

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
HIVE BIDCO, INC.**

Hive Bidco, Inc., a Delaware corporation, hereby certifies that:

1. The name of the corporation is Hive Bidco, Inc. The corporation filed its original Certificate of Incorporation with the Secretary of State on November 13, 2023 under the name Hive Bidco, Inc.

2. This Amended and Restated Certificate of Incorporation of the corporation attached hereto as Exhibit A, which is incorporated herein by this reference, and which restates, integrates and further amends the provisions of the Certificate of Incorporation of this corporation, has been duly adopted by the corporation's Board of Directors and a majority of the corporation's outstanding stock in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, with the approval of the corporation's stockholders having been given by written consent without a meeting in accordance with Section 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer and the foregoing facts stated herein are true and correct.

Dated: [●], 2024

**HIVE BIDCO, INC.**

By:

\_\_\_\_\_  
[●]  
[●]

**EXHIBIT A**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
HIVE BIDCO, INC.**

**ARTICLE I**

**NAME**

The name of this corporation is Hive Bidco, Inc. (the “Corporation”).

**ARTICLE II**

**REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801 and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

**ARTICLE III**

**PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

**ARTICLE IV**

**AUTHORIZED STOCK**

1. **Authorized Shares.** This Corporation is authorized to issue [●]<sup>1</sup> shares, \$0.01 par value per share, of common stock (“Common Stock”) [●] of which are designated “Class A Common Stock” and [●] of which are designated “Class B Common Stock.”

**ARTICLE V**

**TERMS OF COMMON STOCK**

The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

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<sup>1</sup> **Note to Draft:** To be the total number of authorized Class A and Class B (i.e., Rollover) shares (which would include headroom to allow for future issuances of each class).

1. **Definitions.** For purposes of this Article V, the following definitions apply;

1.1 “Amended and Restated Certificate of Incorporation” shall mean this Amended and Restated Certificate of Incorporation of the Corporation, as may be further amended, modified or amended and restated from time to time.

2. **Identical Rights.** Except as otherwise provided in this Amended and Restated Certificate of Incorporation or required by applicable law, shares of Common Stock shall have the same rights and powers, rank equally (including as to dividends and distributions, and any liquidation, dissolution or winding up of the Corporation but excluding voting as described in Section 3 below), share ratably and be identical in all respects as to all matters, including:

2.1 Subject to the prior rights of holders of all classes and series of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the “Board”), out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board. Any dividends paid to the holders of shares of Common Stock shall be paid pro rata, on an equal priority, *pari passu* basis, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of the applicable class of Common Stock treated adversely, voting separately as a class.

2.2 The Corporation shall not declare or pay any dividend or make any other distribution to the holders of Common Stock payable in securities of the Corporation unless the same dividend or distribution with the same record date and payment date shall be declared and paid on all shares of Common Stock; provided, however, that (a) dividends or other distributions payable in shares of Class A Common Stock or rights to acquire shares of Class A Common Stock may be declared and paid to the holders of Class A Common Stock without the same dividend or distribution being declared and paid to the holders of the Class B Common Stock if, and only if, a dividend payable in shares of Class B Common Stock, or rights to acquire shares of Class B Common Stock, are declared and paid to the holders of Class B Common Stock at the same rate and with the same record date and payment date; (b) dividends or other distributions payable in shares of Class B Common Stock or rights to acquire shares Class B Common Stock may be declared and paid to the holders of Class B Common Stock without the same dividend or distribution being declared and paid to the holders of the Class A Common Stock if, and only if, a dividend payable in shares of Class A Common Stock, or rights to acquire shares of Class A Common Stock, are declared and paid to the holders of Class A Common Stock at the same rate and with the same record date and payment date; provided, further, that nothing in the foregoing shall prevent the Corporation from declaring and paying dividends or other distributions payable in shares of Class B Common Stock or rights to acquire Class B Common Stock to holders of all classes of Common Stock.

2.3 If the Corporation in any manner subdivides, reclassifies or combines the outstanding shares of Class A Common Stock or Class B Common Stock, then the outstanding shares of all Common Stock will be subdivided, reclassified or combined in the same proportion and manner.

### 3. **Voting Rights.**

#### 3.1 **Common Stock.**

(a) **Class A Common Stock.** Each holder of shares of Class A Common Stock will be entitled to one vote for each share thereof held at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.

(b) **Class B Common Stock.** Except as required by applicable law, the Class B Common Stock will have no voting rights and no holder thereof shall be entitled to vote on any matter.

3.2 **General.** Except as otherwise expressly provided herein, as required by applicable law, or as set forth in the Shareholders' Agreement of the Corporation dated as of [●], 2024 (as such agreement may be amended from time to time, the "**Shareholders' Agreement**"), the holders of Class A Common Stock and Class B Common Stock will vote together and not as separate classes.

3.3 **Authorized Shares.** The number of authorized shares of Common Stock or any class thereof may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the Class A Common Stock.

3.4 **Election of Directors.** Subject to the rights of certain holders of Class B Common Stock to elect directors as may be contractually agreed among the holders of Common Stock from time to time, including but not limited to the applicable terms of the Shareholders' Agreement, the holders of Class A Common Stock shall be entitled to elect, remove and replace all directors of the Corporation in accordance with applicable law and the by-laws of the Corporation (the "**By-Laws**").

### 4. **Put and Call Options.**

4.1 Shares of Class A Common Stock and shares of Class B Common Stock shall each have the rights and be subject to the obligations set out in Section 5 of the Shareholders' Agreement.

## **ARTICLE VI**

### **LIQUIDATION, DISSOLUTION OR WINDING UP**

1. **Definitions.** For purposes of this **Article VI**, the following definitions apply;

1.1 "**Acquisition**" shall mean (a) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shares of capital stock of the Corporation immediately prior to such consolidation, merger or reorganization, continue to represent a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization, (provided that, for the purpose of this **Article VI**,

all stock, options, warrants, purchase rights or other securities exercisable for or convertible into Common Stock outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of capital stock are converted or exchanged); or (b) any transaction or series of related transactions to which the Corporation is a party in which shares of the Corporation are transferred such that in excess of fifty percent (50%) of the Corporation's voting power is transferred; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof.

1.2 "Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly, controls, is controlled by or is under common control with such Person, including any general partner, managing member, officer, director or trustee of such Person.

1.3 "Asset Transfer" shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Corporation.

1.4 "Cash" means the aggregate cash balance, including all cash, commercial paper, certificates of deposit and other bank deposits, treasury bills, short term investments and all other cash equivalents in its accounts; provided, however, that Cash shall not include credit card receivables or debit card receivables.

1.5 "EBITDA" means the net income of the Group before interest expense, provision for income taxes, depreciation, amortization and impairments of intangible assets, for the relevant period as set forth in the Group's consolidated income statement for such relevant period, as adjusted in accordance with the EBITDA Calculation Principles.

1.6 "EBITDA Calculation Principles" means the following:

**Part A: Preparation of the Group's consolidated income statement**

- (a) For each Reference Period, the Group's consolidated income statement for such Reference Period shall be prepared:
  - (i) in accordance with GAAP as in effect for such relevant period; and
  - (ii) based on (x) the consolidated income statement for the Group's fiscal year ending on or around the end of such Reference Period; (y) divided by the number of days in such fiscal year; (z) multiplied by 365.
- (b) The Group's consolidated income statement for such Reference Period shall be expressed in GBP. Any amounts included in the Group's consolidated income statement which are expressed in a currency other than GBP shall be converted into GBP for purposes of the Group's consolidated income

statement, at the average period rate, which consists of the simple average of spot prices published by Bloomberg for the applicable Reference Period

#### **Part B: Calculation of EBITDA**

- (a) EBITDA means the net income of the Group before interest expense, provision for income taxes, depreciation, amortization and impairments of intangible assets, for the Reference Period as set forth in the Group's consolidated income statement for such Reference Period, adjusted as follows:
  - (i) To exclude any expenses related to long term incentive plans of any Group Company;
  - (ii) To exclude any corporate overhead allocations (including corporate service fees and segment service fees) charged by Mars Snacking and its Affiliates (excluding any charges from another Group Company);
  - (iii) To include operating lease charges; and
  - (iv) To exclude any finance lease charges.
- (b) The provisions of this clause 1.6 shall be interpreted so as to avoid double counting (whether positive or negative) of any item to be included in the calculation of EBITDA and no minimum materiality limits and thresholds shall be applied in calculating any amounts included in EBITDA.

#### 1.7 "EBITDA Multiple Valuation" means:

- (a) if the Group's EBITDA for the relevant Reference Period is at or above the applicable EBITDA Value, an amount equal to 20.0x of the Group's EBITDA for such period;
- (b) if the Group's EBITDA for the relevant Reference Period is at or above the applicable Low-End EBITDA Value but below the applicable EBITDA Value, an amount equal to 17.0x (increasing on a linear basis (but not exceeding 20.0x) based on the Group's EBITDA for such period within the applicable stated ranges of Low-End EBITDA Value and EBITDA Value) of the Group's EBITDA for such period; and
- (c) if the Group's EBITDA for the relevant Reference Period is below the applicable Low-End EBITDA Value, an amount equal to 14.0x of the Group's EBITDA for such period.

#### 1.8 "EBITDA Value" means:

- (a) with respect to a Liquidation Event in the First Liquidation Period, an amount equal to £50 million during the twelve (12) month-period ended December 31, 2025;

(b) with respect to a Liquidation Event in the Second Liquidation Period, an amount equal to £60 million during the twelve (12) month-period ended December 31, 2026;

(c) with respect to a Liquidation Event in the Third Liquidation Period, an amount equal to £70 million during the twelve (12) month-period ended December 31, 2027; and

(d) with respect to a Liquidation Event in the Fourth Liquidation Period, an amount equal to £80 million during the twelve (12) month-period ended December 31, 2028.

1.9 “Financial Indebtedness” means all loans and other financing liabilities or obligations of the Group evidencing debt for borrowed money and transactions having the same economic effect, including: (a) indebtedness owing to any bank, financial institution or other entity (including indebtedness owing to Mars Snacking and its Affiliates (but excluding indebtedness owed by one Group Company to another Group Company), net of any indebtedness owed to a Group Company from Mars Snacking and its Affiliates (but excluding indebtedness owed by one Group Company to another Group Company)); (b) indebtedness arising under any bond, note, loan stock, debenture, commercial paper or similar instrument; (c) indebtedness under any installment sale agreement or finance lease (whether for land, machinery, equipment or otherwise) which is required to be accounted for as a liability under GAAP; (d) any obligations in respect of dividends or other profits distributions declared but not yet paid; (e) any preferred shares required to be accounted for as a liability under GAAP; (f) all liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment or securitization of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing; and together with all unpaid accrued interest on any indebtedness or other financing liabilities or obligations referred to in clauses (a) through (f) above, together with any prepayment premiums or other penalties, fees, expenses or breakage costs arising (or which could reasonably be expected to arise) in connection with the repayment of any such indebtedness or other financing liabilities or obligations. For the avoidance of doubt "Financial Indebtedness" shall not include any operating lease liabilities as accounted for under GAAP.

1.10 “First Liquidation Period” means the twelve (12) month-period ending December 31, 2026;

1.11 “Fourth Liquidation Period” means any time on or after January 1, 2029.

1.12 “GAAP” means generally accepted accounting principles in the United States as applied by Mars Snacking.

1.13 “Group” means the Corporation and its subsidiaries from time to time, and “Group Company” means any of them.

1.14 “Liquidation Event” means any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary.

1.15 “Liquidation Price” means (a) the arithmetic average of the Revenue Valuation and the EBITDA Multiple Valuation for the applicable Reference Period, minus (b) the Net Debt Adjustments as at the final day of the applicable Reference Period, divided by (c) the

total number of shares of Common Stock issued and outstanding on the final day of the applicable Reference Period, where such payment shall be calculated by the Company acting reasonably and in good faith and such payment as calculated by the Company shall be final, binding and conclusive on all holders of Common Stock.

1.16 “Low-End EBITDA Value” means:

- (a) with respect to a Liquidation Event in the First Liquidation Period, an amount equal to £30 million during the twelve (12) month-period ended December 31, 2025;
- (b) with respect to a Liquidation Event in the Second Liquidation Period, an amount equal to £40 million during the twelve (12) month-period ended December 31, 2026;
- (c) with respect to a Liquidation Event in the Third Liquidation Period, an amount equal to £50 million during the twelve (12) month-period ended December 31, 2027; and
- (d) with respect to a Liquidation Event in the Fourth Liquidation Period, an amount equal to £60 million during the twelve (12) month-period ended December 31, 2028.

1.17 “Net Debt Adjustments” means the aggregate amount of the Group’s Financial Indebtedness *minus* the Group’s Cash, in each case, as of the final date of the relevant Reference Period, each calculated in accordance with the Net Debt Adjustment Principles.

1.18 “Net Debt Adjustment Principles” means the following:

**Part A: Preparation of the Group’s consolidated balance sheet**

- (a) For each Reference Period, the Group’s consolidated balance sheet as of the end of such Reference Period shall be prepared:
  - (i) in accordance with GAAP as in effect for such relevant period; and
  - (ii) based on the Group’s consolidated balance sheet as of the end of the Group’s fiscal year.
- (b) The Group’s consolidated balance sheet as of the end of such Reference Period shall be expressed in GBP. Any amounts included in the Group’s consolidated balance sheet which are expressed in a currency other than GBP shall be converted into GBP for purposes of the Group’s consolidated balance sheet, at the period end rate, which consists of the spot price published by Bloomberg on the final day of the applicable Reference Period.

**Part B: Calculation of Net Debt Adjustment**

- (c) The provisions of this clause 1.18 shall be interpreted so as to avoid double counting (whether positive or negative) of any item to be included in the calculation of the Net Debt Adjustments and no minimum materiality limits and thresholds shall be applied in calculating any amounts included in the Net Debt Adjustment.



1.19 “Person” means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.20 “Reference Period” means with respect to a Liquidation Event in the First Liquidation Period, the twelve (12) month-period ending December 31, 2025; with respect to a Liquidation Event in the Second Liquidation Period, the twelve (12) month-period ending December 31, 2026; with respect to a Liquidation Event in the Third Liquidation Period, the twelve (12) month-period ending December 31, 2027 and with respect to a Liquidation Event in the Fourth Liquidation Period, the twelve (12) month-period ending December 31, 2028.

1.21 “Revenue Valuation” means:

(a) if the Group’s EBITDA for the relevant Reference Period is at or above the applicable EBITDA Value, an amount equal to 3.0x of the Group’s Revenue for such period;

(b) if the Group’s EBITDA for the relevant Reference Period is at or above the applicable Low-End EBITDA Value but below the applicable EBITDA Value, an amount equal to 2.5x (increasing on a linear basis (but not exceeding 3.0x) based on the Group’s EBITDA for such period within the applicable stated ranges of Low-End EBITDA Value and EBITDA) of the Group’s Revenue for such period; and

(c) if the Group’s EBITDA for the relevant Option Period is below the applicable Low-End EBITDA Value, an amount equal to 2.0x of the Company’s Revenue for such period.

1.22 “Revenue” means the Corporation’s revenues, as determined in accordance with GAAP, for the relevant period.

1.23 “Second Liquidation Period” means the twelve (12) month-period ending December 31, 2027;

1.24 “Third Liquidation Period” means the twelve (12) month-period ending December 31, 2028;

2. **Payment to Class B Stockholders**. In the event of a Liquidation Event on or after January 1, 2026, the holders of shares of Class B Common Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders on a *pari passu* basis, an amount per share of Class B Common Stock equal to the applicable Liquidation Price.

3. **Excess Payment to Class A Stockholders**. In the event of a Liquidation Event on or after January 1, 2026, where the holders of shares of Class B Common Stock have each received the Liquidation Price entitled to them under Section 2 in full, then the assets of the Corporation available for distribution to stockholders in excess of the amount already paid to the holders of shares of Class B Common Stock under Section 2 shall be distributed to the holders of Class A Common Stock on a pro rata basis.

4. **Maximum Payment to Class B Stockholders.** In the event of a Liquidation Event on or after January 1, 2026, the holders of Class B Common Stock shall not be entitled to any amount in excess of the Liquidation Price upon such a Liquidation Event.

5. **Certain Liquidation Events.** In the event of a Liquidation Event on or before December 31, 2025, the assets of the Corporation legally available for distribution to stockholders shall be distributed on an equal priority, pro rata basis to the holders of Common Stock, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the issued and outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

## **ARTICLE VII**

### **CORPORATE OPPORTUNITIES**

1. **Certain Acknowledgement.** In recognition and anticipation that, subject to certain contractual commitments entered into with the Corporation and/or its subsidiaries, (a) certain directors, principals, officers, employees and/or other representatives of Mars Snacking Holdings, Inc. (“Mars Snacking”) and its respective Affiliates may serve as directors, officers or agents of the Corporation and its subsidiaries and (b) Mars Snacking and its Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article VII are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve Mars Snacking and any of its Affiliates, directors, principals, officers, employees or other representatives and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

2. **Scope.** The Corporation waives, to the maximum extent permitted by law, the application of the doctrine of corporate opportunity, or any other analogous doctrine, with respect to the Corporation, to Mars Snacking and any of its Affiliates, directors, principals, officers, employees or other representatives (each Person entitled such waiver, an “Exempted Person”). To the maximum extent permitted by law, except to the extent otherwise provided in any agreement between an Exempted Person and the Corporation and/or any of its subsidiaries, no Exempted Person shall have any obligation to refrain from (a) engaging in the same or similar activities or lines of business as the Corporation or any of its Affiliates or developing or marketing any products or services that compete, directly or indirectly, with those of the Corporation or any of its Affiliates today or in which the Corporation or any of its Affiliates proposes to engage or develop, (b) investing or owning any interest publicly or privately in, or developing a business relationship with, any Person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Corporation or any of its Affiliates or (c) doing business with any client or customer of the Corporation or any of its Affiliates (each of the activities referred to in clauses (a) through (c) above, a “Specified Activity”). The Corporation renounces any interest or expectancy in, or in being offered an opportunity to participate in, any Specified

Activity that may be presented to or become known to any Exempted Person. Notwithstanding anything to the contrary in this Article VII, no Exempted Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Exempted Person engages in any of the Specified Activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Exempted Person and the Corporation or any of its Affiliates. In the event that any Exempted Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Exempted Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Exempted Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

3. **Certain Matters Deemed Not Corporate Opportunities.** In addition to and notwithstanding the foregoing provisions of this Article VII, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

4. **Amendment to this Article.** No amendment or repeal of this Article VII in accordance with the provisions of Article X shall apply to or have any effect on the liability or alleged liability of any Exempted Person for or with respect to any activities or opportunities of which such Exempted Person becomes aware or otherwise relies on the protection afforded to such Exempted Person prior to such amendment or repeal. This Article VII shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the By-laws or applicable law.

5. **Notice of this Article.** To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article VII.

6. **Definition of Affiliate.** For purposes of this Article VII, "Affiliate" shall mean (a) in respect of Mars Snacking, any Person that, directly or indirectly, is controlled by Mars Snacking, controls Mars Snacking or is under common control with the Mars Snacking and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation ); provided, that Mars, Incorporated and its subsidiaries

will be deemed “Affiliates” and (b) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation.

### **ARTICLE VIII**

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board.
2. The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws.
3. The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-laws. Election of directors need not be by written ballot unless the By-laws so provide.
4. To the fullest extent permitted by the DGCL, no director or officer of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director or officer, as applicable, except for liability (a) for any breach of the duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) pursuant to Section 174 of the DGCL (in the case of directors of the Corporation only) (d) for any transaction from which the director or officer, as applicable, derived an improper personal benefit, or (e) for any action brought by or in the right of the Corporation (in the case of officers only). Any repeal or modification of this Article VIII by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification. Solely for purposes of this Article VIII, “officer” shall have the meaning provided in Section 102(b)(7) of the DGCL as amended from time to time.
5. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate of Incorporation, and any By-laws adopted by the stockholders; provided, however, that no By-laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-laws had not been adopted.

### **ARTICLE IX**

Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide, including, if authorized by the Board in its sole discretion, by means of remote communication. The books of the Corporation may be kept (subject to any

provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the By-laws of the Corporation.

### **ARTICLE X**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL, and all rights conferred upon stockholders herein are granted subject to this reservation.