respect to special meetings. Notwithstanding anything in these by-laws to the contrary, no business (other than nominations of persons for election to the Board of Directors) shall be conducted at any annual meeting of stockholders except in accordance with the procedures set forth in this Section 2.13 and no nominations shall be considered at an annual or special meeting of stockholders except in accordance with Section 2.14 below. The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Section 2.13 (including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's proposal in compliance with such stockholder's representation as required by clause (i) of this Section 2.13) and if any proposed business was not proposed in compliance with this Section 2.13, to declare that such proposed business shall not be transacted, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, 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 this Section 2.13, 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.

Notwithstanding any other provision of these by-laws, the Corporation shall be under no obligation to include any stockholder proposal in its proxy statement materials or otherwise present any such proposal to stockholders at a meeting of stockholders if the Board of Directors reasonably believes the proponents thereof have not complied with Sections 13 and 14 of the Exchange Act and the rules and regulations promulgated thereunder, and the Corporation shall not be required to include in its proxy statement material to stockholders any stockholder proposal not required to be included in its proxy material to stockholders in accordance with the Exchange Act and the rules and regulations promulgated thereunder.

Notwithstanding the foregoing provisions of this Section 2.13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.13; provided however, that any references in these by-laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to proposals as to any other business to be considered pursuant to this Section 2.13, and compliance with this Section 2.13 shall be the exclusive means for a stockholder to submit other business (other than matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time) at an annual meeting of stockholders. Nothing in this Section 2.13 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting in accordance with Section 2.4 of these by-laws.

SECTION 2.14. Nomination of Directors. Only persons who are nominated in accordance with the procedures of this Section 2.14 shall be eligible for election as directors. Subject to the rights of holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation, nominations for the election of directors may be made (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or any committee thereof, or (c) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time notice provided for in this Section 2.14 is delivered to the Secretary of the Corporation, who is entitled to vote in the election of directors and who complies with the notice procedures set forth in this Section 2.14. Such stockholder may nominate one or more persons for election as a director at an annual or special meeting of stockholders only if timely written notice of such stockholder's intent to make such nomination or nominations has been given, either by personal delivery or by U.S. mail, first class postage prepaid, return receipt requested, to the Secretary of the Corporation, or as otherwise provided in accordance with applicable law.

To be timely, a stockholder's notice with respect to an annual meeting of stockholders must be delivered to or mailed and received at the principal executive offices of the Corporation, not less than 120 days nor more than 150 days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting or not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of

such meeting is first made by the Corporation. In no event shall the public announcement 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 above. Such stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, and (ii) such person's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected; and (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of voting securities of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, (v) 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, (vi) a representation whether the stockholder or the beneficial owner intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such nomination, and (vii) any other information relating to such stockholder and beneficial owner required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. With respect to each person whom the stockholder proposes to nominate for election to the Board of Directors, a stockholder's notice must, in addition to the matters set forth above, also include the completed and signed questionnaire, representations and agreements required by Section 2.15 of these by-laws. The Corporation may also require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation. Notwithstanding anything in the first sentence of this paragraph to the contrary, in the event that the number of directors to be elected to the Board of Directors at the annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 2.14 and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.14 shall also be considered timely, but only with respect to nominees for the additional

directorships, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation. At the request of the Board of Directors any person nominated by the Board of Directors for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or the stockholders pursuant to Section 2.4 hereof or (2) provided that the Board of Directors or the stockholders pursuant to Section 2.4 hereof has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.14 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 2.14. The proposal by stockholders of other business to be conducted at a special meeting of the stockholders may be made only in accordance with Section 2.4 hereof. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of

Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by this Section 2.14 (including, but not limited to, the completed and signed questionnaire, representations and agreements required by Section 2.15 of these by-laws) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred fiftieth (150th) day prior to such special meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such special meeting, or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting at which directors are to be elected. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

Only such persons who are nominated in accordance with the procedures set forth in this Section 2.14 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors.

Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination brought before the meeting was made in accordance with the procedures set forth in this Section 2.14 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with such stockholder's representation as required by clause (b)(vi) of this Section 2.14) and (b) if any proposed nomination was not made in compliance with this Section 2.14, to declare that such nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 2.14, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of

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this Section 2.14, 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.

Notwithstanding the foregoing provisions of this Section 2.14, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.14; provided however, that any references in these by-laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations pursuant to this Section 2.14, and compliance with this Section 2.14 shall be the exclusive means for a stockholder to make nominations. Nothing in this Section 2.14 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provision of the Certificate of Incorporation.

SECTION 2.15. Submission of Questionnaire, Representations and Agreements. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (with respect to any person nominated by a stockholder in accordance with clause (c) of the first paragraph of Section 2.14 or the third paragraph of Section 2.14, in accordance with the time periods prescribed for delivery of notice under Section 2.14) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background, and qualification and potential conflicts of interest of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement in the form provided by the Secretary upon written request that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and (C) would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers

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of the Corporation and do all such lawful acts and thing as are not by law or by the Certificate of Incorporation or by these by-laws directed or required to be exercised or done by the stockholders.

SECTION 3.2. Number, Election and Term. Except as otherwise provided in the Certificate of Incorporation relating to the rights of the holders of any class or series of Preferred Stock, voting separately by class or series, to elect additional directors under specified circumstances, the number of directors of the Corporation shall initially be the number specified in the Certificate of Incorporation, and subject to the following sentence, such number may be increased or decreased by a resolution duly adopted by the Board of Directors. Unless approved by at least two-thirds of the incumbent directors, the number of directors which shall constitute the whole Board of Directors shall be no fewer than three and no more than nine. Unless otherwise provided in the Certificate of Incorporation, directors need not be residents of the State of Delaware or stockholders of the Corporation.

Each director, other than those who may be elected by the holders of any class or series of Preferred Stock, voting separately by class or series, shall be elected by the vote of the majority of the votes cast with respect to the director's election at any meeting for the election of directors at which a quorum is present, provided that if the number of nominees exceeds the number of directors to be elected as of the tenth day preceding the date that the

Corporation first mails its notice of meeting to the stockholders of the Corporation, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a majority of the votes cast means that the number of shares voted "for" a director must exceed 50% of the votes cast with respect to that director. If an incumbent director fails to receive a majority of the votes cast in an election where the number of nominees does not exceed the number of directors to be elected as of the tenth day preceding the date that the Corporation first mails its notice of meeting to the stockholders of the Corporation, such director shall tender his or her resignation to the Board contingent on acceptance of such resignation by the Board. The Nominating and Governance Committee will make a recommendation to the Board on whether to accept or reject the resignation, or whether other action should be taken. The Board will act on the resignation, taking into account the Committee's recommendation, and publicly disclose its decision and the rationale behind it within 90 days from the date of the certification of the election results. The director who tenders his or her resignation will not participate in the Committee's recommendation or the Board's decision with respect to such resignation. Directors shall hold office until the next annual meeting and until their successors shall be duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice to the Corporation.

SECTION 3.3. Vacancies, Additional Directors and Removal From Office. Except as otherwise provided pursuant to the provisions of the Certificate of Incorporation relating to the rights of the holders of any class or series of Preferred Stock, voting separately by class or series, to elect directors under specified circumstances, any director or directors may be removed from office at any time, with or without cause but only by the affirmative vote, at any regular meeting or special meeting (as the case may be) of the stockholders, of a majority of the outstanding shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting

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together as a single class, but only if notice of such proposal was contained in the notice of such meeting.

Unless otherwise provided by law or the Certificate of Incorporation, in the event of any increase in the authorized number of directors, any newly created directorship resulting from such increase or any vacancy occurring in the Board of Directors for any cause shall be filled solely by the vote of a majority of the remaining members of the Board of Directors whether or not a quorum, and any director so elected shall hold office until the expiration of the term of office of the director whom he has replaced or until his successor is duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

SECTION 3.4. Regular Meeting. A regular meeting of the Board of Directors shall be held each year, without notice other than this by-law, at the place of, and on the day of, the annual meeting of stockholders if a quorum is present; and other regular meetings of the Board of Directors shall be held each year, at such time and place either within or without the State of Delaware as the Board of Directors may determine.

SECTION 3.5. Special Meeting. A special meeting of the Board of Directors may be called by the Chairman of the Board (if any) or by the Chief Executive Officer and shall be called by the Secretary on the written request of a majority of the directors. The Chairman or Chief Executive Officer so calling, or the directors so requesting, any such meeting shall fix the time and place, either within or without the State of Delaware, of holding such meeting.

SECTION 3.6. Notice of Special Meeting. Notice of special meetings of the Board of Directors shall be given to each director at least 24 hours prior to the time of such meeting by mail, personal delivery, facsimile, telephone or other means of electronic transmission. Any director may waive notice of any meeting, whether before or after the time specified therein. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the 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 directors, or members of a committee of directors, need be specified in a waiver of notice.

SECTION 3.7. Place of Meetings; Order of Business. The directors may hold their meetings and may have an office and keep the books of the Corporation, except as otherwise provided by law, in such place or places, within or without the State of Delaware, as the Board of Directors may from time to time determine. The Chairman of the Board shall preside at all meetings of the Board of Directors. In the absence of the Chairman of the Board, the Chairman of the Nominating and Governance Committee will preside at all meetings of the Board of Directors. If both the Chairman of the Board and the Chairman of the Nominating and Governance Committee are absent or unable to act as chairman, a chairman shall be elected from the directors present. The Secretary of the Corporation shall act as secretary of all meetings of the directors; but in the absence of the Secretary, the chairman of the meeting may appoint any person to act as

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secretary of the meeting. At all meetings of the Board of Directors business shall be transacted in such order as shall from time to time be determined by the chairman of the meeting.

SECTION 3.8. Quorum and Participation; Telephonic Meeting. A majority of the whole Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and 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, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these by-laws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person and attendance at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

SECTION 3.9. Presumption of Assent. A director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless (i) he objects at the beginning of the meeting to the transaction of any business on the

ground that the meeting is not lawfully called or convened, (ii) his dissent shall be entered in the minutes of the meeting or (iii) he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof. Such right to dissent shall not apply to a director who voted in favor of such action.

SECTION 3.10. Action By Unanimous Consent of Directors. 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 of Directors, or of any committee thereof as provided in Article IV of these by-laws, 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 or by electronic transmission and such written consent or electronic transmission is filed with the minutes of proceedings of the Board or committee. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware.

SECTION 3.11. Compensation. Unless otherwise restricted by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of directors. No provision of these by-laws shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 3.12. Approval, Adoption or Ratification of Acts or Agreements by Stockholders. The Board of Directors in its discretion may submit any act or agreement for approval, adoption or ratification at any annual meeting of the stockholders, or at any special

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meeting of the stockholders called for the purpose of considering any such act or agreement, and any act or agreement that, to the fullest extent permitted by law, shall be approved, adopted or ratified by the vote of the stockholders holding a majority in voting power of the issued and outstanding shares of stock of the Corporation entitled to vote and present in person or by proxy at such meeting (provided that a quorum is present), shall, to the fullest extent permitted by law, be as valid and as binding upon the Corporation and upon all the stockholders as if it has been approved, adopted or ratified by every stockholder of the Corporation subject to the Certificate of Incorporation, applicable law or the rules and regulations of any exchange on which shares of the Corporation's stock are traded. In addition, any such act or contract may be approved, adopted or ratified by the written consent of stockholders holding a majority of the issued and outstanding shares of capital stock of the Corporation entitled to vote and such consent shall, to the fullest extent permitted by law, be as valid and as binding upon the Corporation and upon all the stockholders as if it had been approved or ratified by every stockholder of the Corporation.

SECTION 3.13. Chairman of the Board. The Board of Directors annually shall elect a Chairman of the Board from among its members and shall fill any vacancy in the position of Chairman of the Board at such time and in such manner as the Board shall determine. The Chairman of the Board may, but need not, be an officer of or employed in an executive or any other capacity by the Corporation. The Chairman of the Board shall have the powers prescribed to him in Section 6.6 of these by-laws.

ARTICLE IV

COMMITTEES OF DIRECTORS

SECTION 4.1. Designation, Powers and Name. The Corporation elects to be governed by Section 141(c)(2) of the General Corporation Law of the State of Delaware. The Board of Directors shall designate a Nominating and Governance Committee, a Management Development and Compensation Committee, and an Audit Committee and may designate one or more other committees, each such committee to consist of one or more of the directors of the Corporation. Any such designated committee shall have and may, to the fullest extent permitted by law, exercise such of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation as may be provided in the resolution establishing such committee. Any such designated committee may authorize the seal of the Corporation to be affixed to all papers which may require it. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of any member of such committee or committees, 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 member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Such committee or committees shall have such name or names and such limitations of authority as may be determined from time to time by these by-laws, by the Charter for such committee adopted by the Board of Directors, or by a resolution adopted by the Board of Directors.

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SECTION 4.2. Procedure; Meetings; Quorum. Any committee designated pursuant to Section 4.1 shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, shall fix its own rules or procedures to the extent not otherwise set forth in the Charter for such committee or resolution with respect to such committee adopted by the Board of Directors, and shall meet at such times and at such place or places as may be provided by such rules, by the Charter for such committee adopted by the Board of Directors, or by resolution of such committee or resolution of the Board of Directors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and, at a meeting where a quorum is present, the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution.

SECTION 4.3. Compensation. Compensation for membership on special or standing committees shall be as determined by the Board of Directors and may include, but not be limited to, retainers, meeting fees or special compensation for serving as a chairman of any such committee.

ARTICLE V

WAIVER OF NOTICE

SECTION 5.1. Methods of Giving Notice. Except as otherwise provided herein or permitted by applicable law, whenever notice is required to be given to any director, member of any committee or stockholder, such notice shall be in writing and delivered personally or mailed to such director, member or stockholder; provided that in the case of a director or a member of any committee such notice may be given orally or by telephone, electronic or facsimile transmission. If mailed, notice to a director, member of a committee or stockholder shall be deemed to be given when deposited in the

United States mail in a sealed envelope, with postage therein prepaid, addressed, in the case of a stockholder, to the stockholder at the stockholder's address as it appears on the records of the Corporation or, in the case of a director or a member of a committee, to such person at his business address. In the case of notice given by electronic or facsimile transmission, such notice shall be deemed to have been given on the date such transmission is sent or as otherwise determined in accordance with applicable law.

SECTION 5.2. Waiver. Whenever any notice is required to be given under the Certificate of Incorporation, these by-laws or applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. 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 waiver of notice unless so required by the Certificate of Incorporation or these by-laws.

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ARTICLE VI

OFFICERS

SECTION 6.1. Officers. The Board of Directors shall elect such officers of the Corporation with the titles and duties that it designates. The Chairman of the Board, and any Vice Chairmen of the Board, may, but need not, be officers of the Corporation or employed in an executive or any other capacity by the Corporation. There may be a Chief Executive Officer, a President, one or more Vice Presidents, any one or more of which may be designated Executive Vice President or Senior Vice President, a Chief Financial Officer, a General Counsel / Chief Legal Officer, a Secretary, a Treasurer, a Chief Accounting Officer, and such other officers as the Board of Directors may elect or appoint. The Board of Directors may appoint such other officers and agents, including Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and Assistant Controllers, as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined by the Board. Any two or more offices may be held by the same person unless the Certificate of Incorporation provides otherwise. No officer shall execute, acknowledge, verify or countersign any instrument on behalf of the Corporation in more than one capacity, if such instrument is required by law, by these by-laws or by any act of the Corporation to be executed, acknowledged, verified or countersigned by two or more officers. The Chairman of the Board shall be elected from among the directors in accordance with Section 3.13 of these by-laws. With the foregoing exception, none of the other officers need be a director, and none of the officers need be a stockholder of the Corporation.

SECTION 6.2. Term of Office. Each officer shall hold office until his successor shall have been chosen and shall have qualified or until his death or the effective date of his resignation or removal.

SECTION 6.3. Removal and Resignation. Any officer or agent elected or appointed by the Board of Directors may be removed, with or without cause, by the affirmative vote of a majority of the Board of Directors whenever, in its judgment, the best interests of the Corporation shall be served thereby, but such removal shall be without prejudice to the contractual rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Any officer may resign at any time by giving written notice to the Corporation, but such resignation shall be without prejudice to the contractual rights, if any, of the person so removed. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6.4. Vacancies. If the Chief Executive Officer, President, General Counsel / Chief Legal Officer, Chief Financial Officer, Chief Accounting Officer or the most senior representative of Internal Audit shall die, resign, or otherwise be removed from such officer position, such vacancy may be filled solely by the Board of Directors. Any vacancy occurring with respect to any other officer due to death, resignation, removal or otherwise, may be filled by the Board of Directors or by the Chief Executive Officer or the President in accordance with these by-laws.

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SECTION 6.5. Compensation. The compensation of the Corporation's executive officers (as determined in accordance with the Securities Exchange Act of 1934, as amended), and any other group of officers elected or appointed by the Board of Directors and set forth in the charter of the Management Development and Compensation Committee, shall be fixed by the Management Development and Compensation Committee of the Board of Directors or pursuant to its direction; no officer shall be prevented from receiving such compensation by reason of his also being a director. Actions relating to the compensation of the Chief Executive Officer will be promptly reported to the Board of Directors.

SECTION 6.6. Chairman of the Board. The Chairman of the Board, if any, shall have all powers and shall perform all duties incident to the office of chairman of the board. The Chairman shall preside at all meetings of the Board of Directors and of the stockholders of the Corporation; shall formulate and submit to the Board of Directors or the Executive Committee (if any) matters of general policy of the Corporation; shall have authority to call special meetings of the stockholders and the Board of Directors; and shall have such other powers and perform such other duties as usually appertain to the office or as may be prescribed by the Board of Directors or the Executive Committee (if any). The Chairman of the Board may hold such offices as the Board of Directors may determine.

SECTION 6.7. Substitute for Chairman of the Board. In the absence of the Chairman of the Board, or in the event of his inability or refusal to act, the Chairman of the Nominating and Governance Committee will preside and shall perform the duties and exercise the powers of the Chairman of the Board, and when acting shall have all the powers of and be subject to all the restriction upon the Chairman of the Board. If both the Chairman of the Board and the Chairman of the Nominating and Governance Committee are absent or unable to act as chairman, a chairman shall be elected from the directors present.

SECTION 6.8. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general manage, supervise, and control the properties, business, and affairs of the Corporation with all such powers as may be reasonably incident to such responsibilities. Unless the Board of Directors otherwise determines, the Chief Executive Officer shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness, and other obligations in the name of the Corporation in accordance with the internal policies and procedures of the Corporation in effect from time to time, including, if applicable, any limitations on dollar amounts of such

obligations. In the absence of the Chairman of the Board and the Chairman of the Nominating and Governance Committee of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders. He may also preside at any such meeting attended by the Chairman of the Board if he is so designated by the Chairman. Subject to any contractual limitations contained in any employment agreement or other applicable contract, he shall have the power to appoint and remove subordinate officers, agents, and employees; provided, however, that he shall not have the power to remove or to fill a vacancy in the office of the President, General Counsel / Chief Legal Officer, Chief Financial Officer, Chief Accounting Officer or the most senior representative of Internal Audit without the approval of the Board of Directors.

The Chief Executive Officer shall keep the Board of Directors and the Executive Committee (if any) fully informed and shall consult them concerning the business of the Corporation. He shall perform all other duties normally incident to the office of Chief Executive Officer, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Executive Committee (if any) from time to time.

SECTION 6.9. President. The Board of Directors may appoint a President who shall serve subject to the control of the Chief Executive Officer and the Board of Directors. In the absence of the Chief Executive Officer, or in the event of his inability or refusal to act, the President shall perform the duties and exercise the powers of the Chief Executive Officer. Subject to any contractual limitations contained in any employment agreement or other applicable contract, he shall have the power to appoint and remove subordinate officers, agents and employees, after consultation with the Chief Executive Officer; provided, however, that he shall not have the power to remove or to fill a vacancy in the office of the General Counsel / Chief Legal Officer, Chief Financial Officer, Chief Accounting Officer or the most senior representative of Internal Audit without the approval of the Board of Directors. Unless the Board of Directors otherwise determines, the President shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness, and other obligations in the name of the Corporation, in accordance with the internal policies and procedures of the Corporation in effect from time to time, including, if applicable, any limitations on dollar amounts of such obligations. The President shall keep the Board of Directors, the Executive Committee (if any), and the Chief Executive Officer fully informed and shall consult them concerning the business of the Corporation. He may vote, or give a proxy to any other officer of the Corporation to vote, all shares of stock or securities of any other corporation or other entity standing in the name of the Corporation and shall exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation or entity; provided that the Board of Directors may from time to time, by resolution, confer like powers upon any other person or persons. In general the President shall have all powers and shall perform all other duties normally incident to the office of president, and shall have such other powers and perform such other duties as may be prescribed by these by-laws, the Board of Directors, or the Executive Committee (if any) from time to time.

SECTION 6.10. Chief Financial Officer. The Chief Financial Officer shall be the principal financial officer of the Corporation and shall be responsible, either directly or indirectly, for development and administration of the Corporation's financial plans and all financial arrangements, its cash deposits and short term investments, its accounting policies and its federal and state tax returns. The Chief Financial Officer shall also be responsible for the Corporation's internal control procedures and for its relationship with the financial community. The Chief Financial Officer shall perform all the duties incident to the office of chief financial officer of a corporation, those duties assigned to him by other provisions of these by-laws and such other duties as may be assigned to him either directly or indirectly by the Board of Directors, the Audit Committee, the Executive Committee (if any), the Chief Executive Officer, or the President, or as may be provided by law.

SECTION 6.11. Vice Presidents. The Board of Directors may appoint such Vice Presidents, including Executive or Senior Vice Presidents, as it may determine to be in the best interests of the Corporation. Any Vice President may sign certificates representing shares of the

Corporation. Each Vice President shall perform all duties incident to the office of Vice President and shall have such powers and perform such other duties, as from time to time may be assigned to him by these by-laws or by the Chief Executive Officer, the President, the Chief Operating Officer, the Board of Directors, or the Executive Committee (if any).

The Board of Directors may also designate the President or any Vice President as Chief Operating Officer of the Corporation. The Chief Operating Officer, subject to the control of the Chief Executive Officer, the President, and the Board of Directors, shall in general manage, supervise and control the properties, business and day-to-day affairs of the Corporation with all such powers as may be reasonably incident to such responsibilities and shall have such other powers and perform such other duties as may be prescribed by these by-laws, or by the Chief Executive Officer, the President, the Board of Directors, or the Executive Committee (if any) from time to time. Unless the Board of Directors otherwise determines, the Chief Operating Officer shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness, and other obligations in the name of the Corporation, in accordance with the internal policies and procedures of the Corporation in effect from time to time, including, if applicable, any limitations on dollar amounts of such obligations. The Chief Operating Officer shall keep the Board of Directors, the Executive Committee (if any), the President, and the Chief Executive Officer fully informed and shall consult them concerning the business of the Corporation. He may vote, or give a proxy to any other officer of the Corporation to vote, all shares of stock or securities of any other corporation or other entity standing in the name of the Corporation and shall exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation or entity; provided that the Board of Directors may from time to time, by resolution, confer like powers upon any other person or persons.

SECTION 6.12. General Counsel / Chief Legal Officer. The General Counsel, who may also, or in the alternative, have the title Chief Legal Officer, shall be the chief legal advisor of the Corporation and shall have responsibility for the management of the legal affairs and litigation of the Corporation; and, in general, he shall perform the duties incident to the office of general counsel or chief legal officer of a corporation and such other duties as may be assigned to him by these by-laws or by the Chief Executive Officer, the President, the Board of Directors, or the Executive Committee (if any).

SECTION 6.13. Secretary. The Secretary shall (a) keep the minutes of the meetings of the stockholders, the Board of Directors, and committees of directors; (b) see that all notices are duly given in accordance with the provisions of these by-laws and as required by law; (c) be custodian of the corporate records and of the seal of the Corporation, and, if required by law, see that the seal of the Corporation or a facsimile thereof is affixed to all certificates representing shares prior to the issue thereof and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these by-laws and attest the affixation of the seal of the Corporation thereto; (d) keep or cause to be kept a register of the post office address of each stockholder which shall be furnished by such stockholder; (e) have authority to sign certificates representing shares of the Corporation, the issue of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books

powers and perform such other duties, as from time to time may be assigned to him by these by-laws, the Chief Executive Officer, the President, the Board of Directors, or the Executive Committee (if any).

SECTION 6.14. Chief Accounting Officer. The Chief Accounting Officer shall be the principal accounting officer of the Corporation and may also be the controller of the Corporation. He shall keep full and accurate accounts of the assets, liabilities, commitments, receipts, disbursements and other financial transactions of the Corporation; shall cause regular audits of the books and records of account of the Corporation and shall supervise the preparation of the Corporation's financial statements; and, in general, he shall perform the duties incident to the office of controller of a corporation and such other duties as may be assigned to him directly or indirectly by the Board of Directors, the Audit Committee, the Executive Committee (if any), the Chief Executive Officer, the President, or the Chief Financial Officer, or as may be provided by law.

SECTION 6.15. 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 of Directors; if required by the Board of Directors, he shall give a bond for the faithful discharge of his duties, with such surety or sureties as the Board of Directors may determine; he shall keep or cause to be kept full and accurate records of all receipts and disbursements in books of the Corporation; and, in general, he shall perform the duties incident to the office of treasurer of a corporation and such other duties as may be assigned to him directly or indirectly by the Board of Directors, the Chief Executive Officer, the President, or the Chief Financial Officer, or as may be provided by law.

SECTION 6.16. Assistant Secretary, Assistant Treasurer or Assistant Controller. The Assistant Secretaries, Assistant Treasurers and Assistant Controllers shall, in general, perform such duties and have such powers as shall be assigned to them by the Secretary, the Treasurer or the Chief Accounting Officer, respectively, or by the Chief Executive Officer, the President, the Board of Directors or the Executive Committee (if any). The Assistant Secretaries, Assistant Treasurers and Assistant Controllers shall, in the absence or inability or refusal to act of the Secretary, Treasurer or Controller, respectively, perform all functions and duties which such absent officers may delegate, but such delegation shall not relieve the absent officer from the responsibilities and liabilities of his office. The Assistant Secretaries and Assistant Treasurers may sign certificates representing shares of the Corporation, the issue of which shall have been authorized by a resolution of the Board of Directors. The Assistant Controllers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

ARTICLE VII

CONTRACTS, CHECKS AND DEPOSITS

SECTION 7.1. Contracts. Except as otherwise provided in these by-laws or by law or as otherwise directed by the Board of Directors, the Chief Executive Officer, the President, any Vice President, or the Secretary shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any such officer or the Secretary or an Assistant Secretary. The Board of Directors, the Chief Executive Officer, the Chief Operating Officer, or the President or, if designated by the Board of Directors, the Chief Executive Officer, the Chief Operating Officer, or the President, then any Vice President or the Secretary, may authorize any other officer, employee, or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, loans, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board of Directors or any such officer may be general or confined to specific conditions. Subject to the foregoing provisions, the Board of Directors may authorize any officer, officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

SECTION 7.2. Checks, Etc. All checks, demands, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed and, if so required by the Board of Directors, shall be countersigned by such officer or officers or such agent or agents of the Corporation, and in such manner, as shall be determined by the Board of Directors.

SECTION 7.3. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select. Checks, drafts, bills of exchange, acceptances, notes, obligations, and orders for payment of money made payable to the Corporation may be endorsed for deposit to the credit of the Corporation with a duly authorized depository by the Treasurer and/or such other officers or persons as the Board of Directors from time to time may designate.

ARTICLE VIII

CERTIFICATES OF STOCK

SECTION 8.1. Issuance. The shares of the Corporation shall be represented by certificates or, if provided by the Board of Directors by resolution or resolutions, shall be uncertificated shares evidenced by a book-entry system maintained by the registrar of such stock, or a combination of both. Every holder of stock represented by certificates shall be entitled to a certificate signed by, or in the name of the Corporation by, two authorized officers of the

Corporation, including, but not limited to, the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, the President, a Vice-President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation representing the number of shares registered in certificate form. To the extent that shares are represented by certificates, the certificates shall be in such form as may be determined by the Board of Directors, shall be issued in numerical order and shall be entered in the books of the Corporation as they are issued. They shall exhibit the holder's name and number of shares (and if the stock of the Corporation shall be divided into classes or series, the class or series of such shares). Any of or all of the signatures on the certificate may be facsimiles. The stock record books and the blank stock certificate books shall be kept by the Secretary, or at the office of the transfer agent or transfer agents of the Corporation as the Board of Directors may from time to time by resolution determine. In case any officer, transfer agent or registrar who shall have signed or whose facsimile signature or signatures shall have been placed upon any such certificate or certificates shall have ceased to be such officer, transfer agent or registrar before such certificate is issued by the Corporation, such certificate may nevertheless 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 shall be authorized to issue more than one class of stock or more than one series of any class of stock, 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 shall be set forth in full or summarized on the face or back of the certificate, if any, which the Corporation shall issue to represent such class of stock; provided that, except as otherwise provided by statute, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate, if any, which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish 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 8.1 or otherwise required by statute or with respect to this Section 8.1 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. 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.

All certificates surrendered to the Corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost, stolen, destroyed or mutilated certificate a new one may be issued therefore as provided for in these by-laws. Certificates shall not be issued representing fractional shares of stock.

SECTION 8.2. Lost, Stolen or Destroyed; Issuance of New Certificates. The Board of Directors may direct a new certificate of stock or uncertificated shares to be issued in place of

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any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as it shall require or to give the Corporation a bond in such sum as it may deem sufficient to indemnify it against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares, or both.

SECTION 8.3. Transfers. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate or uncertificated shares to the person entitled thereto, cancel the old certificate and register the transaction upon its books. Upon presentation to the Corporation or the transfer agent of the Corporation of an instruction with a request to transfer, pledge or release an uncertificated share or shares, it shall be the duty of the Corporation to register the transfer, pledge or release upon its books, and shall provide the registered owner with such notices as may be required by law. Transfers of shares shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney and filed with the Secretary of the Corporation or the transfer agent.

SECTION 8.4. Registered Stockholders. The Corporation shall be entitled to treat the registered owner of any share or shares of stock whether certificated or uncertificated as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

SECTION 8.5. Regulations Regarding Certificates. Subject to the requirements of applicable law, the Board of Directors shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates representing shares of capital stock of the Corporation.

ARTICLE IX

DIVIDENDS

SECTION 9.1. Declaration. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors, pursuant to and in accordance with applicable law. Dividends may be paid in the form of cash, in property or in shares of capital stock, subject to the provisions of the Certificate of Incorporation.

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SECTION 9.2. Reserve. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, shall think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

SECTION 10.1. Third Party Actions. This Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware as it presently exists or may hereafter be amended, indemnify and upon request shall advance expenses to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative (other than an action by or in the name of the Corporation) by reason of the fact that such person is or was or has agreed to be a director or officer of this Corporation or any of its direct or indirect subsidiaries or while such director or officer is or was serving at the request of this Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against all liability, loss suffered and expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement reasonably incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require this Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim (or part thereof) initiated by or on behalf of such person unless the initiation of such action, suit, proceeding, claim or counterclaim (or part thereof) by such person was authorized in the specific case by the Board of Directors. Prior to receiving any advance of expenses, such person must execute an undertaking providing that he or she undertakes to repay the advance to the extent that it is ultimately determined that he or she is not entitled to be indemnified by the Corporation. Such indemnification shall not be exclusive of other indemnification rights arising under any provision of the Certificate of Incorporation, by-laws, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Section 10.1 shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. For purposes of this Article X, an "officer" is defined as any person elected as an officer of this Corporation by the Board of Directors or appointed as an officer of this Corporation by the Chief Executive Officer or President, in each case, in accordance with Article VI of these by-laws.

SECTION 10.2. Actions By or in the Right of the Corporation. This Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware as it presently exists or may hereafter be amended, indemnify and upon request shall advance expenses to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim by or on the right of the Corporation to procure a

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judgment in its favor by reason of the fact that such person is or was or has agreed to be a director or officer of this Corporation or any of its direct or indirect subsidiaries or while such director or officer is or was serving at the request of this Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against all expenses (including attorney's fees and expenses) reasonably incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require this Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person. Prior to receiving any advance of expenses, such person must execute an undertaking providing that he or she undertakes to repay the advance to the extent that it is ultimately determined that he or she is not entitled to be indemnified by the Corporation. Such indemnification shall not be exclusive of other indemnification rights arising under any provision of the Certificate of Incorporation, by-laws, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Section 10.2 shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established.

SECTION 10.3. Successful Defense. To the extent that a director or officer, of the Corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 10.1 or 10.2 or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonable incurred by him in connection therewith.

SECTION 10.4. Claims. If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses is not paid in full within 30 days after a properly submitted written claim therefor by an indemnitee entitled thereto has been received by the Corporation, such indemnitee may thereupon (but not before) file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the maximum extent permitted by law. In any such action the Corporation shall have the burden of proving that such indemnitee is not entitled to the requested indemnification or advancement of expenses under applicable law.

SECTION 10.5. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article X of these by-laws.

SECTION 10.6. Definitions. For purposes of this Article X, reference to the "Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence has continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent

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corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service

by a person who is a director or officer of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants, or beneficiaries.

SECTION 10.7. Survival; Preservation of Other Rights. The foregoing indemnification provisions shall be deemed to be a contract between the Corporation and each director or officer who serves in any such capacity at any time while these provisions as well as relevant provisions of the General Corporation Law of the State of Delaware are in effect and any repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action, suit, or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such a contract right may not be modified retroactively without the consent of such director or officer. The indemnification provided by this Article X shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, provision of the Certificate of Incorporation, statutes, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

SECTION 10.8. Amendment or Repeal. Any repeal or modification of the provisions of this Article X shall not adversely affect any right or protection hereunder of any person entitled to indemnification hereunder in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to any act or omission occurring prior to the time of such repeal or modification.

SECTION 10.9. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any person entitled to indemnification hereunder who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person entitled to indemnification hereunder may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

SECTION 10.10. Other Indemnification and Advancement of Expenses. This Article X shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than persons entitled to indemnification hereunder when and as authorized by appropriate corporate action.

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ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

SECTION 11.2. Books. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors.

SECTION 11.3. Fiscal Year. The fiscal year of the Corporation shall be such as established from time to time by the Board of Directors.

SECTION 11.4. Resignations. Any director or member of a committee may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Chairman of the Board or Secretary if the resignation is from a director or committee member. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

SECTION 11.5. Facsimile Signatures. In addition to the provisions for the use of facsimile signatures elsewhere specifically authorized in these by-laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors.

SECTION 11.6. Reliance upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements made to the Corporation by any of its officers or employees, or by any other person as to matters the director reasonably believes are within such person's professional or expert competence who has been selected with reasonable care by or on behalf of the Corporation.

SECTION 11.7. Forum for Adjudication of Certain Disputes. Unless the Corporation consents in writing to the selection of an alternative forum (an "Alternative Forum Consent"), the Delaware Court of Chancery (the "Chancery Court") shall, to the fullest extent permitted by law, be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders; (iii) any action asserting a claim pursuant to any provision of the General Corporation Law of the State of Delaware or the Certificate of Incorporation or these by-laws or as to which the General Corporation Law of the State of Delaware confers jurisdiction upon the Chancery Court; or (iv) any action asserting a claim governed by the internal affairs doctrine. Notwithstanding the foregoing, solely in the event that

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the Chancery Court declines to accept jurisdiction over any such action or proceeding, unless there is an Alternative Forum Consent, the sole and exclusive forum for such action or proceeding shall, to the fullest extent permitted by law, be the Superior Court of the State of Delaware (Complex Commercial Division) or, if subject matter jurisdiction over the matter that is the subject of any such action or proceeding is vested exclusively in the federal courts of the United States of America, the United States District Court for the District of Delaware, and any appellate court from any thereof (the "Selected Courts"), in each such case unless any of the Selected Courts has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein. Any person or entity purchasing, otherwise acquiring or retaining any interest in shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Section 11.7. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Section 11.7 with respect to any current or future actions or claims.

ARTICLE XII

AMENDMENT

If provided in the Certificate of Incorporation of the Corporation and subject to the provisions set forth therein, the Board of Directors shall have the power to adopt, amend and repeal from time to time the by-laws of the Corporation, subject to the right of the stockholders entitled to vote with respect thereto to amend or repeal such by-laws as adopted or amended by the Board of Directors.

2018 Long Term Incentive Compensation Award Agreement

for the Senior Leadership Team under the Waste Management, Inc. 2014 Stock Incentive Plan

This Award Agreement (this “**Agreement**”) is entered into effective as of February 20, 2018 (the “**Grant Date**”), by and between Waste Management, Inc., a Delaware corporation (the “**Company**”) (together with its Subsidiaries and Affiliates, “**WM**”), and you (“**Employee**”). At all times, the Awards under this Agreement are subject to the terms and conditions of the Waste Management, Inc. 2014 Stock Incentive Plan (the “**Plan**”), this Agreement, and all applicable administrative interpretations and practices. A copy of the Plan is available online at <http://visor.wm.com> under the Legal tab. Once there, scroll to the bottom of the Legal page, then choose Documents, Stock Incentive Plan and choose “2014 Stock Incentive Plan.” A description of the Plan appears on the same page under “2014 Stock Incentive Plan Prospectus” (the “**Prospectus**”). Please also see the Company’s Form 10-K included in its most recent Annual Report, available on the Investor Relations page of www.wm.com under Financial Reporting – Annual Reports, for information about the Company. By executing this Agreement, you consent to receipt of the Plan, the Prospectus, and the Annual Reports by electronic access as set forth in this paragraph.

You must execute this Agreement in full, online in accordance with the instructions below, prior to March 31, 2018, in order for this Agreement to become effective. If you do not execute this Agreement by correctly following the instructions below, your Awards may be cancelled.

Important Instructions for Executing this Agreement

If you have previously received a stock-based incentive award, simply log on to www.mywmtotalrewards.com using your My WM Total Rewards user ID and password. If you have forgotten your user ID or password, there are instructions on the site to help you. Under the “My Compensation” section, click on the link to view your grants at the website maintained by the third party stock administrator appointed by the Company. Follow the online instructions and complete all of the steps required to accept the award.

If you are a new Plan participant, you must open a Limited Individual Investor Account (LIIA) before you can accept your awards. This account is separate from any other brokerage account you may have at the third party stock administrator. To open your LIIA, log on to www.mywmtotalrewards.com using your My WM Total Rewards user ID and password. If you have forgotten your user ID or password, there are instructions on the site to help you. Under the “My Compensation” section, click on the link to the secure website maintained by the third party stock administrator appointed by the Company. You may also log in directly at www.benefits.ml.com. Once logged in, follow the prompts to “Open a Brokerage Account”. When you have successfully created your account, follow the online instructions and complete all of the steps required to accept the award.

Performance Share Units

1. **PSU Grant.** The Company grants to Employee a Performance Share Unit Award (a “**PSU Award**”), as provided in the Notice of Long-Term Incentive Award dated February 20, 2018 (the “**Notice**”). Each Performance Share Unit (“**PSU**”) is a notational unit of measurement denominated in shares of common stock of the Company, \$.01 par value (“**Common Stock**”).

2. **PSU Metrics.**

- a. The “**Performance Period**” for this PSU Award is the 36-month period beginning January 1, 2018, and ending on December 31, 2020. Vesting and payout of your PSU Award is based upon the level of achievement of the **Performance Goals** that have been set by the Management Development and Compensation Committee of the Board of Directors of the Company (the “**Committee**”). The Performance Goals set by the Committee for your PSU Awards are described in paragraph 3 below.
- b. The performance measure selected by the Committee to serve as the Performance Goal for half (50%) of your Target PSU Award is **Adjusted Free Cash Flow** (defined in paragraph 2.c. below). The performance measure selected by the Committee to serve as the Performance Goal for the other half (50%) of your Target PSU Award is **Total Shareholder Return Relative to the S&P 500**, or “**TSR**” (as defined in paragraph 2.d. below). To determine the payout (if any) under your PSU Award, the Committee will determine the level of the Performance Goal reached (“**Achievement**”) and the corresponding payout percentage applicable to each half of your Target PSU Award under

paragraph 3 below. The Committee's determinations, and the related calculations, including the calculation of Adjusted Free Cash Flow and TSR, are made by, and in the sole discretion of, the Committee, and are final and not subject to appeal.

- c. **Adjusted Free Cash Flow** is the cash flow provided by operating activities of WM for the Performance Period with the following adjustments:
 - i. Capital expenditures are excluded;
 - ii. Payments related to costs (including legal costs) associated with labor disruptions (e.g., strikes) and actual or potential multiemployer plan withdrawal liability(ies) are excluded as expenditures required as a result of past labor commitments combined with changing economic conditions of the present business climate;
 - iii. Strategic acquisition, restructuring, transformation and reorganization costs are excluded in recognition of WM's goals to increase customer and business base while minimizing operating costs; and
 - iv. Cash proceeds from the divestiture of businesses and other assets are included.

The Committee, solely in its discretion, is permitted to make other adjustments to reflect management's performance consistent with maximizing shareholder value; provided that such other adjustments shall not reduce the Adjusted Free Cash Flow amount.

- d. **Total Shareholder Return Relative to the S&P 500 or "TSR"** is the percentile performance of the Company as compared to the other S&P 500 Companies for the Performance Period. For these purposes:
 - i. **S&P 500 Companies** means all of the entities listed on the Standard & Poor's 500 Composite Index, including the Company, on the date which is 30 trading days prior to the commencement of the Performance Period, with the following modifications:
 - A. except as provided in paragraph 2.d.i.B. below, only those entities that continue to trade throughout the Performance Period without interruption on a **National Exchange** shall be included; and
 - B. any such entity that files for bankruptcy ("Bankrupt Peer") during the Performance Period shall continue to be included.
 For these purposes "**National Exchange**" shall mean a securities exchange that has registered with the SEC under Section 6 of the Securities Exchange Act of 1934.
 - ii. **Total Shareholder Return** is the result of dividing (1) the sum of the cumulative value of an entity's dividends for the Performance Period, plus the entity's Ending Price, minus the Beginning Price, by (2) the Beginning Price. For purposes of determining the cumulative value of an entity's dividends during the Performance Period, it will be assumed that all dividends declared and paid with respect to a particular entity during the Performance Period were reinvested in such entity at the ex-dividend date, using the closing price on such date. The aggregate shares, or fractional shares thereof, that will be assumed to be purchased as part of the reinvestment calculation will be multiplied by the Ending Price to determine the cumulative value of an entity's dividends for the Performance Period. For these purposes:

- A. **Price** is the per share closing price, as reported by the Bloomberg L.P. (or any other publicly available reporting service that the Committee may designate from time to time) of a share or share equivalent on the applicable stock exchange.
- B. **Beginning Price** is the average Price for the period of 20 trading days immediately preceding the first day of the Performance Period.
- C. **Ending Price** is the average Price for the period of 20 trading days immediately preceding and including the final day of the Performance Period.
- D. **Bankrupt Peer**: Notwithstanding anything in the foregoing to the contrary, any Bankrupt Peer shall have a Total Shareholder return of negative one hundred percent (-100%).
- iii. **Relative TSR Percentile Rank** is the percentile performance of the Company as compared to the S&P 500 Companies. Relative TSR Percentile Rank is determined by ranking the Company and all other S&P 500 Companies according to their respective Total Shareholder Return for the Performance Period. The ranking is in order from minimum-to-maximum, with the lowest performing entity assigned a rank of one. The Company's ranking is then divided by the total number of entities within the S&P 500 Companies to get the Relative TSR Percentile Rank.

3. **PSU Payout Percentage.**

- a. The **Performance Goals** are the levels of performance set by the Committee on the Grant Date with respect to each measure of performance.
- b. The "**Target PSU Award**" for this Agreement is based on the target number of PSUs granted by the Committee and announced in the Notice. If Achievement falls between two levels of Achievement, the resulting payout percentage will be straight-line interpolated (rounding to the nearest 0.1 percent) between the payout percentages for those two levels of Achievement.

Achievement Levels and Corresponding Payouts for PSUs Dependent on Adjusted Cash Flow Performance Measure

Level of Achievement	Adjusted Free	Payout Percentage
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	Cash Flow Over the Performance Period	for the applicable half of your Target PSU Award
Threshold Performance (the minimum level of Achievement to qualify for any payout of the Adjusted Free Cash Flow half of your Target PSU Award.)	\$5.496 billion	60%
Target Performance (the level of Achievement to qualify for 100% payout of the Adjusted Free Cash Flow half of your Target PSU Award.)	\$5.906 billion	100%
Maximum Performance (the maximum level of Achievement that results in an increased number of PSUs paid out under the Adjusted Free Cash Flow half of your Target PSU Award.)	\$6.316 billion	200%

Achievement Levels and Corresponding Payouts for PSUs Dependent on TSR

Total Shareholder Return Relative to the S&P 500 over the Performance Period		
Level of Achievement	Relative TSR Percentile Rank	Payout Percentage for the applicable half of your Target PSU Award
Threshold Performance (the minimum level of Achievement to qualify for any payout of the TSR half of your Target PSU Award.)	25th	50%

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Total Shareholder Return Relative to the S&P 500 over the Performance Period		
Target Performance (the level of Achievement to qualify for 100% payout of the TSR half of your Target PSU Award.)	50th	100%
Maximum Performance (the maximum level of Achievement that results in an increased number of PSUs paid out under the TSR half of your Target PSU Award.)	75th	200%

4. **Timing and Form of Payment of PSU Award.** After the close of the Performance Period, the Committee will certify (with respect to each portion of your Target PSU Award relating to the separate Performance Goals) Achievement and determine the corresponding payout percentage of the PSU Award by multiplying the applicable half of the PSU Award by the applicable payout percentage. The results will sum to the total number of shares of Common Stock that you are entitled to receive (the "**PSU Awarded Shares**"). Unless you have a valid Deferral Election in place for your PSU Award (see paragraph 8 under "**Important Award Details**" for further information on permitted deferrals), the Company will deliver the PSU Awarded Shares and payment of the corresponding **Dividend Equivalents** (as defined in paragraph 7 under "**Important Award Details**") as soon as administratively feasible (and no later than 74 days after the end of the Performance Period) after the Committee's certification and determination.

Stock Options

- Stock Option Grant.** The Company grants to Employee a stock option award (the "**Stock Option Award**") for the number of shares ("**Stock Options**") of Common Stock provided in the Notice. This Stock Option Award grants Employee the right to purchase shares of Common Stock at the Grant Price. The "**Grant Price**" is the Fair Market Value (as defined in the Plan) of a share of Common Stock on the Grant Date.
- Term.** Notwithstanding any other provisions of this Agreement, the maximum term of the Stock Option Award is the 10th anniversary of the Grant Date.
- Right to Exercise.** Provided Employee remains employed by WM continuously through the applicable exercise dates, the Stock Option Award is exercisable as follows:

Exercise Date	Cumulative Percentage of Stock Option Award Exercisable
Prior to the first anniversary of the Grant Date	0%
On or after the first anniversary of the Grant Date	25%

On or after the second anniversary of the Grant Date	50%
On or after the third anniversary of the Grant Date	100%

4. **Manner of Exercise.** In order to exercise all or a portion of the Stock Option Award, Employee must contact (either by phone or online) the third-party stock plan administrator designated by the Company and follow the procedures established by the Company for exercising a Stock Option Award.
5. **Payment of Grant Price.** The Grant Price is payable in full to the Company either (a) in cash or its equivalent; (b) by tendering previously acquired shares of Common Stock held for at least six months and with an aggregate fair market value at the time of exercise equal to the aggregate Grant Price; (c) to the extent Employee is an executive officer at the time of exercise, by withholding shares of Common Stock that otherwise would be acquired pursuant to the Stock Option Award; or (d) any combination of the foregoing. The Grant Price may also be paid by cashless exercise through delivery of irrevocable instructions to a broker to promptly deliver to the Company the amount of proceeds from a sale of shares having fair market value equal to the Grant Price, provided that such instructions are delivered by no later than the close of the New York Stock Exchange on the last **Trading Day** prior to the 10th anniversary of the Grant Date. Payment by cashless exercise shall not be considered to have occurred until the broker has issued confirmation of the transaction. For these purposes, **Trading Day** means a day on which the New York Stock Exchange is open for trading for its regular trading sessions.

Important Award Details

Your Awards under this Agreement are subject to important terms and conditions set forth below. Please read them carefully and seek advice from your own legal and tax advisors before executing this Agreement.

1. **Death or Disability.** Upon Employee's death or disability (as determined by the Committee and within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations issued thereunder ("**Section 409A**") and specifically Section 409A(a)(2)(C) ("**Disability**")), Employee (or in the case of Employee's death, Employee's beneficiary) shall, subject to paragraph 2.e below, be entitled to:
 - a. receive the PSU Awarded Shares and related Dividend Equivalents that Employee would have been entitled to under this Agreement if Employee had remained employed until the last day of the Performance Period and determined based upon actual Achievement through the end of the Performance Period, which shall be paid to no later than 74 days following the end of the Performance Period; and
 - b. exercise all Stock Options outstanding under the Stock Option Award (whether or not previously exercisable) for one year following such event. Provided however, if Employee was eligible for **Retirement** (as defined in paragraph 2.d.i. below) at the time of his death or Disability, the Stock Option Award will remain exercisable for three years following the date of such event.
2. **Treatment of PSU Award Upon Retirement or Involuntary Termination of Employment Without Cause by WM.**
 - a. Upon an involuntary Termination of Employment by WM without Cause (as defined in paragraph 6.d.iii. below), Employee shall, subject to paragraph 2.e below, be entitled to receive the PSU Awarded Shares and related Dividend Equivalents that Employee would have been entitled to under this Agreement if Employee had remained employed until the last day of the Performance Period and determined based upon actual Achievement through the end of the Performance Period multiplied by the fraction which has as its numerator the total number of days that Employee was employed by WM during the Performance Period and has as its denominator 1096 (which amount shall be issued and paid as soon as practicable and no later than 74 days following the end of the Performance Period).
 - b. Upon Employee's Retirement (as defined in paragraph 2.d.i below), Employee shall, subject to paragraph 2.e below, be entitled to receive the PSU Awarded Shares and related Dividend Equivalents that Employee would have been entitled to under this Agreement if Employee had remained employed until the last day of the Performance Period and determined based upon actual Achievement through the end of the Performance Period multiplied by the fraction which has as its numerator the total number of days that Employee was employed by WM during the first 12 months of the Performance Period and has as its denominator 365 (which amount shall be issued and paid as soon as practicable and no later than 74 days following the end of the Performance Period). To illustrate the application of the preceding sentence, if Employee's Retirement is on or after December 31, 2018, subject to paragraph 2.e below, he or she shall be eligible to receive a full payout at the end of the Performance Period (based upon actual Achievement).
 - c. In the event Employee is employed by a subsidiary of the Company that is sold by the Company in a transaction (i) that would not constitute a Change in Control of the Company within the meaning of paragraph 6.c.i. below, but (ii) that would constitute a Change in Control of the subsidiary within the meaning of paragraph 6.c.i. with the subsidiary substituted for Company thereunder, such transaction shall be deemed to constitute an involuntary Termination of Employment by WM without Cause for purposes of this paragraph 2 as of the effective date of such Transaction.

d. The following terms shall have the meanings set forth below for purposes of this Agreement:

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- i. **Retirement** means Termination of Employment due to the voluntary resignation of employment by Employee, after Employee (1) has reached age 55 or greater; (2) has a sum of age plus years of Service (as defined in paragraph ii. below) with WM equal to 65 or greater; and (3) has completed at least 5 consecutive full years of Service with WM during the 5 year period immediately preceding the resignation; provided, that Employee is not receiving severance benefits pursuant to the severance pay plans of WM in connection with such Termination of Employment.
 - ii. **Service** is measured from Employee's original date of hire by WM, except as provided below. In the case of a break of employment by Employee from WM of one year or more in length, Employee's service before the break of employment is not considered Service. Service with an entity acquired by WM is considered Service so long as Employee remained continuously employed with such predecessor company(ies) and WM. In the case of a break of employment between a predecessor company and WM of any length, Employee's Service shall be measured from the original date of hire by WM and shall not include any service with any predecessor company.
- e. In order to receive any of the vesting or exercisability benefits upon termination described in paragraphs 1, 2.a, 2.b or 3.b, Employee (or, if applicable, Employee's estate) must (x) to the extent requested by WM, execute and not revoke a general release of claims in favor of WM and its affiliates in a form that is acceptable to WM and which has become effective and irrevocable prior to the payment date set forth above (or such earlier deadline set by WM) and (y) continue to abide by all ongoing obligations to WM under any restrictive covenant agreement.
3. Treatment of Stock Option Award upon Involuntary Termination; Resignation; Retirement.
- a. Involuntary Termination of Employment Without Cause or Resignation by Employee. Upon an involuntary Termination of Employment without Cause by WM or a Termination of Employment due to a voluntary resignation by Employee that is accepted by WM that is not a Retirement (as defined above), for a period of 90 days following such Termination of Employment, Employee shall be entitled to exercise all of the Stock Options then outstanding and exercisable under the Stock Option Award. Any Stock Options that are not outstanding and exercisable shall be forfeited.
 - b. Retirement. Upon Employee's Retirement, the Stock Option Award shall, subject to paragraph 2.e above, continue to become exercisable under the applicable exercise schedule for three years following Employee's Retirement and once exercisable shall remain exercisable for the three-year period following Employee's Retirement.
4. Termination of Employment for Other Reasons.
- a. PSU Award in the Event of Involuntary Termination with Cause or Resignation by Employee. Except as provided in paragraphs 1 through 2 above and 6 below, Employee must be an employee of WM continuously from the Grant Date through the close of business on last day of the Performance Period to be entitled to receive payment of any PSU Award. Upon Termination of Employment on or before December 31, 2020, for any reason other than any termination that would qualify Employee for payout under paragraphs 1 through 2 above and 6 below, Employee shall immediately forfeit the PSU Award and any related Dividend Equivalents without payment of any consideration by WM.
 - b. Stock Option Award in the Event of Involuntary Termination with Cause. Upon Termination of Employment by WM with Cause, Employee shall forfeit all Stock Options under the Stock Option Award, whether or not exercisable, without the payment of any consideration by WM.

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5. Repayment of Award in the Event of Misconduct.

- a. Overriding any other inconsistent terms of this Agreement, if the Committee, in its sole discretion, determines that Employee either engaged in or benefited from Misconduct (as defined below), then, to the fullest extent permitted by law, Employee shall refund and pay to WM any Common Stock and/or amounts (including Dividend Equivalents), plus interest, received by Employee under this Agreement. **Misconduct** means any act or failure to act by any employee of WM that (i) caused or was intended to cause a violation of WM's policies or the WM code of conduct, generally accepted accounting principles or any applicable laws in effect at the time of the act or failure to act in question and that (ii) materially increased the value of the payment or Award received by Employee under this Agreement. The Committee may, in its sole discretion, delegate the determination of Misconduct to an independent third party (either a law firm or an accounting firm, hereinafter referred to as **Independent Third Party**) appointed by the Committee.

- b. Following a determination of Misconduct by Employee, Employee may dispute such determination pursuant to binding arbitration as set forth in paragraph 18 under “**General Terms**” provided, however, that if Employee is determined to have benefited from, but not engaged in, Misconduct, Employee will have no right to dispute such determination and such determination shall be conclusive and binding.
 - c. WM must initiate recovery pursuant to this paragraph 5 by the earliest of (i) one year after discovery of alleged Misconduct, or (ii) the second anniversary of Employee’s Termination of Employment.
 - d. The provisions of this paragraph 5, without any implication as to any other provision of this Agreement, shall survive the expiration or termination of this Agreement and Employee’s employment.
6. Acceleration upon Change in Control. Overriding any other inconsistent terms of this Agreement:

- a. PSU Award. If there is a **Change in Control** (as defined in paragraph 6.c.i. below) before the close of the Performance Period, Employee is entitled to receive both i. and ii., as follows:
 - i. For each half of the PSU Award, the result of an equation with a numerator of
 - (x) the respective number of PSUs Employee would have otherwise received based upon achievement of the applicable Performance Goal after reducing the Performance Period so that it ends on the last day of the quarter preceding the Change in Control (the “**Early Measurement Date**”) and, for the Adjusted Free Cash Flow half of the PSU Award, after adjusting the Threshold, Target and Maximum Achievement Levels to reflect budgeted performance in the shorter Performance Period, multiplied by
 - (y) a fraction equal to (1) the number of days occurring between the beginning of the Performance Period and the Early Measurement Date (including the Early Measurement Date) divided by (2) 1096.

Payout of the PSUs shall be an immediate cash payment (in all events paid within 74 days following the Change in Control) equal to the number of PSUs earned under this paragraph 6.a. multiplied by the closing stock price of the Common Stock on the Early Measurement Date and will be accompanied by a cash payment of the associated Dividend Equivalents through the Early Measurement Date; and

- ii. As a substitute award for the lost opportunity to continue to earn PSUs for the entire length of the original Performance Period:
 - 1. If the successor entity is a publicly traded company as of the Early Measurement Date, an award of restricted stock units in the successor entity equal to the number of shares of common stock of the

successor entity that could have been purchased on the Early Measurement Date with an amount of cash equal to the quotient obtained from the following equation:

$$\frac{TAP \times (1096 - EMD) \times CP}{1096}$$

where

TAP is the number of PSUs represented by the Target PSU Award;
EMD is the number of days during the Performance Period which occur prior to and including the Early Measurement Date; and
CP is the closing price of a share of Common Stock of the Company on the Early Measurement Date.

Any restricted stock units in the successor entity awarded under this paragraph 6.a.ii.1. will vest completely on December 31, 2020 (and be paid within 74 days thereof), provided that Employee remains continuously employed with the successor entity until then. Provided however, in the event of Employee’s involuntary Termination of Employment without Cause during the **Window Period** (as defined in paragraph c.iv. below) or upon Employee’s Retirement, death or Disability, Employee shall become immediately vested in full in the restricted stock units in the successor entity awarded pursuant to this paragraph 6.a.ii.1 and paid (i) in the case of death or Disability, within 74 days of such time or (ii) in the case of Retirement or involuntary Termination of Employment without Cause, within 74 days following December 31, 2020.

- 2. If the successor entity is not a publicly traded company as of the Early Measurement Date, an amount of cash equal to the quotient obtained from the equation in paragraph 6.a.ii.1. above.

Any cash payment awarded under this paragraph 6.a.ii.2. will be paid to Employee as soon as administratively feasible (and no later than 74 days) following December 31, 2020, provided that Employee remains continuously employed with the successor entity until such date. Provided however, in the event of Employee’s involuntary Termination of Employment without Cause during the Window Period or upon Employee’s Retirement, death or Disability, Employee shall become vested and be paid such cash payment by the successor entity (i) in the case of death or Disability, within 74 days of such time or (ii) in the case of

- b. **Stock Option Award.** In the event of Employee's involuntary Termination of Employment without Cause or Termination of Employment due to a resignation by Employee for Good Reason that, in either case, occurs on or before the second anniversary of a Change in Control, the Stock Option Award shall become exercisable immediately (whether or not previously exercisable) and shall remain exercisable for the three year period following such Termination of Employment. For this purpose, "**Good Reason**" has the same meaning determined by Employee's written employment agreement in effect on the Grant Date. In the event there is no such agreement or definition, then Good Reason means the initial existence of one or more of the following conditions, arising without the consent of the Employee: (1) a material diminution in Employee's base compensation; (2) a material diminution in Employee's authority, duties, or responsibilities, so as to effectively cause Employee to no longer be performing the duties of his position; (3) a material diminution in the authority, duties, or responsibilities of the supervisor to whom Employee is required to report.
- c. The following terms shall have the meanings set forth below for purposes of this Agreement:
- i. **Change in Control** means the first to occur of any of the following:
1. any Person, or Persons acting as a group (within the meaning of Section 409A), acquires, directly or indirectly, including by purchase, merger, consolidation or otherwise, ownership of securities of the

Company that, together with securities held by such Person or Persons, represents fifty percent (50%) or more of the total voting power or total fair market value of the Company's then outstanding securities;

2. any Person, or Persons acting as a group (within the meaning of Section 409A), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons), directly or indirectly, including by purchase, merger, consolidation or otherwise, ownership of securities of the Company that represents thirty percent (30%) or more of the total voting power of the Company's then outstanding voting securities;
3. the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, at the Grant Date, constitute the Board of Directors of the Company (the "**Board**") and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least a majority of the directors before the date of such appointment or election or whose appointment, election or nomination for election was previously so approved or recommended; or
4. the stockholders of the Company approve a plan of complete liquidation of the Company and such liquidation is actually commenced or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets (or any transaction having a similar effect), other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least fifty percent (50%) of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale. For purposes hereof, a "sale or other disposition by the Company of all or substantially all of the Company's assets" will not be deemed to have occurred if the sale involves assets having a total gross fair market value of less than forty percent (40%) of the total gross fair market value of all assets of the Company immediately prior to such sale;

provided, in each of cases 1 through 4, that in the event the award or portion of the award is determined to constitute a non-exempt "deferral of compensation" pursuant to Section 409A, to the extent necessary to avoid the imposition of any penalties or additional tax under Section 409A, with respect to such award or portion of award the Change of Control event must also constitute a "change in the ownership of a corporation," a "change in the effective control of a corporation," or a "change in the ownership of a substantial portion of a corporation's assets," in each case, within the meaning of Section 409A.

For purposes of this definition, the following terms shall have the following meanings:

(A) "**Exchange Act**" means the Securities and Exchange Act of 1934, as amended from time to time; and

(B) "**Person**" shall have the meaning set forth in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (1) the Company, (2) a trustee or other fiduciary holding securities under an employee benefit plan of the Company, (3) an employee benefit plan of the Company, (4) an underwriter temporarily holding securities pursuant to an offering of such securities or (5) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of shares of Common Stock.

- ii. **Termination of Employment** means the termination of Employee's employment or other service relationship with WM as determined by the Committee. Temporary absences from employment because of illness, vacation or leave of absence and transfers among the Company and its Subsidiaries and Affiliates will not be considered a Termination of Employment. Any question as to whether and when there has been a Termination of Employment, and the cause of such termination, shall be determined by and in the sole discretion of the Committee and such determination shall be final.
- iii. **Cause** means any of the following: (1) willful or deliberate and continual refusal to materially perform Employee's duties reasonably requested by WM after receipt of written notice to Employee of such failure to perform, specifying such failure (other than as a result of Employee's sickness, illness, injury, death or disability) and Employee fails to cure such nonperformance within ten (10) days of receipt of said written notice; (2) breach of any statutory or common law duty of loyalty to WM; (3) Employee has been convicted of, or pleaded *nolo contendere* to, any felony; (4) Employee willfully or intentionally caused material injury to WM, its property, or its assets; (5) Employee disclosed to unauthorized person(s) proprietary or confidential information of WM that causes a material injury to WM; or (6) any material violation or a repeated and willful violation of WM's policies or procedures, including but not limited to, WM's Code of Business Conduct and Ethics (or any successor policy) then in effect.
- iv. **Window Period** means the period beginning on the date occurring six (6) months immediately prior to the date on which a Change in Control first occurs and ending on the second anniversary of the date on which a Change in Control occurs.
7. **Dividend Equivalents on PSUs.** **Dividend Equivalents** mean an amount of cash equal to all dividends and distributions (or their economic equivalent) that are payable by the Company on one share of Common Stock to the stockholders of record. The Company will pay Dividend Equivalents with respect to the PSUs when (i) the Performance Period has ended; (ii) Employee has vested in the Award; and (iii) the PSU Awarded Shares have been certified by the Committee based on actual Achievement during the Performance Period (or otherwise determined pursuant to paragraph 6.a.i. above). As soon as administratively feasible after these events (and no later than 74 days following the end of the Performance Period), the Company will pay Employee a lump-sum cash amount for PSU Award Dividend Equivalents based on the number of PSU Awarded Shares multiplied by the per share quarterly dividend payments made to stockholders of the Company's Common Stock during the Performance Period (without any interest or compounding). Any accumulated and unpaid Dividend Equivalents attributable to PSUs that are cancelled or forfeited will not be paid and are immediately forfeited upon cancellation of the PSUs.
8. **Deferral Elections.**
- a. The Committee may establish procedures for Employee to elect to defer, until a time or times later than the vesting of PSU Awards, receipt of all or a portion of the shares of Common Stock deliverable under the Awards. Any such deferral election ("**Deferral Election**") must be under the terms and conditions determined in the sole discretion of the Committee (or its designee) and the Waste Management, Inc. 409A Deferral Savings Plan, As Amended and Restated Effective January 1, 2014 and as further amended, restated or supplemented from time to time (the "**WM 409A Plan**"). The Committee further retains the authority and discretion to modify and/or terminate existing Deferral Elections, procedures and distribution options. Common Stock subject to a Deferral Election does not confer any shareholder rights to Employee unless and until the date the deferral expires and certificates representing such shares are delivered to Employee.
- b. No deferrals of Dividend Equivalents are permitted. In the event shares of Common Stock received upon vesting of PSU Awards are deferred pursuant to a valid Deferral Election, then the Company will pay Dividend Equivalents to Employee in cash on such deferred shares of Common Stock, as soon as administratively feasible following the payment of such dividends to stockholders of record.

- c. If the Committee permits deferral of the PSU Awards under this Agreement, then each provision of this Agreement shall be interpreted to permit deferral only (i) in accordance with the terms of the WM 409A Plan and (ii) as allowed in compliance with Section 409A. Any provision that would conflict with such requirements is not valid or enforceable. Employee acknowledges, without limitation, and consents that the application of Section 409A to this Agreement may require additional delay of payments otherwise payable under this Agreement or the WM 409A Plan. Employee and the Company agree to execute any instruments and take any action as reasonably may be necessary to comply with Section 409A.

General Terms

1. Restrictions on Transfer.
 - a. Absent prior written consent of the Committee, Awards may not be sold, assigned, transferred, pledged or otherwise encumbered, whether voluntarily or involuntarily, by operation of law or otherwise, other than pursuant to a domestic relations order; provided, however, that the transfer of any shares of Common Stock issued under the Awards shall not be restricted by virtue of this Agreement once such shares have been paid out.
 - b. Consistent with paragraph 1.a. above and except as provided in paragraph 3. below, no right or benefit under this Agreement shall be subject to transfer, anticipation, alienation, sale, assignment, pledge, encumbrance or charge, whether voluntary, involuntary, by operation of law or otherwise, and any attempt to transfer, anticipate, alienate, sell, assign, pledge, encumber or charge the same shall be void. No right or benefit hereunder shall in any manner be liable for or subject to any debts, contracts, liabilities or torts of the person entitled to such benefits. If Employee or his Beneficiary shall attempt to transfer, anticipate, alienate, assign, sell, pledge, encumber or charge any right or benefit hereunder (other than pursuant to a domestic relations order), or if any creditor shall attempt to subject the same to a writ of garnishment, attachment, execution sequestration, or any other form of process or involuntary lien or seizure, then such attempt shall have no effect and shall be void.
2. Fractional Shares. No fractional shares of Common Stock will be issued under the Plan or this Agreement.
3. Withholding Tax. Employee agrees that Employee is responsible for federal, state and local tax consequences associated with the Awards (and any associated Dividend Equivalents) under this Agreement. Upon the occurrence of a taxable event with respect to any Award under this Agreement, Employee shall deliver to WM at such time, (i) such amount of money or shares of Common Stock earned or owned by Employee or (ii) if employee is an executive officer at the time of such tax event and so elects (or, otherwise, with WM's approval), shares deliverable to Employee at such time pursuant to the applicable Award, in each case, as WM may require to meet its obligation under applicable tax laws or regulations, and, if Employee fails to do so, WM is authorized to withhold from any shares of Common Stock deliverable to Employee, cash, or other form of remuneration then or thereafter payable to Employee, any tax required to be withheld.
4. Compliance with Securities Laws. WM is not required to deliver any shares of Common Stock under this Agreement, if, in the opinion of counsel for the Company, such issuance would violate the Securities Act of 1933 or any other applicable federal or state securities laws or regulations. Prior to the issuance of any shares, WM may require Employee (or Employee's legal representative upon Employee's death or disability) to enter into such written representations, warranties and agreements as WM may reasonably request in order to comply with applicable laws, including an agreement (in such form as the Committee may specify) under which Employee represents that the shares of Common Stock acquired under an Award are being acquired for investment and not with a view to sale or distribution.

Further, WM may postpone issuing and/or delivering any Common Stock for so long as WM, in its complete and sole discretion, reasonably determines is necessary to satisfy any of the following conditions: (a) the Company completing or amending any securities registration or qualification of the Common Stock, (b) receipt of proof satisfactory to WM that a person seeking to exercise the Award after the Employee's death is entitled to do so; (c) establishment of Employee's compliance with any necessary representations or terms and conditions of the Plan or this Agreement, or (d) compliance with any federal, state, or local tax withholding obligations.

5. Employee to Have no Rights as a Stockholder. Employee shall have no rights as a stockholder with respect to any shares of Common Stock subject to this Award prior to the date on which Employee is recorded as the holder of such shares of Common Stock on the records of the Company, including no right to dividends declared on the Common Stock underlying the Award. Notwithstanding the foregoing, Dividend Equivalents shall be paid to Employee in accordance with and subject to the terms of paragraph 7 under "[Important Award Details.](#)"
6. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by Employee, WM and their respective permitted successors or assigns (including personal representatives, heirs and legatees), except that Employee may not assign any rights or obligations under this Agreement except to the extent, and in the manner, expressly permitted herein. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that WM would be required to perform it if no such succession had taken place, except as otherwise expressly provided in paragraph 6.b. under "[Important Award Details.](#)"
7. Limitation of Rights. Nothing in this Agreement or the Plan may be construed to:
 - a. give Employee any right to be awarded any further Awards other than in the sole discretion of the Committee;
 - b. give Employee or any other person any interest in any fund or in any specified asset or assets of WM (other than the Awards made by this Agreement, the related Dividend Equivalents awarded under this Agreement, and any Common Stock issuable under the terms and conditions of such Awards); or

- c. confer upon Employee the right to continue in the employment or service of WM.
8. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without reference to principles of conflict of laws.
9. Severability/Entire Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- a. Employee understands and agrees that the Awards granted under this Agreement are granted under the authority of the Plan and these Awards and this Agreement are in all ways governed by the terms and conditions of the Plan and its administrative practices and interpretations. Any inconsistency between the Agreement and the Plan shall be resolved in favor of the Plan. Employee also agrees the terms and conditions of the Plan, this Agreement and related administrative practices and interpretations control, even if there is a conflict with any other terms and conditions in any employment agreement or in any prior awards. Without limiting the generality of the foregoing, as a condition to receipt of this Award, Employee agrees that the provisions relating to vesting and/or forfeiture of this Award upon a Termination of Employment set forth in this Agreement supersede and replace any provisions relating to vesting of the Award upon termination or other event set forth in any employment agreement, offer letter or similar document.
- b. Employee understands and agrees that he or she is to consult with and rely upon only Employee's own tax, legal, and financial advisors regarding the consequences and risks of this Agreement and the awards made under this Agreement.

- c. Except as provided in paragraph 13 below, this Agreement may not be amended except in writing (including by electronic writing) signed by all the parties to this Agreement (or their respective successors and legal representatives). The captions are not a part of the Agreement and for that reason shall have no force or effect.
10. No Waiver. In the event the Employee or WM fails to insist on strict compliance with any term or condition of this Agreement or fails to assert any right under this Agreement, such failure is not a waiver of that term, condition or right.
11. Covenant Requirement Essential Part of Award. An overriding condition (even if any other provision of the Plan and this Agreement are conflicting) for Employee to receive any benefit from or payment of any Award under this Agreement, is that Employee must also have entered into an agreement containing restrictive covenants concerning limitations on Employee's behavior following termination of employment that is satisfactory to WM.
12. Definitions. If not defined in this Agreement, capitalized terms have the meanings set forth in the Plan.
13. Compliance with Section 409A. Both WM and Employee intend that this Agreement not result in unfavorable tax consequences to Employee under Section 409A. Accordingly, Employee consents to any amendment of this Agreement WM may reasonably make consistent to achieve that intention and WM may, disregarding any other provision in this Agreement to the contrary, unilaterally execute such amendment to this Agreement. WM shall promptly provide, or make available to, Employee a copy of any such amendment. WM agrees to make any such amendments to preserve the intended benefits to the Employee to the maximum extent possible. This paragraph does not create an obligation on the part of WM to modify this Agreement and does not guarantee that the amounts or benefits owed under the Agreement will not be subject to interest and penalties under Section 409A. Each cash and/or stock payment and/or benefit provided under the Plan and this Agreement and/or pursuant to the terms of WM's benefit plans, programs and policies shall be considered a separate payment for purposes of Section 409A. Notwithstanding the foregoing, it is intended that Stock Option Awards not be subject to Section 409A. For purposes of Section 409A, to the extent that Employee is a "specified employee" within the meaning of the Treasury Regulations issued pursuant to Section 409A as of Employee's separation from service and to the limited extent necessary to avoid the imputation of any tax, penalty or interest pursuant to Section 409A, notwithstanding anything to the contrary in this Agreement, no amount which is subject to Section 409A of the Code and is payable on account of Employee's separation from service shall be paid to Employee before the date (the "Delayed Payment Date") which is the first day of the seventh month after the Employee's separation from service or, if earlier, the date of the Employee's death following such separation from service. All such amounts that would, but for the immediately preceding sentence, become payable prior to the Delayed Payment Date will be accumulated and paid without interest on the Delayed Payment Date.
14. Use of Personal Data. Employee agrees to the collection, use, processing and transfer of certain personal data, including name, salary, nationality, job title, position, social security number (or other tax identification number) and details of all past Awards and current Awards outstanding under the Plan ("Data"), for the purpose of managing and administering the Plan. Employee is not obliged to consent to such collection, use, processing and transfer of personal data, but a refusal to provide such consent may affect the ability to participate in the Plan. WM may transfer Data among themselves or to third parties as necessary for the purpose of implementation, administration and management of the Plan. These various recipients of Data may be located throughout the world. Employee authorizes these various recipients of Data to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Plan. Employee may, at any time, review Data with respect to Employee and require any necessary amendments to such Data. Employee may withdraw his or her consent to use Data herein by

notifying WM in writing (according to the provisions of paragraph 15 below); however, Employee understands that by withdrawing his or her consent to use Data, Employee may affect his or her ability to participate in the Plan.

15. Notices. Any notice given by one party under this Agreement to the other shall be in writing and may be delivered personally or by mail, postage prepaid, addressed to the Secretary of the Company, at its then corporate

headquarters, and Employee at Employee's address as shown on WM's records, or to such other address as Employee, by notice to the Company, may designate in writing from time to time.

16. Electronic Delivery. WM may, in its sole discretion, deliver any documents related to the Awards under this Agreement, the Plan, and/or the WM 409A Plan, by electronic means or request Employee's consent to participate in the administration of this Agreement, the Plan, and/or the WM 409A Plan by electronic means. Employee hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by WM or another third party designated by WM.
17. Clawback. Notwithstanding any provisions in the Plan or this Agreement to the contrary, any portion of the payments and benefits provided under this Agreement or the sale of any shares of Common Stock issued hereunder shall be subject to any clawback or other recovery policy adopted by the Committee from time to time, including, without limitation, any such policy adopted in accordance with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any SEC rule.
18. Binding Arbitration. Except as otherwise specifically provided herein, the Committee's findings, calculations and determinations under this Agreement are made in the sole discretion of the Committee, and Employee expressly agrees that such determinations shall be final and not subject to dispute. In the event, however, that Employee has a right to dispute a matter hereunder (including, but not limited to the right to dispute set forth in paragraph 5 under "Important Award Details"), the Company and Employee agree that such dispute shall be settled exclusively by final and binding arbitration, as governed by the Federal Arbitration Act (9 U.S.C. 1 *et seq.*). The arbitration proceeding, including the rendering of an award, if any, shall be administered by JAMS pursuant to its Employment Arbitration Rules and Procedures, which may be found on the JAMS Website www.jamsadr.com. All expenses associated with the arbitration shall be borne by WM; provided however, that such arbitration expenses will not include attorney fees incurred by the respective parties. Judgment on any arbitration award may be entered in any court having jurisdiction.
19. Counterparts. This Agreement may be executed in counterparts, which together shall constitute one and the same original.

Execution

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed by one of its officers thereunto duly authorized and Employee has executed this Agreement, effective as of February 20, 2018.

WASTE MANAGEMENT, INC.

Employee

James E. Trevathan, Jr.

Accepted by electronic signature.

Date: February 20, 2018