

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 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): November 3, 2022

CONSTRUCTION PARTNERS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38479
(Commission
File Number)

26-0758017
(I.R.S. Employer
Identification Number)

290 Healthwest Drive, Suite 2
Dothan, Alabama 36303
(Address of principal executive offices) (ZIP Code)

(334) 673-9763
(Registrant's telephone number, including area code)

Not Applicable
(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))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common stock, \$0.001 par value	ROAD	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

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.

Approval of Form of LTIP-B Award Agreement

On November 3, 2022, the Compensation Committee (the “Compensation Committee”) of the board of directors (the “Board”) of Construction Partners, Inc. (the “Company”) approved a form of award agreement for performance stock unit awards (“LTIP-B awards”) granted pursuant to the Construction Partners, Inc. 2018 Equity Incentive Plan (the “Equity Incentive Plan”). The following description of the form of LTIP-B award agreement does not purport to be complete and is qualified in its entirety by the full text of the form of LTIP-B award agreement, which is attached hereto as Exhibit 10.1.

The LTIP-B awards represent performance stock units (“PSUs”), with each unit having a notional value equivalent to one share of the Company’s Class A common stock for purposes of determining the number of shares subject to the award. Each LTIP-B award provides for a target number of PSUs that the grantee may earn, with the preliminary number of vested PSUs to be determined based on the Company’s actual performance compared to its targets over a three-year performance period for the following metrics: (i) compound aggregate revenue growth rate and (ii) average Adjusted EBITDA margin.

Fifty percent (50%) of the target PSUs (the “Revenue Target PSUs”) will be eligible to vest based on the Company’s achievement of compound aggregate revenue growth rate as compared to the revenue growth rate target, as set forth in the following table. The number of vested PSUs will be interpolated for performance between each performance level (based on whole percentages), and no PSUs will vest if the performance level is less than 89% of the revenue growth rate target over the performance period.

Performance Level	Revenue Growth Rate vs. Target	Payout % (Vested PSUs)
Below Threshold	< 89%	0% of Revenue Target PSUs
Threshold	89%	75% of Revenue Target PSUs
Target	100%	100% of Revenue Target PSUs
Maximum	> 112%	150% of Revenue Target PSUs

Fifty percent (50%) of the target PSUs (the “Adjusted EBITDA Margin Target PSUs”) will be eligible to vest based on the Company’s achievement of average Adjusted EBITDA margin as compared to the Adjusted EBITDA margin target, as set forth in the following table. The number of vested PSUs will be interpolated for performance between each performance level (based on whole percentages), and no Adjusted EBITDA Margin Target PSUs will vest if the performance level is less than 95% of the Adjusted EBITDA margin target over the performance period.

Performance Level	Avg. Adjusted EBITDA Margin vs. Target	Payout % (Vested PSUs)
Below Threshold	< 95.2%	0% of Adjusted EBITDA Margin Target PSUs
Threshold	95.2%	75% of Adjusted EBITDA Margin Target PSUs
Target	100%	100% of Adjusted EBITDA Margin Target PSUs
Maximum	> 104.8%	150% of Adjusted EBITDA Margin Target PSUs

Following a determination of the preliminary vested PSUs, the final number of PSUs that are eligible to vest will be either increased or decreased by up to 15% based on a comparison of the Company’s total stockholder return (“TSR”) over the performance period compared to that of the Russell 2000 over the same period (provided that the Company’s TSR must be positive in order for any upward adjustment to be made). Specifically, the number of PSUs that will vest is subject to modification based on the following schedule:

Company TSR vs. Russell 2000	Award Modification
25th Percentile or Below ↓	-15%
50th Percentile ↓	Straight-line interpolation 0%
75th Percentile or Above	Straight-line interpolation +15%

In addition to being subject to all the general terms and conditions of the Equity Incentive Plan, the form of LTIP-B award agreement provides that the PSUs have no rights with respect to dividends until the awards become vested and are settled in shares of Class A common stock. The LTIP-B award agreement provides that the “vesting date” for each LTIP-B award, which is defined as the date on which the administrator of the Equity Incentive Plan determines for the performance period (i) the actual achievement of the compound aggregate revenue growth rate for the performance period, (ii) the actual achievement of the Adjusted EBITDA margin for the performance period, and (iii) the actual achievement of the Company’s relative TSR, will occur within 60 days following the end of the performance period. Provided that the grantee is employed by or providing services to the Company or any affiliate on the applicable vesting date, vested PSUs will be converted and settled in shares of Class A common stock within 60 days following the vesting date. In general, upon a termination of the employment of an LTIP-B award holder prior to the vesting date, vesting will cease, and the LTIP-B award will immediately terminate and be forfeited.

Compound aggregate revenue growth rate, average Adjusted EBITDA margin and relative TSR are among the many performance metrics that the Equity Incentive Plan permits the administrator of the Equity Incentive Plan to use in establishing performance goals for performance awards granted pursuant to the Equity Incentive Plan, and the Company may determine to use different performance metrics when granting performance awards in the future.

Grant of LTIP-B Awards

On November 3, 2022, the Compensation Committee, as administrator of the Equity Incentive Plan, approved grants of LTIP-B awards to certain named executive officers of the Company, including Fred J. (Jule) Smith, III, the Company’s President and Chief Executive Officer, John L. Harper, the Company’s Senior Vice President, Robert P. Flowers, the Company’s Senior Vice President, and M. Brett Armstrong, the Company’s Senior Vice President. Pursuant to these grants, the number of vested PSUs will be based on the Company’s compound aggregate revenue growth rate and average Adjusted EBITDA margin over the three-year performance period beginning October 1, 2022 and ending September 30, 2025. In connection with the grants, Mr. Smith received an award of 15,905 target PSUs, Mr. Harper received an award of 8,362 target PSUs, Mr. Flowers received an award of 8,017 target PSUs, and Mr. Armstrong received an award of 7,758 target PSUs.

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

On November 3, 2022, the Board adopted amended and restated by-laws of the Company (the by-laws, as so amended and restated, the “Amended and Restated By-Laws”), effective immediately. The Amended and Restated By-Laws, among other things:

- clarify that meetings of stockholders may be held in a hybrid in-person and virtual format;
- modify the provisions relating to adjournment procedures and lists of stockholders entitled to vote at stockholder meetings, in each case, to reflect recent amendments to the Delaware General Corporation Law, as amended (the “DGCL”);
- clarify the parameters for proxies in connection with stockholder meetings;
- clarify that written consents of the Board may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL;
- enhance procedural mechanics and disclosure requirements in connection with stockholder nominations of directors and submissions of stockholder proposals (other than proposals to be included in the Company’s proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) at stockholder meetings, including without limitation, by requiring:

- additional background information and disclosures regarding proposing stockholders, proposed nominees, proposed business, and other persons related to a stockholder's solicitation of proxies;
 - any stockholder submitting a nomination or proposal notice to make a representation that such stockholder is a holder of record of shares of capital stock of the Company entitled to vote at the meeting at which such nomination or proposal is to be brought;
 - any stockholder submitting a nomination or proposal notice to make a representation that such stockholder has complied with all applicable requirements of state law and the Exchange Act;
 - any stockholder submitting a nomination notice to make a representation as to whether such stockholder intends to solicit proxies in support of director nominees other than the Company's nominees in accordance with Rule 14a-19 under the Exchange Act ("Rule 14a-19"), and if so, to include an undertaking that such stockholder will comply with the requirements of Rule 14a-19 and to provide, at the Company's request, no later than five business days prior to the applicable meeting, reasonable evidence that the requirements of Rule 14a-19 have been satisfied;
 - that any material inaccuracies in the disclosures included in a stockholder's nomination or proposal notice be corrected in accordance with the Amended and Restated By-Laws; and
 - that proposed nominees be available for interviews with the Board;
- clarify that the Board (or an officer designated thereby) has the power and duty to determine whether a stockholder nomination or proposal has been made in accordance with the Amended and Restated By-Laws and that, if the Board or such officer determines that any stockholder's nomination or proposal was not made in accordance with the Amended and Restated By-Laws, such nomination or proposal will not be presented at the meeting at which such nomination or proposal was to be brought;
 - remove the requirement that officers of the Company be elected annually;
 - modify the requirements for signatures on stock certificates to reflect amendments to the DGCL; and
 - make various other updates, including ministerial and conforming changes.

The foregoing summary of the Amended and Restated By-Laws does not purport to be complete and is qualified in its entirety by reference to the complete text of the Amended and Restated By-Laws, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1*	Amended and Restated By-Laws of Construction Partners, Inc.
10.1*	Form of Performance Share Award (LTIP-B) Agreement
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.

SIGNATURES

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

CONSTRUCTION PARTNERS, INC.

Date: November 9, 2022

By: /s/ R. Alan Palmer
R. Alan Palmer
Executive Vice President and Chief Financial Officer

AMENDED AND RESTATED
BY-LAWS
OF
Construction Partners, Inc.
a Delaware corporation

(the "*Corporation*")

(Adopted as of November 3, 2022)

**AMENDED AND RESTATED
BY-LAWS
OF
CONSTRUCTION PARTNERS, INC.**

**ARTICLE I
OFFICES**

Section 1.1 Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2 Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

**ARTICLE II
STOCKHOLDERS MEETINGS**

Section 2.1 Annual Meetings. The annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, *provided* that the Board may in its sole discretion determine that the meeting shall be (a) held solely by means of remote communication or (b) held in person and by means of remote communication, in each case pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting.

Section 2.2 Special Meetings. Except as otherwise required by applicable law or provided in the Corporation's Amended and Restated Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**"), special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, the Chief Executive Officer, or the Board; *provided, however*, that at any time when shares of Class B common stock, par value \$0.001 per share (the "**Class B Common Stock**"), of the Corporation remain outstanding, special meetings of the stockholders of the Corporation for any purpose or purposes shall also be called at the request of stockholders as, and to the extent, provided in the Certificate of Incorporation. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, *provided* that the Board may in its sole discretion determine that the meeting shall be (a) held solely by means of remote communication or (b) held in person and by means of remote communication, in each case pursuant to Section 9.5(a).

Section 2.3 Notices. Notice of each stockholders meeting stating the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting if such date is different from the record date for determining stockholders entitled to notice of the meeting shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Such notice shall be given by the Corporation not less than 10 nor more than 60 days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting; *provided, however*, that with respect to any special meeting of stockholders previously scheduled by the Board or the Chairman of the Board at the request of stockholders of the Corporation in accordance with the Certificate of Incorporation, the Board of Directors shall not postpone, reschedule or cancel such special meeting without the prior written consent of the stockholders who requested such meeting.

Section 2.4 Quorum. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the

voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. A quorum, once established, shall not be broken by the subsequent withdrawal of enough votes to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power 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 such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5 Voting of Shares.

(a) Voting Lists. The Corporation shall prepare at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order for each class of stock and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of 10 days ending on the day before the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders. For purposes of these By-Laws, “*stock ledger*” shall have the definition set forth in Section 219 of the Delaware General Corporation Law, as amended (“*DGCL*”).

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. In the case any matter is voted upon by written ballot, if authorized by the Board, the requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission (as defined in Section 2.3), *provided* that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person’s discretion, may require that any votes cast at a meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed with the Secretary before being voted. The authorization of a person to act as proxy may be documented, signed, and delivered in accordance with Section 116 of the DGCL, *provided* that such authorization shall set forth, or be delivered with, information enabling the Corporation to determine the identity of the stockholder granting such authorization. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation (“*Preferred Stock*”), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. With respect to all other matters, the affirmative vote of a majority of the votes cast (affirmatively or negatively) by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon shall be sufficient to approve all other matters, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these By-Laws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Corporation may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed prior to the meeting, the

chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6 Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place, if any. Notice need not be given of any such adjourned meeting if the date, time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are provided in accordance with applicable law. At the adjourned meeting, the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with [Section 2.3](#) and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.7 Advance Notice for Business.

(a) Annual Meetings of Stockholders. Except for nominations for election to the Board pursuant to [Section 3.2](#), no business may be transacted at an annual meeting of stockholders, other than business that is either (x) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board, (y) otherwise properly brought before the annual meeting by or at the direction of the Board or (z) otherwise properly brought before the annual meeting by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving of the notice provided for in this [Section 2.7\(a\)](#) and who is entitled to vote at such annual meeting and (B) who complies with the notice procedures set forth in this [Section 2.7\(a\)](#). Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), and included in the notice of meeting given by or at the direction of the Board, the foregoing clause (z) shall be the exclusive means for a stockholder to propose business (other than nominations) to be brought before an annual meeting of stockholders.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation, even if such matter is already the subject of any notice to the stockholders or public announcement from the Board, and such business must otherwise be a proper matter for stockholder action. Subject to [Section 2.7\(a\)\(y\)](#), a stockholder's notice to the Secretary with respect to such business, to be timely, must (x) comply with the provisions of this [Section 2.7\(a\)\(i\)](#) and (y) be timely updated by the times and in the manner required by the provisions of [Section 2.7\(a\)\(iii\)](#). A stockholder's notice must be received by the Secretary at the principal executive offices of the Corporation not later than the 90th day nor earlier than the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; *provided, however*, that if the annual meeting is called for a date that is more than 30 days earlier or more than 60 days later than such anniversary date, notice by the stockholder to be timely must be so received not earlier than the 120th day before the meeting and not later than the later of (x) the 90th day before the meeting or (y) the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any notice time period) for the giving of a stockholder's notice as described in this [Section 2.7\(a\)](#).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth (A) as to each such matter such stockholder proposes to bring before the annual meeting (1) a brief description of the business desired to be brought before the annual meeting and any material interest in such business of such stockholder and any Stockholder Associated Person (as defined below), individually or in the aggregate, (2) the text of the proposal or business (including

the text of any resolutions proposed for consideration and if such business includes a proposal to amend these By-Laws, the text of the proposed amendment) and (3) the reasons for conducting such business at the annual meeting, (B) the name and address of the stockholder proposing such business, as they appear on the Corporation's books, and the name and address of any Stockholder Associated Person, (C) the class or series and number of shares of capital stock of the Corporation that are owned of record or are directly or indirectly owned beneficially by such stockholder and by any Stockholder Associated Person, (D) any option, warrant, convertible security, stock appreciation right, swap or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right is subject to settlement in the underlying class or series of shares of the Corporation or otherwise (a "**Derivative Instrument**") directly or indirectly owned beneficially by such stockholder or by any Stockholder Associated Person and any other direct or indirect opportunity of such stockholder or any Stockholder Associated Person to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (E) any proxy (other than a revocable proxy or written consent given in response to a solicitation made pursuant to Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any shares of the Corporation, (F) any short interest in any security of the Corporation held by such stockholder or any Stockholder Associated Person (for purposes of this Section 2.7, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (G) any rights owned beneficially by such stockholder or Stockholder Associated Person to dividends on the shares of the Corporation that are separated or separable from the underlying shares of the Corporation, (H) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (I) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such stockholder's or any Stockholder Associated Person's immediate family sharing the same household, (J) a description of all agreements, arrangements or understandings (written or oral) between or among such stockholder, any Stockholder Associated Person or any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (K) any other information relating to such stockholder and any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitation of proxies for a contested election of directors (even if an election contest is not involved), or would be otherwise required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (L) a representation that such stockholder is a holder of record of shares of capital stock of the Corporation entitled to vote at the meeting and intends to appear in person or through a qualified representative at the annual meeting to bring such business before the meeting and an acknowledgement that, if such stockholder (or a qualified representative of the stockholder) does not appear to present the stockholder's proposal at such meeting, the Corporation need not present the stockholder's proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation, (M) the names and addresses of other stockholders (including beneficial and record owners) known by the proposing stockholder to support the proposal, and to the extent known, the class or series and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholders, (N) any agreement, arrangement or understanding (written or oral) between such stockholder, on the one hand, and a Stockholder Associated Person, on the other hand, related to any subject matter that will be material in such stockholder's solicitation of stockholders (including, without limitation, matters of social, labor, environmental and governance policy), regardless of whether such agreement, arrangement or understanding relates specifically to the Corporation, (O) any direct or indirect interest of such stockholder in any contract with the Corporation or any affiliate of the Corporation (including any employment agreement, collective bargaining agreement or consulting agreement), (P) a complete and accurate description of any pending, or to such stockholder's knowledge, threatened, legal proceeding in which such stockholder is a party or participant involving the Corporation or, to such stockholder's knowledge, any current or former officer, director, affiliate or associate of the Corporation, (Q) a representation that the stockholder will provide the Corporation with the updates and supplements required by Section 2.7(a)(iii), (R) a statement of whether or not such stockholder, its qualified representatives and/or any Stockholder Associated Person intend to (1) deliver a proxy statement and/or form of proxy to holders of at least the percentage of voting power of all of

the shares of capital stock of the Corporation required under applicable law to carry the proposal or (2) otherwise engage in a solicitation (within the meaning of Rule 14a-1(l) under the Exchange Act) with respect to the proposal, and if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation, and (S) a representation that the stockholder has complied with all applicable requirements of state law and the Exchange Act with respect to matters set forth in this Section 2.7(a). A “*qualified representative*” of a stockholder means a person that is a duly authorized officer, manager or partner of such stockholder or is authorized by a writing (a) executed by such stockholder, (b) delivered (or a reliable reproduction or electronic transmission of the writing is delivered) by such stockholder to the Corporation prior to the taking of the action taken by such person on behalf of such stockholder and (c) stating that such person is authorized to act for such stockholder with respect to the action to be taken.

(iii) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.7(a) shall be true and correct as of the record date for the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (A) in the case of the update and supplement required to be made as of the record date for the meeting, not later than five business days after such record date and (B) in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof, as applicable, not later than eight business days prior to the date for the meeting or any adjournment or postponement thereof. For the avoidance of doubt, any information provided pursuant to this Section 2.7(a)(iii) shall not be deemed to cure any deficiencies in a notice previously delivered pursuant to this Section 2.7(a) and shall not extend the time period for the delivery of notice pursuant to this Section 2.7(a). If a stockholder fails to provide any written update or supplement in accordance with this Section 2.7(a)(iii), the information as to which such written update or supplement relates may be deemed not to have been provided in accordance with this Section 2.7(a).

(iv) If any information submitted pursuant to this Section 2.7(a) shall be inaccurate in any material respect, such information shall be deemed not to have been provided in accordance with this Section 2.7(a). The proposing stockholder shall notify the Secretary in writing at the principal executive offices of the Corporation of any material inaccuracy or material change in any information submitted pursuant to this Section 2.7(a) within two business days after becoming aware of such inaccuracy or change. Upon written request of the Secretary on behalf of the Board (or a duly authorized committee thereof), the proposing stockholder shall provide, within five business days after delivery of such request (or such earlier period as may be specified in such request), (A) written verification, reasonably satisfactory to the Board or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by such stockholder pursuant to this Section 2.7(a) and (B) a written affirmation of any information submitted by such stockholder pursuant to this Section 2.7(a) as of an earlier date. If the proposing stockholder fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 2.7(a).

(v) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder’s intention to present such proposal at an annual meeting only pursuant to and in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder’s proposal has been included in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), *provided, however*, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. The Board (or an officer designated thereby) shall have the power and duty to determine whether a stockholder proposal has been made in accordance with the provisions set forth in this Section 2.7(a) and, if the Board or such officer determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), 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 matter may have been received by the Corporation.

(vi) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. 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. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Definitions. For purposes of these By-Laws, (i) "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act; (ii) "**Stockholder Associated Person**" shall mean for any proposing or nominating stockholder (A) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (B) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder, or (C) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (A) and (B); and (iii) a stockholder shall be deemed to be "**acting in concert**" with a person if such stockholder has knowingly acted (whether or not pursuant to an express agreement, arrangement or understanding) at any time during the prior two years in concert with such person (or control person thereof) in relation to matters (whether or not specific to the Corporation) that will be material to the stockholder's solicitation of stockholders, including, without limitation, matters of social, labor, environmental and governance policy; *provided, however*, that a stockholder shall not be deemed to be acting in concert with a person whose primary business is to serve as investment manager or adviser with respect to investing and trading in securities for a client or its own account.

(d) Notwithstanding anything to the contrary contained in this Section 2.7, the notice procedures set forth in paragraphs (a)(i), (a)(ii), (a)(iii), (a)(iv) or (b) of this Section 2.7 with respect to any annual or special meeting of stockholders shall not apply to a proposal made by a stockholder holding at least 25% of the Class B Common Stock of the Corporation.

Section 2.8 Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting (regardless of whether a quorum is present), 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 or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting. The secretary of each annual and special meeting of stockholders shall keep the minutes thereof.

Section 2.9 Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only in the manner provided in the Certificate of Incorporation and in accordance with applicable law.

ARTICLE III DIRECTORS

Section 3.1 Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2 Advance Notice for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors by the stockholders of the Corporation. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving of the notice provided for in this Section 3.2 and who is entitled to vote in the election of directors at such meeting and (B) who complies with the procedures set forth in this Section 3.2. Subject to Section 3.2(k), the foregoing clause (ii) shall be the exclusive means for a stockholder to make nominations of persons for election to the Board at any annual or special meeting of stockholders.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation, even if the election of directors to the Board is already the subject of any notice to the stockholders or public announcement from the Board. To be timely, a stockholder's notice to the Secretary must (i) comply with the provisions of this Section 3.2(b) and (ii) be timely updated by the times and in the manner required by the provisions of Section 3.2(e). A stockholder's notice must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the 90th day nor earlier than the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; *provided, however*, that if the annual meeting is called for a date that is more than 30 days earlier or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the 120th day before the meeting and not later than the later of (A) the 90th day before the meeting or (B) the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the 120th day before the meeting and not later than the later of (A) the 90th day before the meeting or (B) the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. The public announcement of an adjournment or postponement of an annual meeting or special meeting shall not commence a new time period (or extend any notice time period) for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) to the contrary, if the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned of record or are directly or indirectly owned beneficially by the person, (D) any Derivative Instrument directly or indirectly owned beneficially by such nominee and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation and (E) any other information relating to the person that would be required to be disclosed in a proxy statement soliciting proxies for the election of such person as a director in an election contest (even if an election contest is not involved) or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice (A) the name and address of such stockholder as they appear on the Corporation's books, and the name and address of any Stockholder Associated Person, (B) the class or series

and number of shares of capital stock of the Corporation that are owned of record or directly or indirectly owned beneficially by such stockholder and any Stockholder Associated Person, (C) any Derivative Instrument directly or indirectly owned beneficially by such stockholder or Stockholder Associated Person and any other direct or indirect opportunity of such stockholder or any Stockholder Associated Person to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (D) any proxy (other than a revocable proxy or written consent given in response to a solicitation made pursuant to Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any shares of the Corporation, (E) any short interest in any security of the Corporation held by such stockholder or any Stockholder Associated Person (for purposes of this Section 3.2 a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (F) any rights beneficially owned, directly or indirectly, by such stockholder or Stockholder Associated Person to dividends on the shares of the Corporation that are separated or separable from the underlying shares of the Corporation, (G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (H) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such stockholder's or any Stockholder Associated Person's immediate family sharing the same household, (I) a description of all agreements, arrangements or understandings (written or oral) between or among such stockholder, any Stockholder Associated Person, any proposed nominee or any other person or persons (including their names) pursuant to which the nomination or nominations are to be made by such stockholder, (J) a representation that such stockholder is a holder of record of shares of capital stock of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and an acknowledgement that, if such stockholder (or a qualified representative of the stockholder) does not appear to present the stockholder's nomination at such meeting, the Corporation need not present the stockholder's nomination for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation, (K) the names and addresses of other stockholders (including beneficial and record owners) known by the proposing stockholder to support the nomination, and to the extent known, the class or series and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholders, (L) any agreement, arrangement or understanding (written or oral) between such stockholder, on the one hand, and a Stockholder Associated Person, on the other hand, related to any subject matter that will be material in such stockholder's solicitation of stockholders (including, without limitation, matters of social, labor, environmental and governance policy), regardless of whether such agreement, arrangement or understanding relates specifically to the Corporation, (M) any agreement, arrangement or understanding (written or oral) between such stockholder or any Stockholder Associated Person, on the one hand, and the director nominee, on the other hand, related to any subject matter that will be material in such stockholder's solicitation of stockholders (including, without limitation, matters of social, labor, environmental and governance policy), regardless of whether such agreement, arrangement or understanding relates specifically to the Corporation, (N) any plans or proposals on the part of such stockholder or any Stockholder Associated Person to nominate directors at any other company with a class of equity securities registered pursuant to Section 12 of the Exchange Act, whether or not trading in such securities has been suspended, within the next 12 months (a "**Public Company**"), (O) any proposals or nominations submitted on behalf of such stockholder or any Stockholder Associated Person seeking to nominate directors at any other Public Company within the past 36 months (whether or not such proposal or nomination was publicly disclosed), (P) any other information relating to such stockholder and any Stockholder Associated Person that would be required to be disclosed in a proxy statement soliciting proxies for the election of such person as a director in an election contest (even if an election contest is not involved) or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (Q) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder or any Stockholder Associated Person, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any Stockholder Associated Person, or any person acting in concert therewith, was the "**registrant**" for purposes of such rule and the nominee was a director or executive officer of such registrant, (R) any direct or indirect interest of such stockholder in any contract with the Corporation or any affiliate of the Corporation (including any employment agreement, collective bargaining agreement or consulting agreement), (S) a complete and accurate description of any pending, or to such stockholder's knowledge, threatened, legal proceeding

in which such stockholder is a party or participant involving the Corporation or, to such stockholder's knowledge, any current or former officer, director, affiliate or associate of the Corporation, (T) a representation that the stockholder will provide the Corporation with the updates and supplements required by Section 3.2(e), (U) a statement of whether or not such stockholder, its qualified representatives and/or any Stockholder Associated Person intend to solicit proxies or votes in support of such director nominees or nomination in accordance with Rule 14a-19 promulgated under the Exchange Act (and if so, such statement shall also include an undertaking that such stockholder will deliver to beneficial owners of shares representing at least 67% of the voting power of the stock entitled to vote generally in the election of directors either (1) at least 20 calendar days before the annual meeting, a copy of its definitive proxy statement for the solicitation of proxies for its director candidates, or (2) at least 40 calendar days before the annual meeting a Notice of Internet Availability of Proxy Materials that would satisfy the requirements of Rule 14a-16(d) of the Exchange Act), and (V) a representation that the stockholder has complied with all applicable requirements of state law and the Exchange Act with respect to matters set forth in this Section 3.2. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee in the Corporation's proxy statement and to serve as a director if elected and a representation that such nominee currently intends to serve as a director for the full term for which such nominee is standing for election. With respect to each person, if any, whom the stockholder proposes to nominate for election to the Board, a stockholder's notice must, in addition to the matters set forth above in this paragraph (d), also include a completed and signed questionnaire, representation and agreement required by Section 3.3 of these By-Laws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. If requested by the Corporation, any supplemental information required under this Section 3.2(d) shall be provided by the stockholder within 10 days after it has been requested by the Corporation. In addition, the Board may require any proposed nominee to submit to interviews with the Board or any committee thereof, and such proposed nominee shall make himself or herself available for any such interviews within no less than 10 days following the date of such request.

(e) A stockholder providing notice of a director nomination shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 3.2 shall be true and correct as of the record date for the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (i) in the case of the update and supplement required to be made as of the record date for the meeting, not later than five business days after such record date and (ii) in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof, as applicable, not later than eight business days prior to the date for the meeting or any adjournment or postponement thereof. For the avoidance of doubt, any information provided pursuant to this Section 3.2(e) shall not be deemed to cure any deficiencies in a notice previously delivered pursuant to this Section 3.2 and shall not extend the time period for the delivery of notice pursuant to this Section 3.2. If a stockholder fails to provide any written update or supplement in accordance with this Section 3.2(e), the information as to which such written update or supplement relates may be deemed not to have been provided in accordance with this Section 3.2.

(f) If any information submitted pursuant to this Section 3.2 shall be inaccurate in any material respect, such information shall be deemed not to have been provided in accordance with this Section 3.2. The nominating stockholder shall notify the Secretary in writing at the principal executive offices of the Corporation of any material inaccuracy or material change in any information submitted pursuant to this Section 3.2 (including if the stockholder or any Stockholder Associated Person no longer intends to solicit proxies in accordance with the representation made pursuant to Section 3.2(d)(ii)(U)) within two business days after becoming aware of such inaccuracy or change. Upon written request of the Secretary on behalf of the Board (or a duly authorized committee thereof), the nominating stockholder shall provide, within five business days after delivery of such request (or such earlier period as may be specified in such request), (i) written verification, reasonably satisfactory to the Board or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by such stockholder pursuant to this Section 3.2 and (ii) a written affirmation of any information submitted by such stockholder pursuant to this Section 3.2 as of an earlier date. If the nominating stockholder fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 3.2.

(g) Notwithstanding the foregoing provisions of this Section 3.2, unless otherwise required by law, no stockholder shall solicit proxies in support of director nominees other than the Corporation's nominees unless such stockholder has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of

such proxies. If (i) any stockholder provides notice pursuant to Rule 14a-19(b) under the Exchange Act and (ii) such stockholder subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or (3) under the Exchange Act (as determined by the Board or an officer designated thereby), then the Corporation shall disregard any proxies for any proposed nominees on the Corporation's proxy card other than the Corporation's nominees, notwithstanding that proxies in favor thereof may have been received by the Corporation. Upon request by the Corporation, if any stockholder provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such stockholder shall deliver to the Secretary, no later than five business days prior to the applicable meeting, reasonable evidence that the requirements of Rule 14a-19(a)(3) under the Exchange Act have been satisfied.

(h) The Board (or an officer designated thereby) shall have the power and the duty to determine whether a nomination has been made in accordance with the provisions set forth in this Section 3.2, and, if the Board or such officer determines that any nomination was not made in accordance with the provisions of this Section 3.2, such nomination shall not be considered at the meeting in question.

(i) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein.

(j) Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(k) Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to nominate and elect directors pursuant to the Certificate of Incorporation or the right of the Board to fill newly created directorships and vacancies on the Board pursuant to the Certificate of Incorporation.

(l) Notwithstanding anything to the contrary contained in this Section 3.2, the notice procedures set forth in paragraphs (b), (c), (d), (e) or (f) of this Section 3.2 with respect to any annual or special meeting of stockholders shall not apply to a nomination made by a stockholder holding at least 25% of the Class B Common Stock of the Corporation.

Section 3.3 Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 3.2 of these By-Laws or, in the case of a nomination made by or at the direction of the Board or by a stockholder holding at least 25% of the Class B Common Stock of the Corporation, in accordance with such time periods as the Board may from time to time prescribe) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made in the form required by the Corporation (which form such nominating stockholder shall request in writing from the Secretary prior to submitting notice and which the Secretary shall provide to such nominating stockholder within 10 days after receiving such request), and a written representation and agreement in the form required by the Corporation (which form such nominating stockholder shall request in writing from the Secretary prior to submitting notice and which the Secretary shall provide to such nominating stockholder within 10 days after receiving such request) providing that, among other things, such person (a) is not and will not become a party to (i) 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 (ii) 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) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, if elected as a director of the Corporation, will be and remain in compliance with all applicable rules of any securities exchanges upon which the Corporation's securities are listed, the Certificate of Incorporation, these By-Laws and all applicable policies and guidelines of the Corporation publicly disclosed from time to time, including, without limitation, those relating to corporate governance, conflict of interest, confidentiality, stock ownership and securities trading.

Section 3.4 Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or

other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

ARTICLE IV BOARD MEETINGS

Section 4.1 Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting, if any, unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this [Section 4.1](#).

Section 4.2 Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places as shall from time to time be determined by the Board.

Section 4.3 Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or Chief Executive Officer and (b) shall be called by the Chairman of the Board, Chief Executive Officer or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in [Section 9.3](#), to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with [Section 9.4](#).

Section 4.4 Quorum; Required Vote. A majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board, 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, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By-Laws. For purposes of these By-Laws, the term “*Whole Board*” shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5 Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and any consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. After an action is taken, the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) shall be filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6 Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

**ARTICLE V
COMMITTEES OF DIRECTORS**

Section 5.1 Establishment. The Board may designate one or more committees, including but not limited to an Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2 Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3 Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

Section 5.4 Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By-Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

**ARTICLE VI
OFFICERS**

Section 6.1 Officers. The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a President, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board, Chief Executive Officer, or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board, Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall advise and counsel the Chief Executive Officer and other officers and shall exercise such powers and perform such duties as shall be assigned to or required of the Chairman of the Board from time to time by the Board or these By-Laws. The Chairman of the Board must be a director of the Corporation.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) President. The President shall be the chief operating officer of the Corporation and shall, subject to the authority of the Chief Executive Officer and the Board, have general management and control of the day-to-day business operations of the Corporation and shall consult with and report to the Chief Executive Officer. The President shall put into operation the business policies of the Corporation as determined by the Chief Executive Officer and the Board and as communicated to the President by the Chief Executive Officer and the Board. The President shall make

recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer or the President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Treasurer. The Treasurer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer, or the President may authorize).

(h) Assistant Treasurers. The Assistant Treasurer or, if there shall be more than one, the Assistant Treasurers in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Treasurer, perform the duties and exercise the powers of the Treasurer.

Section 6.2 Term of Office; Removal; Vacancies. All officers elected by the Board shall hold office until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board, Chief Executive Officer, or President may also be removed, with or without cause, by the Chairman of the Board, Chief Executive Officer, or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the Board, Chief Executive Officer, or President may be filled by the Chairman of the Board, Chief Executive Officer, or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3 Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4 Multiple Officeholders; Stockholder and Director Officers; Delegation. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By-Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware. The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any other provisions of these By-Laws.

ARTICLE VII SHARES

Section 7.1 Certificated and Uncertificated Shares. The shares of the Corporation shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed in accordance with Section 7.3 representing the number of shares registered in certificate form. The Corporation shall not have power to issue a certificate representing shares in bearer form.

Section 7.2 Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause 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 or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; *provided, however*, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice 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 or rights.

Section 7.3 Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two authorized officers of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4 Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as approved by the Board in any manner permitted by the DGCL. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, the Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated.

Section 7.5 Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6 Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with a stock power or other indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7 Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, also so inspect the books and records of the Corporation.

Section 7.8 Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice given by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice given by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 7.9 Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or

more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “*proceeding*”), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter a “*Covered Person*”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, against all expenses, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding; *provided, however*, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

Section 8.2 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, a Covered Person shall also have the right to be paid by the Corporation the expenses (including, without limitation, attorneys’ fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an “*advancement of expenses*”); *provided, however*, that, if the DGCL requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “*undertaking*”), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “*final adjudication*”) that such Covered Person is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

Section 8.3 Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim to the fullest extent permitted by law. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by (a) the Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (b) the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, shall be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 8.4 Non-Exclusivity of Rights. The rights provided to Covered Persons pursuant to this Article VIII shall not be exclusive of any other right that any Covered Person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents with respect to indemnification and advances, to the fullest extent not prohibited by the DGCL.

Section 8.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust, other enterprise or nonprofit entity against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6 Indemnification of Other Persons. This Article VIII 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 Covered Persons. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Covered Persons under this Article VIII.

Section 8.7 Repeal, Amendment or Modification. Any repeal, amendment or modification of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws inconsistent with this Article VIII, shall, to the extent permitted by applicable law, be prospective only (except to the extent such amendment, modification or change in applicable law permits the Corporation to provide broader indemnification rights to Covered Persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal, amendment, modification or adoption of such inconsistent provision.

Section 8.8 Certain Definitions. For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.9 Contract Rights. The rights provided to Covered Persons pursuant to this Article VIII (a) shall be contract rights based upon good and valuable consideration, pursuant to which a Covered Person may bring suit as if the provisions of this Article VIII were set forth in a separate written contract between the Covered Person and the Corporation, (b) shall fully vest at the time the Covered Person first assumes his or her position as a director or officer of the Corporation, (c) are intended to be retroactive and shall be available with respect to any act or omission occurring prior to the adoption of this Article VIII, (d) shall continue as to a Covered Person who has ceased to be a director or officer of the Corporation, and (e) shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

Section 8.10 Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX MISCELLANEOUS

Section 9.1 Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; *provided, however*, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2 Fixing Certain Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a record date, such date shall also be the record date

for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be on the business day next preceding the day on which notice is given, or, if notice is waived, on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 9.2(a) at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be on the day on which the Board adopts the resolution relating thereto.

Section 9.3 Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall 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 an Assistant Secretary or to the Corporation's 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.

(c) Electronic Transmission “*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 through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram or any other manner permitted by the DGCL.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder’s consent by delivering written notice of such revocation 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 such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder’s address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder’s then-current address, the requirement that notice be given to such stockholder shall be reinstated. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4 Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5 Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place, solely by means of remote communication or held at a designated place and by means of remote communication, *provided* that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote

on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) **Board Meetings.** Unless otherwise restricted by applicable law, the Certificate of Incorporation or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6 Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7 Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8 Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, Chief Executive Officer, President or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9 Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10 Seal. The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11 Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12 Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13 Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer, the President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14 Securities of Other Corporations or Entities Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer, President or any Vice President. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation or other entity in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation or entity, and at any such meeting or with respect to any such consent shall possess and may exercise any and all

rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15 Amendments. The Board of Directors is authorized to make, repeal, alter, amend and rescind, in whole or in part, these By-Laws without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or the Certificate of Incorporation. For so long as shares of Class B Common Stock remain outstanding, the affirmative vote of the holders of a majority in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the By-Laws (including, without limitation, this Section 9.15) or to adopt any provision inconsistent therewith. Notwithstanding any other provisions of these By-Laws or any provision of law that might otherwise permit a lesser vote of the stockholders, once no shares of Class B Common Stock remain outstanding, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock), these By-Laws or applicable law, the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of these By-Laws (including, without limitation, this Section 9.15) or to adopt any provision inconsistent herewith.

Section 9.16 Choice of Forum. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.16.

CONSTRUCTION PARTNERS, INC.
2018 EQUITY INCENTIVE PLAN

PERFORMANCE STOCK UNIT AWARD GRANT NOTICE

Pursuant to this Performance Stock Unit Award Grant Notice (this “**Notice of Grant**”), you (the “**Participant**”) are hereby granted a Performance Stock Unit Award (the “**Award**”) by Construction Partners, Inc., a Delaware corporation (the “**Company**”) under the Construction Partners, Inc. 2018 Equity Incentive Plan (the “**Plan**”), as set forth below. Each Performance Stock Unit (a “**PSU**”) subject to the Award has a notional value equivalent to one share of the Company’s Common Stock for purposes of determining the number of Shares subject to the Award.

The Award is subject to all the terms and conditions set forth in this Notice, the Plan, and the Performance Stock Unit Agreement, attached hereto as **Exhibit A** (the “**Award Agreement**”), each of which are incorporated by reference into this Notice of Grant. Capitalized terms that are not defined in the Notice of Grant shall have the meanings given to them in the Award Agreement, and if not defined in the Award Agreement, the meanings given to them in the Plan.

Name of Participant:	
Address of Participant:	
Target Number of PSUs:	_____ (the “ Target PSUs ”); provided that the actual number of PSUs that are granted and eligible to vest is up to 172.5% of the Target PSUs (or _____ PSUs).
Date of Grant:	
Acceptance Expiration Date:	15 days after the Participant’s receipt of this Notice of Grant.
Vesting Schedule:	Except as specifically provided in the Award Agreement and subject to the restrictions and conditions set forth in the Plan, the PSUs shall vest on the Vesting Date (as defined on Schedule 1 to this Notice of Grant, attached hereto, which is incorporated by reference into this Notice of Grant), based upon the achievement of the performance goals set forth on Schedule 1 (the “ Performance Vesting Conditions ”).

By your signature and the signature of the Company’s representative below, you and the Company agree to be bound by all of the terms and conditions of this Notice of Grant and the accompanying Award Agreement and the Plan (each incorporated herein by this reference as if set forth in full in this document). By executing this Notice of Grant, you hereby irrevocably elect to accept the Award granted under this Notice of Grant and the related Award Agreement and to receive the PSUs designated above subject to the terms of the Plan, this Notice of Grant and the Award Agreement.

You acknowledge and agree that this Award does not constitute an express or implied promise of your continued engagement as an employee, officer, director or other service provider for the vesting period, for any period, or at all, and shall not interfere with your right or the Company’s right to terminate your employment or service relationship with the Company or any Affiliate at any time, with or without Cause.

You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and the Award.

This Notice of Grant may be executed in duplicate counterparts, the production of either of which shall be sufficient for all purposes for the proof of the binding terms of this Award.

PARTICIPANT

Name: _____, an individual

Dated: _____

CONSTRUCTION PARTNERS, INC.

By:
Title:

Dated: _____

SCHEDULE 1

**CONSTRUCTION PARTNERS, INC.
2018 EQUITY INCENTIVE PLAN**

PERFORMANCE VESTING CONDITIONS

Performance Period: October 1, 20__ – September 30, 20__.

Performance Goals: For the Performance Period, there are two separate performance goals, along with an achievement modifier (the “Performance Goals”): (i) the compound aggregate revenue growth rate over the Performance Period (the “Revenue Growth Rate”);⁽¹⁾ and (ii) the average annual Adjusted EBITDA margin over the Performance Period (the “Adjusted EBITDA margin”);⁽²⁾ as set forth below. The target Revenue Growth Rate for the Performance Period is ____ (the “Revenue Growth Target”) and the target average Adjusted EBITDA margin for the Performance Period is ____ (the “Adjusted EBITDA Margin Target”). The achievement of the Performance Goals shall be modified by the total shareholder return (“TSR”) ranking of the Company against the Russell 2000 Index over the Performance Period (the “Relative TSR”).

Vesting Date: The “Vesting Date” shall be the date on which the Administrator determines for the Performance Period (i) the actual achievement of the Revenue Growth Rate for the Performance Period, (ii) the actual achievement of the average Adjusted EBITDA margin for the Performance Period, and (iii) the actual achievement of the Relative TSR, which shall occur within sixty (60) days following the end of the Performance Period, provided that you are employed by or providing services to the Company or an Affiliate on such date.

Vesting Schedule: Fifty percent (50%) of the Target PSUs (the “Revenue Target PSUs”) will be eligible to vest based on the achievement of Revenue Growth Rate as it compares to the Revenue Growth Target, as set forth in the first chart below, and fifty percent (50%) of the Target PSUs (the “Adjusted EBITDA Margin Target PSUs”), will be eligible to vest based on the achievement of average Adjusted EBITDA margin as it compares to the Adjusted EBITDA Margin Target, as set forth in the second chart below. The number of PSUs eligible to vest based on the achievement of the Revenue Growth Rate and Adjusted EBITDA margin Performance Goals (i.e., the Preliminary Vested PSUs (as defined below)) shall be adjusted upward or downward by up to fifteen percent (15%) based on the TSR Modifier (as defined below), as set forth in the third chart below.

Revenue Growth Rate:

The percentage of the Revenue Target PSUs that may vest on the Vesting Date (the “**Revenue Vested PSUs**”) is based on the actual Revenue Growth Rate versus the Revenue Growth Target (expressed as a percentage, rounded to two decimal places), as set forth below:

Performance Level	Revenue Growth Rate vs. Revenue Growth Target	Payout % / Revenue Vested PSUs ⁽³⁾
Below Threshold	< ____ %	0% of Revenue Target PSUs
Threshold	____ %	75% of Revenue Target PSUs
Target	100%	100% of Revenue Target PSUs
Maximum	> ____ %	150% of Revenue Target PSUs

Adjusted EBITDA Margin:

The percentage of the Adjusted EBITDA Margin Target PSUs that may vest on the Vesting Date (the “**Adjusted EBITDA Margin Vested PSUs**”) is based on the actual average Adjusted EBITDA margin versus the Adjusted EBITDA Margin Target (expressed as a percentage, rounded to two decimal places), as set forth below:

Performance Level	Adjusted EBITDA Margin vs. Adjusted EBITDA Margin Target	Payout % / Adjusted EBITDA Margin Vested PSUs ⁽⁴⁾
Below Threshold	< ___ %	0% of Adjusted EBITDA Margin Target PSUs
Threshold	___ %	75% of Adjusted EBITDA Margin Target PSUs
Target	100%	100% of Adjusted EBITDA Margin Target PSUs
Maximum	> ___ %	150% of Adjusted EBITDA Margin Target PSUs

TSR Modifier:

The Revenue Vested PSUs and Adjusted EBITDA Margin Vested PSUs collectively are referred to herein as the **‘Preliminary Vested PSUs.’**

The Preliminary Vested PSUs determined above shall be adjusted upward or downward by up to fifteen percent (15%) based on the Company’s Relative TSR ranking against the Russell 2000 Index over the Performance Period, provided that the Company’s TSR must be positive in order for any upward adjustment to be made (the **‘TSR Modifier’**), as set forth in the chart below (such Preliminary Vested PSUs, as adjusted by the TSR Modifier, shall be referred to herein as, the **Vested PSUs**). ⁽⁵⁾

The Administrator shall calculate the TSR for the Company and each company within the Russell 2000 Index (an **‘Index Company’**) (expressed as a percentage, rounded up or down to the nearest whole number). The Company and each Index Company shall be ranked from lowest to highest based on the TSR of each company. The percentile rank of the Company’s TSR will be determined relative to the TSR ranking of each Index Company (expressed as a percentage, rounded up or down to the nearest whole number) (the **‘Company’s Rank’**). The Company’s Rank will then be utilized to determine the TSR Modifier, as set forth below:

Company’s Rank vs. Russell 2000 Index (Percentile)	TSR Modifier ⁽⁶⁾
25 th Percentile or Below	-15%
50 th Percentile	0%
75 th Percentile or Above	+15%

** If the absolute TSR of the Company is negative over the Performance Period, then the TSR Modifier shall be capped at 0%*

Forfeiture: Except as otherwise provided herein, vesting will cease upon your termination of Continuous Service prior to the Vesting Date and the unvested portion of the Award will immediately terminate and be forfeited.

Retirement: Notwithstanding the foregoing, in the event of your termination of Continuous Service due to your Retirement (as defined below) on or after the first anniversary of the Date of Grant but prior to the Vesting Date, the PSUs shall remain outstanding and eligible for vesting on the Vesting Date based on the actual achievement of the Performance Goals (as modified by the TSR Modifier), and pro-rated based on a fraction, determined by the number of completed days of service from beginning of the Performance Period through the date of your Retirement over the total number of days in the Performance Period. Any PSUs that do not vest on the Vesting Date shall terminate and be forfeited as of the Vesting Date. For purposes of this Award, the term “Retirement” shall mean your termination of Continuous Service on or after your attainment of (i) age sixty-seven (67) and (ii) fifteen (15) years of service with the Company or any Affiliate; provided, however, that if at any time the Administrator determines that your termination of Continuous Service should be a Termination of Service for Cause, then your termination of service will no longer be due to your Retirement and all PSUs shall immediately be forfeited, and no longer eligible for vesting on the Vesting Date.

⁽¹⁾For purposes of this Schedule 1, Revenue Growth Rate shall mean the rate of increase in total gross revenues of the Company and its consolidated Subsidiaries over the Performance Period, based on reported GAAP figures, calculated as follows:

$$\text{Revenue Growth Rate} = \left[\frac{\text{Ending year total revenue (i.e., fiscal year ending 9/30/20__)} - \text{Starting year total revenue (i.e., fiscal year ending 9/30/20__)}}{3} \right] - 1$$

⁽²⁾For purposes of this Schedule 1, Adjusted EBITDA margin shall mean the average annual Adjusted EBITDA margin over the Performance Period, based on reported GAAP figures, calculated as follows:

$$\text{Average Adjusted EBITDA margin} = \frac{\text{Year 1 Adjusted EBITDA Margin} + \text{Year 2 Adjusted EBITDA Margin} + \text{Year 3 Adjusted EBITDA Margin}}{3}$$

For purposes of the foregoing calculation, Adjusted EBITDA represents Adjusted EBITDA as a percentage of revenues for the applicable period. Adjusted EBITDA represents net income before, as applicable from time to time, (i) interest expense, net, (ii) provision (benefit) for income taxes, (iii) depreciation, depletion, accretion and amortization, (iv) equity-based compensation expense, (v) loss on the extinguishment of debt, (vi) certain management fees and expenses and (vii) nonrecurring legal settlement costs and associated legal expenses unrelated to the Company's core operations.

⁽³⁾The Payout % determining the number of Revenue Vested PSUs will be interpolated for performance between each Performance Level (rounded to two decimal places). For the avoidance of doubt, there will be no payout and no Revenue Vested PSUs if the performance level set forth above is less than ___% of the Revenue Growth Target.

⁽⁴⁾The Payout % determining the number of Adjusted EBITDA Margin Vested PSUs will be interpolated for performance between each Performance Level (rounded to two decimal places). For the avoidance of doubt, there will be no payout and no Adjusted EBITDA Margin Vested PSUs if the performance level set forth above is less than ___% of the Adjusted EBITDA Margin Target.

⁽⁵⁾For purposes of this Award, the TSR for the Company and the Russell 2000 Index shall be calculated by the following formula:

$$\text{TSR} = \left[\frac{\text{Ending Price} - \text{Beginning Price} + \text{Reinvested Dividends}}{\text{Beginning Price}} \right] \times 100\%$$

For purposes of the foregoing formula, the following terms shall have the following meanings:

“**Beginning Price**” means the average closing price of the Company's Common Stock or the common stock of the companies within the Russell 2000 Index, as applicable, during the thirty (30) Trading Day period ending on September 30, 20__.

“**Ending Price**” means the average closing price of the Company's Common Stock or the common stock of the companies within the Russell 2000 Index, as applicable, during the final thirty (30) Trading Days of the Performance Period (or earlier date if the Performance Period is shortened pursuant to the terms set forth herein). Notwithstanding the foregoing, if the Performance Period is shortened as of the date of a Change in Control of the Company, the Ending Price for the Company shall be based on the consideration received in connection with such Change in Control.

“**Reinvested Dividends**” means the dividends which are paid by the Company (or the member of the Russell 2000 Index) to its shareholders, assuming such dividends are reinvested in the applicable company, through the Performance Period (or earlier date if the Performance Period is shortened pursuant to the terms set forth herein).

“**Trading Day**” means a day on which trading in the common stock generally occurs on the principal U.S. national or regional securities exchange on which the common stock is then listed or, if the common stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the common stock is then traded.

⁽⁶⁾The TSR Modifier will be interpolated for Relative TSR performance between the 25th Percentile and the 50th Percentile and between the 50th Percentile and the 75th Percentile (based on whole percentages).

EXHIBIT A

**CONSTRUCTION PARTNERS, INC.
2018 EQUITY INCENTIVE PLAN**

PERFORMANCE STOCK UNIT AWARD AGREEMENT

This Performance Stock Unit Award Agreement (the “**Award Agreement**”) is entered into on the Date of Grant, subject to the Participant’s acceptance of the terms of the Award Agreement evidenced by the Participant’s signature on the Performance Stock Unit Award Grant Notice accompanying this Award Agreement (the “**Notice of Grant**”), by and between Construction Partners, a Delaware corporation (the “**Company**”), and the Participant named in the Notice of Grant.

Under the Construction Partners, Inc. 2018 Equity Incentive Plan (the “**Plan**”), the Administrator has authorized the grant to the Participant of the Award under the terms and subject to the conditions set forth in this Award Agreement and the Plan. Unless otherwise defined herein, the capitalized terms used herein shall have the meanings given to them in the Notice of Grant, and if not defined in the Notice of Grant, the meanings ascribed to them in the Plan.

NOW, THEREFORE, in consideration of the premises and the benefits to be derived from the mutual observance of the covenants and promises contained in this Award Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Basis for Award. This Award is granted under the Plan for valid consideration provided to the Company by the Participant. By the Participant’s execution of the Notice of Grant, the Participant agrees to accept the Award granted under the Notice of Grant and this Award Agreement and to receive the PSUs designated in the Notice of Grant subject to the terms of the Plan, the Notice of Grant and this Award Agreement.
2. PSUs. Each PSU represents the right to receive a Share on the Vesting Date. Unless and until the PSUs vest, the Participant will have no right to receive Shares under such PSUs. Prior to actual distribution of Shares pursuant to any vested PSUs, such PSUs will represent an unsecured obligation of the Company.
3. Vesting. Subject to Paragraph 4 hereof and to any other relevant Plan provisions, the PSUs granted under the Award will vest according to the vesting schedule specified in the Notice of Grant (such PSUs that become vested, the “**Vested PSUs**”).
4. Forfeiture upon Termination of Continuous Service. Except as provided in the Notice of Grant, if the Participant has a termination of Continuous Service for any or no reason prior to vesting, the PSUs that have not vested (the “**Unvested PSUs**”) will thereupon be terminated and forfeited at no cost to the Company, and the Participant will have no rights with respect to any Unvested PSUs so forfeited and terminated.
5. Conversion and Payment After Vesting. Subject to Paragraph 16(i) hereof, any PSUs that vest in accordance with Paragraph 3 and become Vested PSUs will be converted into Shares and paid to the Participant (or in the event of the Participant’s death, to his or her estate) on or as soon as practicable after, the Vesting Date (but in any event, within sixty (60) days of the date on which the PSUs vest).
6. Tax Withholding.
 - (a) As a condition to the conversion and payment of any Vested PSUs, the Participant must pay to the Company any federal, state or local taxes required by law to be withheld with respect to the PSUs that vest. In addition to the Company’s right to withhold from any compensation paid to the Participant by the Company, the Participant may provide for payment of withholding taxes in full by cash or check or, if the Administrator permits, by one or more of the alternative methods of payment set forth in the Plan.
 - (b) Notwithstanding the forgoing, the Participant may satisfy any federal, state or local tax withholding obligation relating to the conversion and payment of any Vested PSUs under this Award by (in addition to the Company’s right to withhold from any compensation paid to the Participant by the Company), authorizing the Company to withhold a number of shares of Common Stock from the Shares otherwise issuable to the Participant as a result of the conversion and payment of any Vested PSUs under this Award, the Fair Market Value of which does not exceed either the maximum statutory tax rates in the Participant’s applicable jurisdictions or the amount of tax required to be withheld by law, and in which case the Award will be surrendered and cancelled with respect to the number of Shares retained by the Company (provided that to the extent such direction would result in the Company withholding fractional Shares, the number of Shares to be withheld will be rounded

down to the nearest whole and the Participant must pay the remainder of the withholding obligation in cash or by certified or bank check).

7. Payments After Death. Any delivery of Shares to be made to the Participant under this Award Agreement will, if the Participant is then deceased, be made to the administrator or executor of the Participant's estate. Any such administrator or executor must furnish the Company with (a) written notice of his or her status as transferee and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

8. Rights as a Stockholder. Neither the Participant nor any person claiming under or through the Participant will have any of the rights or privileges of a stockholder of the Company in respect of any PSUs unless and until the date of issuance of any Shares under the Plan for Vested PSUs. Except as otherwise provided in Paragraph 11, no adjustment shall be made for dividends or other rights for which the record date is prior to the issuance of any Shares subject to the Award. The Participant agrees to execute any documents requested by the Company in connection with the issuance of any Shares.

9. Compliance with Laws and Regulations. The issuance and transfer of Common Stock is subject to the Company's and the Participant's full compliance, to the satisfaction of the Company and its counsel, with all applicable requirements of federal, state and foreign securities laws and with all applicable requirements of any securities exchange on which the Common Stock may be listed at the time of such issuance or transfer. Any determination in this connection by the Administrator shall be final, binding, and conclusive. The obligations of the Company and the rights of the Participant are subject to all applicable laws, rules, and regulations.

10. Regulatory Restrictions on Issuance of Shares. Notwithstanding the other provisions of this Agreement, if at any time the Company determines, in its sole discretion, that the listing, registration or qualification of Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to the Participant (or his or her estate), such issuance will not occur unless and until such listing, registration, qualification, consent or approval will have been effected or obtained free of any conditions not acceptable to the Company. The Participant understands that the Company shall be under no obligation to register for offering or resale or to qualify for exemption under the Securities Act, or to register or qualify under the laws of any state or foreign jurisdiction, any Shares, security or interest in a security paid or issued under, or created by, the Plan, or to continue in effect any such registrations or qualifications if made.

11. Adjustments. The number of Shares covered by the Award shall be subject to adjustment in accordance with Section 14 of the Plan.

12. No Right to Continued Service. Nothing in this Award Agreement or in the Plan imposes or may be deemed to impose, by implication or otherwise, any limitation on any right of the Company or its Affiliates to terminate the Participant's Continuous Service at any time.

13. Compliance with Securities Laws. The Participant understands and acknowledges that, notwithstanding any other provision of the Award Agreement to the contrary, the conversion of Vested PSUs and the issuance of Shares is expressly conditioned on compliance with the Securities Act and all applicable federal, state and foreign securities laws. The Participant agrees to cooperate with the Company to ensure compliance with such laws.

14. Representations and Warranties of the Participant. The Participant represents and warrants to the Company as follows:

(a) Acknowledgment and Agreement to Terms of the Plan. The Participant acknowledges receipt of a copy of the Plan, the Notice of Grant, this Award Agreement and the prospectus dated April 1, 2018 covering the Shares reserved for issuance under the Plan. The Participant has read and understands the terms of the Plan, the Notice of Grant and this Award Agreement, and agrees to be bound by their terms and conditions. The Participant acknowledges that there may be adverse tax consequences on the vesting and conversion of PSUs or the disposition of the Shares following conversion, and that the Participant should consult a tax advisor before such time.

(b) Investment Representation. Unless the Shares are issued to the Participant in a transaction registered under applicable federal and state securities laws, the Participant represents and warrants to the Company that all Shares which may be issued hereunder will be acquired by the Participant for investment purposes for his or her own account and not with any intent for resale or distribution in violation of federal or state securities laws. Unless the Shares are issued to the Participant in a transaction registered under the applicable federal and state securities laws, at the option of the Company, a stop-transfer order against the Shares may be placed on the official stock books and records of the Company, and a legend indicating that such Shares may not be pledged, sold or otherwise transferred, unless an opinion of counsel is provided (concurring in by counsel for the Company) stating that such transfer is not in violation of any applicable law or regulation, may be stamped on stock

certificates to ensure exemption from registration. The Company may require such other action or agreement by the Participant as may from time to time be necessary to comply with the federal, state and foreign securities laws.

(c) Rule 144. The Participant understands that Rule 144 under the Securities Act may indefinitely restrict transfer of the Common Stock if the Participant is an “affiliate” of the Company (as defined in Rule 144), or for up to one year if “current public information” about the Company (as defined in Rule 144) is not publicly available regardless of whether the Participant is an affiliate of the Company.

(d) Compliance with Laws. Notwithstanding any of the provisions hereof, the Participant hereby agrees that the Company will not be obligated to issue any Shares to the Participant if the issuance of such Shares shall constitute a violation by the Participant or the Company of any provision of any law or regulation of any governmental authority. Any determination in this connection by the Administrator shall be final, binding, and conclusive. The obligations of the Company and the rights of the Participant are subject to all applicable laws, rules, and regulations.

15. Stop-Transfer Orders

(a) Stop-Transfer Instructions. To ensure compliance with the restrictions imposed by this Award Agreement, the Company may issue appropriate “stop-transfer” instructions to its transfer agent, if any, and if the Company transfers its own Common Stock, it may make appropriate notations to the same effect in its own records.

(b) Refusal to Transfer. The Company will not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of this Award Agreement; or (ii) to treat as owner of the Shares, or to accord the right to vote or pay dividends to, any purchaser or other transferee to whom the Shares have been transferred.

16. General Terms

(a) Interpretation. Any dispute regarding the interpretation of the Notice of Grant, this Award Agreement or the Plan must be submitted by the Participant or the Company to the Administrator for review. The Administrator’s resolution of such dispute will be final and binding on the Company and the Participant. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the Notice of Grant.

(b) Entire Agreement. The Plan and the Notice of Grant are incorporated in this Award Agreement by reference, and the Participant hereby acknowledges that a copy of each has been made available to the Participant. This Award Agreement, the Notice of Grant and the Plan constitute the entire agreement of the parties and supersede all prior undertakings and agreements with respect to the subject matter hereof. Each party to this Agreement and the Notice of Grant acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or by anyone acting on behalf of any party, which are not embodied in this Agreement, the Notice of Grant or the Plan and that any agreement, statement, or promise that is not contained in this Agreement, the Notice of Grant or the Plan shall not be valid or binding or of any force or effect. In the event of a conflict or inconsistency between the terms and conditions of this Award Agreement, the Notice of Grant and the Plan, the Plan will govern.

(c) Claims. The Participant’s sole remedy for any Claim (as defined below) shall be against the Company, and the Participant shall not have any claim or right of any nature against any Affiliate of the Company or any stockholder or existing or former director, officer or employee of the Company or any Affiliate. The foregoing individuals and entities (other than the Company) shall be third-party beneficiaries of this Agreement for purposes of enforcing the terms of this Paragraph 16(c). For purposes of this Agreement, the term “**Claim**” means any claim, liability or obligation of any nature, arising out of or relating to the Plan or an alleged breach of the Plan, the Award Agreement or the Notice of Grant.

(d) Modification. The Notice of Grant and this Award Agreement may be modified only in writing signed by both parties; provided, however, that the Company may change or modify this Agreement or the Notice of Grant without the Participant’s consent or signature if the Company determines, in its sole discretion, that such change or modification is necessary for purposes of compliance with any applicable laws, including, without limitation (i) compliance with or exemption from the requirements of Section 409A (as defined below), (ii) compliance with any federal or state securities laws, or (iii) compliance with the rules of any exchange or inter-dealer quotation system on which the Company’s Shares are listed or quoted. Notwithstanding the preceding sentence, the Company may amend the Plan to the extent permitted by the Plan.

(e) Notices. Any notice required under this Award Agreement to be delivered to the Company must be in writing and addressed to the Corporate Secretary of the Company at its principal corporate offices. Any notice required to be given or delivered to the Participant must be in writing and addressed to the Participant at the address indicated on the Notice of Grant or

to such other address as the Participant designates in writing to the Company. All notices will be deemed to have been delivered: (i) on personal delivery, (ii) five days after deposit in the United States mail by certified or registered mail (return receipt requested), (iii) two business days after deposit with any return receipt express courier (prepaid), or (iv) one business day after transmission by fax or email.

(f) Award Is Not Transferable. Except to the limited extent provided in Paragraph 7, the Award and the rights and privileges conferred hereby may not be transferred, assigned, pledged (as collateral for a loan or as security for the performance of an obligation or for any other purpose) or hypothecated in any way (whether by operation of law or otherwise) and may not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of the Award, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, the Award and the rights and privileges conferred hereby immediately will become null and void.

(g) Successors and Assigns. The Company may assign any of its rights under this Award Agreement. This Award Agreement will be binding on and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein and in the Plan, this Award Agreement is binding on the Participant and the Participant's heirs, executors, administrators, legal representatives, successors and assigns.

(h) Covenants and Agreements as Independent Agreements. Each of the covenants and agreements that is set forth in this Agreement shall be construed as a covenant and agreement independent of any other provision of this Agreement. The existence of any claim or cause of action of the Participant against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the covenants and agreements that are set forth in this Agreement.

(i) Section 409A. The Award is intended to be exempt from or comply with the requirements of Section 409A of the Code and the rules and regulations issued thereunder ("Section 409A") and shall be construed accordingly. Notwithstanding any other provision of this Agreement, the Notice of Grant, or the Plan to the contrary, with respect to any payments and benefits to which Section 409A applies, if the Participant is a "specified employee," within the meaning of Section 409A, then to the extent necessary to avoid subjecting the Participant to the imposition of any additional tax under Section 409A, amounts that would otherwise be payable during the six-month period immediately following the Participant's "separation from service," within the meaning of Section 409A(a)(2)(A)(i), shall not be paid to the Participant during such period, but shall instead be accumulated and paid to the Participant (or, in the event of the Participant's death, the Participant's estate) in a lump sum on the first business day after the earlier of the date that is six months following the Participant's separation from service or the Participant's death.

(j) Recovery of Compensation. In accordance with Section 16(k) of the Plan, the Company may recoup all or any portion of any Shares or cash paid to the Participant in connection with the Award, as set forth in therein and in the Company's clawback policies, as in effect from time to time.

(k) Legal Construction. In the event that any one or more of the terms, provisions, or agreements that are contained in this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect for any reason, the invalid, illegal, or unenforceable term, provision, or agreement shall not affect any other term, provision, or agreement that is contained in this Agreement, and this Agreement shall be construed in all respects as if the invalid, illegal, or unenforceable term, provision, or agreement had never been contained herein.

(l) Headings. The headings that are used in this Agreement are used for reference and convenience purposes only and do not constitute substantive matters to be considered in construing the terms and provisions of this Agreement.

(m) Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

(n) Governing Law. This Award Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to its conflict of law principles. If any provision of this Award Agreement is determined by a court of law to be illegal or unenforceable, then such provision will be enforced to the maximum extent possible and the other provisions will remain fully effective and enforceable.