

**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): October 23, 2023 (October 20, 2023)**

**PFSweb, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

000-28275  
(Commission File Number)

75-2837058  
(IRS Employer  
Identification No.)

4455 REGENT BLVD  
IRVING, TX  
(Address of principal executive offices)

75063  
(Zip Code)

(972) 881-2900  
(Registrant's telephone number, including area code)

N/A  
(Former name or 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 communication 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:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.001 par value	PFSW	Nasdaq Capital 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.

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## Introductory Note

As previously disclosed in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on September 14, 2023, PFSweb, Inc., a Delaware corporation (the “Company”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) by and among the Company, GXO Logistics, Inc., a Delaware corporation (“Parent”), and Peregrine MergerSub 1, Inc., a Delaware corporation and wholly owned subsidiary of Parent (“Merger Sub”), dated as of September 13, 2023. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, on October 23, 2023, Merger Sub completed a cash tender offer (the “Offer”) to acquire all of the issued and outstanding shares of the common stock, par value \$0.001 per share (the “Company Common Stock”), of the Company (collectively, the “Shares”) (other than Shares held by Parent, Merger Sub, the Company or any of their respective subsidiaries as treasury stock or otherwise) at a price per Share of \$7.50, in cash, without interest and less any applicable withholding taxes (the “Offer Price”).

The Offer expired at the end of the day, 12:00 midnight, New York City time, on October 20, 2023. According to the depositary for the Offer, 19,792,215 shares of Company Common Stock were validly tendered and not withdrawn in the Offer, representing approximately 86.9% of the outstanding shares of Company Common Stock. The number of shares of Company Common Stock tendered satisfied the condition to the Offer that there be validly tendered and not validly withdrawn shares of Common Stock that, considered together with all other shares (if any) beneficially owned by Parent and its affiliates, represent one more share than 50% of the Shares outstanding at the time of the expiration of the Offer. On October 23, 2023, all conditions to the Offer having been satisfied or waived, Parent and Merger Sub accepted for payment all shares of Company Common Stock validly tendered and not validly withdrawn.

Following the completion of the Offer, the remaining conditions to the Merger set forth in the Merger Agreement were satisfied, and on October 23, 2023, Merger Sub merged with and into the Company, with the Company surviving as a wholly owned subsidiary of Parent (the “Merger”). The Merger was completed pursuant to Section 251(h) of the Delaware General Corporation Law (the “DGCL”), with no stockholder vote required. At the effective time of the Merger (the “Effective Time”), each Share (except as otherwise provided in the Merger Agreement) was converted automatically into and thereafter represent only the right to receive \$7.50 in cash, without interest and subject to any applicable withholding taxes.

In addition, pursuant to the Merger Agreement and effective as of the Effective Time:

- Each stock option to purchase Shares that was outstanding and unexercised as of immediately prior to the Effective Time, whether or not vested or exercisable, was automatically cancelled and converted into the right to receive an amount of cash from the Surviving Corporation equal to the product of (i) the total number of Shares then underlying such stock option multiplied by (ii) the excess, if any, of the same cash consideration, without interest and less any applicable withholding taxes, for their Shares as was payable in the Offer (the “Merger Consideration”) over the exercise price per share of such stock option. If the exercise price of any such stock option was equal to or greater than the Merger Consideration, such stock option was cancelled for no consideration.
- Each deferred stock unit award in respect of Shares that was outstanding as of immediately prior to the Effective Time, whether or not vested, was automatically cancelled and converted into the right to receive an amount of cash from the Surviving Corporation equal to the product of (i) the total number of Shares then underlying such deferred stock unit award multiplied by (ii) the Merger Consideration.
- Each other stock-based award in respect of Shares (including each restricted stock unit award and each performance-based restricted stock unit award) that was outstanding as of immediately prior to the Effective Time was automatically cancelled and converted into the right to receive an amount of cash from the Surviving Corporation equal to the product of (i) the number of Shares determined to be earned underlying such other stock-based award multiplied by (ii) the Merger Consideration. The number of Shares underlying each other stock-based award that was subject to performance-based vesting conditions was determined by measuring the level of achievement of the applicable performance goals in accordance with the provisions of the applicable award agreements.

The foregoing description of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibit 2.1 to the Company’s Current Report on Form 8-K, filed with the SEC on September 14, 2023, and which is incorporated herein by reference.

### Item 1.01. Entry into a Material Definitive Agreement

On October 20, 2023, the Company and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC), a Delaware corporation, as successor to ChaseMellon Shareholder Services, L.L.C., a New Jersey limited liability company, as rights agent, entered into Amendment No. 12 (the “Amendment”) to the Company’s Rights Agreement, as amended (the “Rights Agreement”).

Amendment No. 12 amends the Rights Agreement by accelerating the expiration of the Company’s preferred share purchase rights (the “Rights”) under the Rights Agreement by amending the definition of “Final Expiration Date” under the Rights Agreement

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to mean “11:59 p.m., New York City time, on October 20, 2023.” Accordingly, the Rights which were previously dividend to holders of record of the Company Common Stock expired as of 11:59 p.m., New York City time, on October 20, 2023, upon the expiration of the Rights Agreement and no person shall have any rights pursuant to the Rights Agreement or the Rights.

The foregoing description of the Amendment and the Rights Agreement does not purport to be complete and is subject to, and qualified in its entirety by, a summary of the material terms of the Rights Agreement, as amended by the Amendment, together with the full text of the Rights Agreement, and each of Amendments Nos. 1 to 10 thereto, as set forth in the Company’s Proxy Statement filed with the SEC on July 17, 2023, Amendment No. 11 included as Exhibit 4.1 to the Company’s Current Report on Form 8-K filed with the SEC on September 14, 2023, and Exhibit 4.1 hereto.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

As described in the Introductory Note above, on October 23, 2023, Merger Sub irrevocably accepted for payment all shares of Company Common Stock validly tendered and not validly withdrawn pursuant to the Offer on or prior to the expiration of the Offer. On October 23, 2023, the Merger was completed pursuant to Section 251(h) of the DGCL, with no vote of the Company’s stockholders required. Upon the consummation of the Merger, the Company became a wholly owned subsidiary of Parent.

The aggregate consideration payable by Merger Sub to acquire the shares of Common Stock in the Offer and the Merger is approximately \$170.8 million. Parent and its controlled affiliates advanced to Merger Sub the funds necessary to consummate the Offer and the Merger and to pay the related fees and expenses.

The information contained in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

**Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

In connection with the consummation of the Merger, the Company notified The Nasdaq Global Market (“NASDAQ”) of the consummation of the Merger and requested that NASDAQ (i) halt trading in the shares of Company Common Stock, (ii) suspend trading of and delist the shares of Company Common Stock and (iii) file with the SEC a notification of removal from listing and/or registration on Form 25 to effect the delisting of all shares of Company Common Stock from NASDAQ and the deregistration of such shares of Company Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). In addition, the Company will file a certification and notice of termination of registration on Form 15 with the SEC requesting the termination of registration of the shares of Common Stock under Section 12(g) of the Exchange Act and the suspension of reporting obligations under Sections 13 and 15(d) of the Exchange Act with respect to the shares of Company Common stock.

**Item 3.03. Material Modification to Rights of Security Holders.**

The information set forth in the Introductory Note and Items 2.01, 3.01, 5.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

**Item 5.01. Changes in Control of Registrant.**

As a result of the completion of the Merger, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Parent. The Merger Consideration was funded through Parent’s cash on hand. The information set forth in the Introductory Note and Items 2.01 and 5.02 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

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

At the Effective Time, each of David I. Beatson, Robert Frankfurt, G. Mercedes De Luca, Monica Luechtefeld, Benjamin Rosenzweig and Michael C. Willoughby resigned and ceased to be directors of the Company and members of any committee of the Company’s Board of Directors. These resignations were not a result of any disagreement between the Company and the directors on any matter relating to the Company’s operations, policies or practices. Effective immediately following these resignations, Karlis P. Kirsis and Zeeshan Naqvi became the directors of the Company.

In addition, as of Effective Time, each of the Company’s Chief Executive Officer Michael J. Willoughby and the Company’s Chief Financial Officer, Thomas J. Madden terminated employment for good reason and became entitled to the severance and change in control benefits contemplated by their existing compensation arrangements with the Company. In consideration for a \$100,000 payment from the Company, Mr. Madden also agreed to certain restrictive covenants for the two-year period following the Effective Time, including a covenant not to compete and a non-solicit of customers and employees.

Effective immediately following completion of the Merger, all of the incumbent officers of the Company, as of immediately prior to the effectiveness of the Merger, were removed as officers of the Company. From and after the Effective Time, the officers of

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the Company are as follows: Zeeshan Naqvi, 47 (President and Treasurer), and Karlis P. Kirsis (Vice President and Secretary). Mr. Naqvi, 47, has served as Senior Vice President, Treasurer of Parent since September 2021. Prior to Mr. Naqvi's time with Parent, he served as Vice President, Treasurer at Diebold Nixdorf, Inc. from July 2019 to August 2021 and as Managing Director – Treasury at Moody's Corporation from August 2015 to July 2019. Mr. Kirsis, 44, has served as Chief Legal Officer of Parent since August 2, 2021, having previously served as senior vice president, European Chief Legal Officer, Corporate Secretary for XPO, a role he held since February 2020. Mr. Kirsis previously served in various roles at XPO, including senior vice president, Corporate Counsel, from July 2017 to February 2020, and vice president, Corporate and Securities Counsel, from September 2016 to July 2017. Prior to his time with XPO, Mr. Kirsis was a corporate associate with Skadden, Arps, Slate, Meagher & Flom LLP from 2007 to 2016.

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

Pursuant to the terms of the Merger Agreement, at the Effective Time, the Company's certificate of incorporation and bylaws were each amended and restated in their entirety. Copies of the amended and restated certificate of incorporation and amended and restated bylaws are attached as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report on Form 8-K, and are incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
2.1	<a href="#">Agreement and Plan of Merger, dated as of September 13, 2023, by and among PFSweb, Inc., GXO Logistics, Inc., and Peregrine MergerSub I, Inc.</a> (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on September 14, 2023)
3.1	<a href="#">Third Amended and Restated Certificate of Incorporation of PFSweb, Inc.</a>
3.2	<a href="#">Amended and Restated By-Laws.</a>
4.1	<a href="#">Amendment No. 12 to the Rights Agreement, dated as of October 20, 2023, between the Company and Computershare Inc, as Rights Agent</a> (incorporated by reference to Exhibit 4.1 to the Form 8-A/A filed by the Company with the Securities and Exchange Commission on October 20, 2023).
104	Cover Page Interactive Data file, formatted in Inline XBRL

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**SIGNATURE**

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.

**PFSweb, Inc.**

Dated: October 23, 2023

By: /s/ Karlis P. Kirsis  
Karlis P. Kirsis  
Vice President & Secretary

**THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
PFSWEB, INC.**

**ARTICLE I**

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

**ARTICLE II**

The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is c/o Registered Agent Solutions, Inc., 838 Walker Road Suite 21-2 in the City of Dover, County of Kent, State of Delaware, 19904, and the name of the registered agent of the Corporation in the State of Delaware at such address is Registered Agent Solutions, Inc.

**ARTICLE III**

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware.

**ARTICLE IV**

Section 1 The Corporation shall be authorized to issue 1,000 shares of capital stock, all of which 1,000 shares shall be shares of common stock, par value \$0.01 per share (the "Common Stock").

Section 2 Except as otherwise provided by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes. Each share of the Common Stock shall have one vote and the Common Stock shall vote together as a single class.

**ARTICLE V**

Any one or more directors may be removed, with or without cause, by the vote or written consent of the holders of a majority of the issued and outstanding shares of capital stock of the Corporation entitled to be voted in the election of directors.

**ARTICLE VI**

In furtherance and not in limitation of those powers conferred by the DGCL, the board of directors of the Corporation (the "Board") is expressly authorized and empowered to make, alter and repeal the by-laws of the Corporation (the "By-Laws").

**ARTICLE VII**

Meetings of the stockholders shall be held at such place, within or without the State of Delaware as may be designated by, or in the manner provided in, the By-Laws or, if not so

designated, at the registered office of the Corporation in the State of Delaware. Elections of directors need not be by written ballot unless and to the extent that the By-Laws so provide.

#### **ARTICLE VIII**

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

#### **ARTICLE IX**

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit.

#### **ARTICLE X**

The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure the benefit of the heirs, executors and administrators of such a person. No amendment, modification or repeal of this Article X shall affect or impair in any way the rights of any director or officer of the Corporation to indemnification under the provisions hereof with respect to any action, suit or proceeding arising out of, or relating to, any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or appeal.

SECOND AMENDED & RESTATED BY-LAWS

of

PFSWEB, INC.

dated as of October 23, 2023

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AMENDMENTS

## ARTICLE I

### OFFICES

SECTION 1. REGISTERED OFFICE – The address, including street, number, city, and county, of the registered office of PFSweb, Inc. (the “Corporation”) in the State of Delaware is c/o Registered Agent Solutions, Inc., 9 E. Loockerman Street, Suite 311, City of Dover, County of Kent, State of Delaware, 19901; and the name of the registered agent of the corporation in the State of Delaware at such address is Registered Agent Solutions, Inc.

SECTION 2. OTHER OFFICES – The Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time select or the business of the Corporation may require.

## ARTICLE II

### MEETINGS OF STOCKHOLDERS

SECTION 1. ANNUAL MEETINGS – Annual meetings of stockholders for the election of directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. If the Board of Directors fails so to determine the time, date and place of meeting, the annual meeting of stockholders shall be held at the registered office of the Corporation on the first Tuesday in April. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

SECTION 2. SPECIAL MEETINGS – Special meetings of the stockholders for any purpose or purposes may be called by the Chairman, the President or the Secretary, or by resolution of the Board of Directors.

SECTION 3. VOTING – Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these By-Laws may vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. All elections for directors shall be decided by plurality vote; all other questions shall be decided by majority vote except as otherwise provided by the Certificate of Incorporation or the laws of the State of Delaware.

A complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be

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produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is entitled to be present.

SECTION 4. QUORUM – Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these By-Laws, the presence, in person or by proxy, of stockholders holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

SECTION 5. NOTICE OF MEETINGS – Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

SECTION 6. ACTION WITHOUT MEETING – Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

### ARTICLE III

#### DIRECTORS

SECTION 1. NUMBER AND TERM – The business and affairs of the Corporation shall be managed under the direction of a Board of Directors which shall consist of not less than one person. The exact number of directors shall initially be two and may thereafter be fixed from time to time by the Board of Directors. Directors shall be elected at the annual meeting of stockholders and each director shall be elected to serve until his or her successor shall be elected and shall qualify. A director need not be a stockholder.

SECTION 2. RESIGNATIONS – Any director may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no

time be specified, at the time of its receipt by the Chairman, the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

**SECTION 3. VACANCIES** – If the office of any director becomes vacant, the remaining directors in the office, though less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his or her successor shall be duly chosen. If the office of any director becomes vacant and there are no remaining directors, the stockholders, by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation, at a special meeting called for such purpose, may appoint any qualified person to fill such vacancy.

**SECTION 4. REMOVAL** – Except as hereinafter provided, any director or directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of directors, at an annual meeting or a special meeting called for the purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation.

**SECTION 5. COMMITTEES** – The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more directors of the Corporation.

Any such committee, to the extent provided in the resolution of the Board of Directors, or in these By-Laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation.

**SECTION 6. MEETINGS** – The newly elected directors may hold their first meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the stockholders; or the time and place of such meeting may be fixed by consent of all the Directors.

Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors.

Special meetings of the Board of Directors may be called by the Chairman or the President, or by the Secretary on the written request of any director, on at least one day's notice to each director (except that notice to any director may be waived in writing by such director) and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the notice of the meeting.

Unless otherwise restricted by the Certificate of Incorporation of the Corporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in any meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

SECTION 7. QUORUM – A majority of the Directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation of the Corporation or these By-Laws shall require the vote of a greater number.

SECTION 8. COMPENSATION – Directors shall not receive any stated salary for their services as directors or as members of committees, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

SECTION 9. ACTION WITHOUT MEETING – Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the Board of Directors or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee.

#### ARTICLE IV

##### OFFICERS

SECTION 1. OFFICERS – The officers of the Corporation shall be a President, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected by the Board of Directors and shall hold office until their successors are duly elected and qualified. In addition, the Board of Directors may elect such Assistant Secretaries and Assistant Treasurers as it may deem proper. The Board of Directors may appoint such other officers and agents as it may deem advisable, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

SECTION 2. PRESIDENT – The President shall be the Chief Operating Officer of the Corporation. He or she shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation. The President shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation.

SECTION 3. VICE PRESIDENTS – Each Vice President shall have such powers and shall perform such duties as shall be assigned to him or her by the Board of Directors.

SECTION 4. TREASURER – The Treasurer shall be the Chief Financial Officer of the Corporation. He or she shall have the custody of the Corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit



of the Corporation in such depositaries as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, the Chairman, or the President, taking proper vouchers for such disbursements. He or she shall render to the Chairman, the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he or she shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe.

SECTION 5. SECRETARY – The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board of Directors and all other notices required by law or by these By-Laws, and in case of his or her absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman or the President, or by the Board of Directors, upon whose request the meeting is called as provided in these By-Laws. He or she shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him or her by the Board of Directors, the Chairman or the President.

SECTION 6. ASSISTANT TREASURERS AND ASSISTANT SECRETARIES – Assistant Treasurers and Assistant Secretaries, if any, shall be elected and shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Board of Directors.

## ARTICLE V

### MISCELLANEOUS

SECTION 1. CERTIFICATES OF STOCK – Each stockholder shall be entitled to a certificate of stock certifying the number of shares owned by such stockholder in the Corporation. Certificates of stock of the Corporation shall be of such form and device as the Board of Directors may from time to time determine.

SECTION 2. LOST CERTIFICATES – A new certificate of stock may be issued in the place of any certificate theretofore issued by the Corporation, alleged to have been lost or destroyed, and the Board of Directors may, in its discretion, require the owner of the lost or destroyed certificate, or such owner's legal representatives, to give the Corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate, or the issuance of any such new certificate.

SECTION 3. TRANSFER OF SHARES – The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other person as the Board of Directors may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. A

record shall be made of each transfer and whenever a transfer shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

SECTION 4. STOCKHOLDERS RECORD DATE – In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 5. DIVIDENDS – Subject to the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon stock of the Corporation as and when they deem appropriate. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends, such sum or sums as the Board of Directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the Board of Directors shall deem conducive to the interests of the Corporation.

SECTION 6. FISCAL YEAR – The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 7. CHECKS – All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be



signed by such officer or officers, or agent or agents, of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 8. NOTICE AND WAIVER OF NOTICE – Whenever any notice is required to be given under these By-Laws, personal notice is not required unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his or her address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by law. Whenever any notice is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation of the Corporation or of these By-Laws, a waiver thereof, in writing and signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice.

## ARTICLE VI

### INDEMNIFICATION

SECTION 1. INDEMNIFICATION – The Corporation, to the fullest extent permitted by the Delaware General Corporation Law, including, without limitation, to the fullest extent permitted by Section 145 of the same (as that section may be amended and supplemented from time to time), shall have the power to indemnify any director or officer of the Corporation against any expenses, liabilities or other matters referred to in or covered by that Section. The indemnification provided for in this Article VI (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under these By-Laws, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office, (ii) shall continue as to a person who has ceased to be a director or officer and (iii) shall inure to the benefit of the heirs, executors and administrators of such person.

SECTION 2. INDEMNIFICATION OF EMPLOYEES AND AGENTS – The Board of Directors in its discretion shall have the power on behalf of the Corporation to indemnify any person, other than a director or officer, made a party to any action, suit or proceeding by reason of the fact that such person, or such person's testator or intestate, is or was an employee or agent of the Corporation.

SECTION 3. INSURANCE – The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of the Delaware General Corporation Law.

## ARTICLE VII

### AMENDMENTS

These By-Laws may be altered, amended or repealed at any annual meeting of the stockholders (or at any special meeting thereof if notice of such proposed alteration, amendment or repeal to be considered is contained in the notice of such special meeting) by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation. Except as otherwise provided in the Certificate of Incorporation of the Corporation, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present alter, amend or repeal these By-Laws, or enact such other By-Laws as in their judgment may be advisable for the regulation and conduct of the affairs of the Corporation.

