

EXHIBIT B

(Redlines)

EXHIBIT 6.12

CERTIFICATE OF INCORPORATION AND BYLAWS

Exhibit 6.12-1

Certificate of Incorporation

This Exhibit is subject to all provisions of the Plan, including, without limitation, Section 15.4, pursuant to which the Debtor has reserved the right, subject to the terms and conditions of the Plan Support Agreement and the GUC Trust Settlement Agreement, to alter, amend, or modify the Plan under section 1127(a) of chapter 11 of Title 11 of the United States Code at any time prior to the Confirmation Date

~~DRAFT AS OF 3/4/15; SUBJECT TO REVISION AND MODIFICATION AS
AGREED AMONG THE DEBTOR, THE REQUIRED CONSENTING
CREDITORS AND THE REQUISITE BACKSTOP PARTIES~~
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

of

EXIDE TECHNOLOGIES

The undersigned, [Name of the Officer], certifies that [he/she] is the [Title of Officer] of Exide Technologies, a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), and does hereby further certify as follows:

(1) The name of the Corporation is Exide Technologies.

(2) The name under which the Corporation was originally incorporated was ESB Incorporated and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on November 23, 1966.

(3) This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware (“DGCL”), pursuant to the authority granted to the Corporation under Section 303 of the DGCL to put into effect and carry out the ~~Third~~ Second-Amended Plan of Reorganization of the Corporation dated as of [____], 2015 under chapter 11 of Title 11 of the United States Code, as confirmed on [____], 2015 by order (the “Order”) of the United States Bankruptcy Court for the District of Delaware (Case No. 13-11482 (KJC)). Provision for the making of this Amended and Restated Certificate of Incorporation is contained in the Order.

(4) The text of the Amended and Restated Certificate of Incorporation of the Corporation as amended hereby is restated to read in its entirety, as follows:

1. Name. The name of the corporation is Exide Technologies (the “Corporation”).

2. Address; Registered Office and Agent. The address of the Corporation's registered office is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, in the county of New Castle; and the registered agent at such address is The Corporation Trust Company.

3. Purposes. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware ("DGCL").

4. Capital Stock.

4.1 The total number of shares of all classes of stock that the Corporation shall have authority to issue is (A): [____] shares, divided into [____] shares of Common Stock, with the par value of \$[0.01] per share (the "Common Stock"), and (B) [____] shares of Preferred Stock, with the par value of \$[0.01] per share (the "Preferred Stock"). The authorized number of shares of any class of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, and no separate vote of such class of stock the authorized number of which is to be increased or decreased shall be necessary to effect such change.

4.2 The Board of Directors of the Corporation (the "Board") is

hereby authorized, by resolution or resolutions thereof, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting and other powers (if any) of the shares of such series, and the preferences and any relative, participating, optional or other special rights and any qualifications, limitations or restrictions thereof, of the shares of such series. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

4.3 Except as may otherwise be provided in this Certificate of Incorporation or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as may otherwise be provided in this Certificate of Incorporation (including any certificate filed with the Secretary of State of the State of Delaware establishing the terms of a series of Preferred Stock in accordance with Section 4.2) or by applicable law, no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

4.4 Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock, dividends may be declared and paid on the Common Stock at such times and in such amounts as the Board in its discretion shall determine.

4.5 Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of the Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its ~~Stockholders~~stockholders ratably in proportion to the number of shares held by them.

4.6 All shares of Common Stock and Preferred Stock of the Corporation shall be subject to the rights, restrictions, limitations and other terms applicable to such shares pursuant to the certain Stockholders Agreement to be entered by and among the Corporation and its stockholders in accordance with that certain ~~Second~~Third Amended Plan of Reorganization of the Corporation dated as of [____], 2015 under chapter 11 of Title 11 of the United States Code, as confirmed on [____], 2015 by order of the United States Bankruptcy Court for the District of Delaware (Case No. 13-11482 (KJC)).

4.7 Prohibited Transfers.

4.7.1 Except with the prior written consent of the Board (which consent may be withheld in the sole discretion of the Board), no stockholder shall Transfer (hereinafter defined) any shares of Common Stock or Preferred Stock if the Board determines in its sole discretion that such Transfer would constitute a Restricted Transfer. A "Restricted Transfer" means any Transfer that (i) (A) would, if effected (after taking into account any other proposed Transfers that have been consented to by the Board but not yet made), result in the Corporation having 2,000 or more holders of record or 500 or more holders of record who are not "accredited investors" (as such concepts are defined for purposes of Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and any relevant rules promulgated thereunder) of any class of capital securities of the Corporation or (B) would, if effected, cause the Corporation to be required to register under the Exchange Act the class of Common Stock or Preferred Stock proposed to be Transferred, unless, in any such case, at the time of such Transfer such class of securities proposed to be Transferred was, prior to such proposed Transfer, already required to be registered under the Exchange Act, or (ii) would, if effected, result in such Common Stock or Preferred Stock being beneficially owned by a Competitor (hereinafter defined). Any Restricted Transfer purported to be effected without the consent of the Board and any Transfer purported to be effected without notice to the Corporation as required under Section 4.7.2 below shall, in each case, be null and void *ab initio*. For purposes of this

Section 4.7, (x) "Transfer" means any direct, indirect or synthetic sale, assignment, pledge, lease, hypothecation, mortgage, gift or creation of security interest, lien or trust (voting or otherwise) or other encumbrance or other disposition or transfer (by operation of law or otherwise, including by means of reference under a derivative, participation or similar contract or by the direct, indirect or synthetic transfer or issuance of equity securities of any entity) of any share of Common Stock or Preferred Stock, and (y) "Competitor" means any person or entity engaged in any business that is at the time being engaged by the Corporation or any of its subsidiaries or any business that is determined by the Board, in its sole discretion, to be competitive therewith.

4.7.2 Notwithstanding anything to the contrary in this Amended and Restated Certificate of Incorporation, (a) in addition to any other required notice provisions applicable to stockholders of the Corporation, at least ten (10) days prior to any Transfer, any stockholder intending to make a Transfer shall deliver a written notice to the Corporation disclosing in reasonable detail the class of Common Stock or Preferred Stock proposed to be transferred, the number of shares of Common Stock or Preferred Stock proposed to be Transferred, the terms and conditions of the proposed Transfer and the identity and line of business of the prospective transferee(s), and (b) no Stockholder shall consummate any Transfer unless and until the Board determines in its sole discretion that such Transfer would not constitute a Restricted Transfer or the Board otherwise consents to such Transfer.

5. Number of Directors; Election of Directors. 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 of the Corporation (the "By-laws"). Unless and except to the extent that the By-laws shall so require, the election of directors of the Corporation need not be by written ballot.

6. Limitation of Liability.

6.1 To the fullest extent permitted under the DGCL, as amended from time to time, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

6.2 Any amendment or repeal of the foregoing provision shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment or repeal.

7. Indemnification.

7.1 Right to Indemnification. The Corporation shall indemnify

and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a “Covered Person”) who was or is an authorized representative of the Corporation, and who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”), by reason of the fact that such person was or is an authorized representative of the Corporation, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board. For purposes of this Section 7, “authorized representative” means (i) any and all directors of the Corporation, (ii) the Corporation’s Chief Executive Officer, Chief Financial Officer, General Counsel, Treasurer, Secretary, Division Presidents and Executive Vice Presidents and any and all other officers of the Corporation that are appointed by the Board and (iii) any person designated as an authorized representative by the Board (which may, but need not, include any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise).

7.2 Prepayment of Expenses. To the extent not prohibited by applicable law, the Corporation shall pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Section 7 or otherwise.

7.3 Claims. If a claim for indemnification or advancement of expenses under this Section 7 is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

7.4 Nonexclusivity of Rights. The rights conferred on any Covered Person by this Section 7 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of these ~~Bylaws~~By-laws, the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise.

7.5 Other Sources. The Corporation (i) shall be the indemnitor

of first resort (i.e., its obligation to a Covered Person are primary and any obligation of any indemnification and/or insurance providers other than the Corporation (a "Secondary Indemnitor") to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Covered Person are secondary), (ii) shall be required to advance the full amount of expenses contemplated by Section 7.2 that are incurred by a Covered Person and shall be liable for the full amount of all such expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Certificate of Incorporation, the By-laws or any agreement between the Corporation and such Covered Person, and (iii) shall, to the extent a Covered Person has received any payment of amounts otherwise indemnifiable hereunder from any Secondary Indemnitor, upon request by such Covered Person, reimburse such amounts to such Secondary Indemnitor.

7.6 Amendment or Repeal. Any amendment or repeal of the foregoing provisions of this Section 7 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment or repeal.

7.7 Other Indemnification and Prepayment of Expenses. This Section 7 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

7.8 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 the person and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Section 7.

8. Adoption, Amendment or Repeal of By-Laws. The Board is authorized to adopt, amend or repeal the By-laws.

9. Non-Voting Securities. Pursuant to Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), the Corporation will not issue non-voting equity securities (which shall not be deemed to include any warrants or options to purchase capital stock of the Corporation); provided, however, that this provision (i) will have no further force or effect beyond that required under

Section 1123 of the Bankruptcy Code, (ii) will have such force and effect, if any, only for so long as such section is in effect and applicable to the Corporation or any of its wholly-owned Subsidiaries and (iii) in all events may be amended or eliminated in accordance with applicable law as from time to time in effect.

10. Certificate Amendments. The Corporation reserves the right at any time, and from time to time, to amend or repeal any provision contained in this Certificate of Incorporation, and add other provisions authorized by the laws of the State of Delaware at the time in force, in the manner now or hereafter prescribed by applicable 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 (as amended) are granted subject to the rights reserved in this Article.

[Remainder of Page Intentionally Left Blank]

WITNESS the signature of this Amended and Restated Certificate of Incorporation this [__] day of [____] 2015.

EXIDE TECHNOLOGIES

By: ~~Name: [_____] Title:~~
~~[_____] _____~~
Name: [_____]
Title: [_____]

[Signature Page to Certificate of Incorporation of Exide Technologies]

Exhibit 6.12-2

Amended and Restated By-Laws

This Exhibit is subject to all provisions of the Plan, including, without limitation, Section 15.4, pursuant to which the Debtor has reserved the right, subject to the terms and conditions of the Plan Support Agreement and the GUC Trust Settlement Agreement, to alter, amend, or modify the Plan under section 1127(a) of chapter 11 of Title 11 of the United States Code at any time prior to the Confirmation Date

~~DRAFT AS OF 3/4/15; SUBJECT TO REVISION AND MODIFICATION AS AGREED AMONG THE DEBTOR, THE REQUIRED CONSENTING CREDITORS AND THE REQUISITE BACKSTOP PARTIES~~

AMENDED AND RESTATED BY-LAWS

of

EXIDE TECHNOLOGIES

(A Delaware Corporation)

These Amended and Restated By-laws of Exide Technologies were duly adopted in accordance with the provisions of Section 303 of the General Corporation Law of the State of Delaware (“DGCL”), pursuant to the authority granted to the Corporation under Section 303 of the DGCL to put into effect and carry out the ~~Second~~Third Amended Plan of

Reorganization of the Corporation dated as of [_____], 2015 under chapter 11 of Title 11 of the United States Code, as confirmed on [_____], 2015 by order (the “Order”) of the

United States Bankruptcy Court for the District of Delaware (Case No. 13-11482 (KJC)). Provision for the making of these Amended and Restated By-laws is contained in the Order.

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ARTICLE 1

DEFINITIONS

As used in these By-laws, unless the context otherwise requires, the term:

1.1 “Assistant Secretary” means an Assistant Secretary of the Corporation.

1.2 “Assistant Treasurer” means an Assistant Treasurer of the Corporation.

1.3 “Board” means the Board of Directors of the Corporation.

1.4 “By-laws” means the By-laws of the Corporation, as amended.

1.5 “Certificate of Incorporation” means the Certificate of Incorporation of the Corporation, as amended.

1.6 “Chairman” means the Chairman of the Board of Directors of the Corporation.

1.7 “Corporation” means Exide Technologies.

1.8 “DGCL” means the General Corporation Law of the State of Delaware, as amended.

1.9 “Directors” means the directors of the Corporation.

1.10 “~~law~~Law” means any U.S. or non-U.S., federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a governmental authority (including any department, court, agency or official, or non-governmental self-regulatory organization, agency or authority and any political subdivision or instrumentality thereof).

1.11 “Office of the Corporation” means the executive office of the Corporation, anything in Section 131 of the DGCL to the contrary notwithstanding.

1.12 “President” means the President of the Corporation.

1.13 “Secretary” means the Secretary of the Corporation.

1.14 “Stockholders” means the stockholders of the Corporation.

1.15 “Treasurer” means the Treasurer of the Corporation.

1.16 “Vice President” means a Vice President of the Corporation.

ARTICLE 2

STOCKHOLDERS

2.1 Place of Meetings. Meetings of Stockholders may be held at such place or solely by means of remote communication or otherwise, as may be designated by the Board from time to time.

2.2 Annual Meeting. A meeting of Stockholders for the election of Directors and other business shall be held annually at such date and time as may be designated by the Board from time to time.

2.3 Special Meetings. Special meetings of Stockholders may be called at any time by the Board, or at the request, in writing, of Stockholders entitled to cast at least twenty-five percent (25%) of the votes that all Stockholders are entitled to cast at the particular meeting, and may not be called by any other person or persons. Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the notice.

2.4 Record Date. (A) For the purpose of determining the Stockholders entitled to notice of any meeting of Stockholders or any adjournment thereof, unless otherwise required by the Certificate of Incorporation or applicable [law](#)Law, the Board may fix a record date (the “Notice Record Date”), which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than 60 or less than ten days before the date of such meeting. The Notice Record 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 Notice Record Date, that a later date on or before the date of the meeting shall be the date for making such determination (the “Voting Record Date”). For the purposes of determining the Stockholders entitled to express consent to corporate action in writing without a meeting, unless otherwise required by the Certificate of Incorporation or applicable [law](#)Law, the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than ten days after the date on which the record date was fixed by the Board. For the purposes of determining the Stockholders entitled to receive payment of any dividend or other distribution or

allotment of any rights, exercise any rights in respect of any change, conversion or exchange of stock or take any other lawful action, unless otherwise required by the Certificate of Incorporation or applicable [lawLaw](#), the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than 60 days prior to such action.

(B) If no such record date is fixed:

(i) The record date for determining Stockholders entitled to notice of and 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;

(ii) The record date for determining Stockholders entitled to express consent to corporate action in writing without a meeting (unless otherwise provided in the Certificate of Incorporation), when no prior action by the Board is required by applicable [lawLaw](#), 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 [lawLaw](#); and when prior action by the Board is required by applicable [lawLaw](#), the record date for determining Stockholders entitled to express consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board takes such prior action; and

(iii) When a determination of Stockholders of record entitled to notice of or to vote at any meeting of Stockholders has been made as provided in this Section 2.4, such determination shall apply to any adjournment thereof, unless the Board fixes a new Voting Record Date for the adjourned meeting, in which case the Board shall also fix such Voting Record Date or a date earlier than such date as the new Notice Record Date for the adjourned meeting.

2.5 Notice of Meetings of Stockholders. Whenever under the provisions of applicable [lawLaw](#), the Certificate of Incorporation or these By-laws, Stockholders are required or permitted to take any action at a meeting, notice shall be given stating the place, if any, date and hour of the meeting, the means of remote communication, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the Voting Record Date, if such date is

different from the Notice Record Date, and, in the case of a special meeting, the purposes for which the meeting is called. Unless otherwise provided by these By-laws or applicable [lawLaw](#), notice of any meeting shall be given, not less than ten nor more than 60 days before the date of the meeting, to each Stockholder entitled to vote at such meeting as of the Notice Record Date. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail, with postage prepaid, directed to the Stockholder at his or her address as it appears on the records of the Corporation. An affidavit of the Secretary, an Assistant Secretary or the transfer agent of the Corporation that the notice required by this Section 2.5 has been given shall, in the

absence of fraud, be prima facie evidence of the facts stated therein. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. Any business that might have been transacted at the meeting as originally called may be transacted at the adjourned meeting. If, however, the adjournment is for more than 30 days or, if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting. If, after the adjournment, a new Voting Record Date is fixed for the adjourned meeting, the Board shall fix a new Notice Record Date in accordance with Section 2.4(B)(iii) hereof and shall give notice of such adjourned meeting to each Stockholder entitled to vote at such meeting as of the Notice Record Date.

2.6 Waivers of Notice. Whenever the giving of any notice to Stockholders is required by applicable ~~law~~Law, the Certificate of Incorporation or these ~~Bylaws~~By-laws, a waiver thereof, given by the person entitled to said notice, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance by a Stockholder at a meeting shall constitute a waiver of notice of such meeting except when the Stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Neither the business to be transacted at, nor the purposes of, any regular or special meeting of the Stockholders need be specified in any waiver of notice.

2.7 List of Stockholders. The Secretary shall prepare and make, at least ten days before every meeting of Stockholders, a complete, alphabetical list of the Stockholders entitled to vote at the meeting, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list may be examined by any Stockholder, at the Stockholder's expense, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting, during ordinary business hours at the principal place of business of the Corporation or on a reasonably accessible electronic network as provided by applicable ~~law~~Law. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any Stockholder who is present. If the meeting is held solely by means of remote communication, the list shall also be open for inspection as provided by applicable ~~law~~Law. Except as provided by applicable ~~law~~Law, the stock ledger shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders or to vote in person or by proxy at any meeting of Stockholders.

2.8 Quorum of Stockholders; Adjournment. Except as otherwise provided by these By-laws, at each meeting of Stockholders, the presence in person or by proxy of the holders of a majority of the voting power of all outstanding shares of stock entitled to vote at the meeting of Stockholders, shall constitute a quorum for the transaction of any business at such meeting. In the absence

of a quorum, the holders of a majority in voting power of the shares of stock present in person or represented by proxy at any meeting of Stockholders, including an adjourned meeting, may adjourn such meeting to another time and place. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of Directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

2.9 Voting; Proxies. At any meeting of Stockholders, all matters other

than the election of directors, except as otherwise provided by the Certificate of Incorporation, these By-laws or any applicable ~~law~~Law, shall be decided by the affirmative vote of a majority in voting power of shares of stock present in person or represented by proxy and entitled to vote thereon. At all meetings of Stockholders for the election of Directors, a plurality of the votes cast shall be sufficient to elect. 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. A proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in ~~law~~Law to support an irrevocable power. A Stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or by delivering a new proxy bearing a later date.

2.10 Voting Procedures and Inspectors at Meetings of Stockholders.

The Board, in advance of any meeting of Stockholders, may appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting may appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of 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 (A) ascertain the number of shares outstanding and the voting power of each, (B) determine the shares represented at the meeting and the validity of proxies and ballots, (C) count all votes and ballots, (D) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (E) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. Unless otherwise provided 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

determined by the person presiding at the meeting and shall be announced at the meeting. No ballot, proxies, votes or any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a Stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable ~~law~~Law. No person who is a candidate for office at an election may serve as an inspector at such election.

2.11 Conduct of Meetings; Adjournment. The Board may adopt such rules and procedures for the conduct of Stockholder meetings as it deems appropriate. At each meeting of Stockholders, the Chairman or, in the absence of the Chairman, the President or, if the President is absent, a Vice President and, in case more than one Vice President shall be present, that Vice President designated by the Board (or in the absence of any such designation, the most senior Vice President present), shall preside over the meeting. Except to the extent inconsistent with the rules and procedures as adopted by the Board, the person presiding over the meeting of Stockholders shall have the right and authority to convene, adjourn and reconvene the meeting from time to time, to prescribe such additional rules and procedures and to do all such acts as, in the judgment of such person, are appropriate for the proper conduct of the meeting. Such rules and procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include, (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 person presiding over 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. The person presiding over any meeting of Stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, may determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, he or she shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary or, in his or her absence, one of the Assistant Secretaries, shall act as secretary of the meeting. If none of the officers above designated to act as the person presiding over the meeting or as secretary of the meeting shall be present, a person presiding over the meeting or a secretary of the meeting, as the case may be, shall be designated by the Board and, if the Board has not so acted, in the case of the designation of a person to act as secretary of the meeting, designated by the person presiding over the meeting.

2.12 Order of Business. The order of business at all meetings of Stockholders shall be as determined by the person presiding over the meeting.

2.13 Written Consent of Stockholders Without a Meeting. Any action 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 or consents in writing, setting forth the action to be 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 and shall be delivered (by hand or by certified or registered mail, return receipt requested) to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded. Every written consent shall bear the date of signature of each Stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Section 2.13, written consents signed by a sufficient number of holders to take action are delivered to the Corporation as aforesaid. Prompt notice of the taking of the

corporate action without a meeting by less than unanimous written consent shall, to the extent required by applicable ~~law~~Law, be given to those Stockholders who have not consented in writing, and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

ARTICLE 3

DIRECTORS

3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these By-laws or applicable ~~law~~Law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

3.2 Number; Term of Office. The Board shall consist of one or more members, the number thereof to be determined from time to time by the Board. Each Director shall hold office until a successor is duly elected and qualified or until the Director's earlier death, resignation, disqualification or removal.

3.3 Newly Created Directorships and Vacancies. Any newly created

directorships resulting from an increase in the authorized number of Directors and any vacancies occurring in the Board, may be filled by the affirmative votes of a majority of the remaining members of the Board, although less than a quorum. A Director so elected shall be elected to hold office until the earlier of the expiration of the term of office of the Director whom he or she has replaced, a successor is elected and qualified or the Director's death, resignation or removal.

3.4 Resignation. Any Director may resign at any time by notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice or at such later time as is therein specified.

3.5 Regular Meetings. Regular meetings of the Board may be held without notice at such times and at such places as may be determined from time to time by the Board or its Chairman.

3.6 Special Meetings. Special meetings of the Board may be held at such times and at such places as may be determined by the Chairman or the President on at least 24 hours' notice to each Director given by one of the means specified in Section 3.9 hereof other than by mail or on at least three days' notice if given by mail. Special meetings shall be called by the Chairman, President or Secretary in like manner and on like notice on the written request of any two or more Directors.

3.7 Telephone Meetings. Board or Board committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation by a Director in a meeting pursuant to this Section 3.7 shall constitute presence in person at such meeting.

3.8 Adjourned Meetings. A majority of the Directors present at any meeting of the Board, including an adjourned meeting, whether or not a quorum is present, may adjourn and reconvene such meeting to another time and place. At least 24 hours' notice of any adjourned meeting of the Board shall be given to each Director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 3.9 hereof other than by mail, or at least three days' notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

3.9 Notice Procedure. Subject to Sections 3.6 and 3.10 hereof, whenever notice is required to be given to any Director by applicable [law](#)Law, the Certificate of Incorporation or these By-laws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such Director at

such Director's address as it appears on the records of the Corporation, telegram, telecopy or by other means of electronic transmission.

3.10 Waiver of Notice. Whenever the giving of any notice to Directors is required by applicable ~~law~~Law, the Certificate of Incorporation or these By-laws, a waiver thereof, given by the Director entitled to the notice, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board or committee meeting need be specified in any waiver of notice.

3.11 Organization. At each meeting of the Board, the Chairman or, in his or her absence, another Director selected by the Board shall preside. The Secretary shall act as secretary at each meeting of the Board. If the Secretary is absent from any meeting of the Board, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all Assistant Secretaries, the person presiding at the meeting may appoint any person to act as secretary of the meeting.

3.12 Quorum of Directors. The presence of a majority of the Board shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board.

3.13 Action by Majority Vote. Except as otherwise expressly required by these By-laws or the Certificate of Incorporation, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

3.14 Action Without Meeting. Unless otherwise restricted by these ~~Bylaws~~By-laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all Directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee.

3.15 Removal. Subject to the terms hereof, the entire Board or any individual Director may be removed from office with or without cause by the Stockholders entitled to cast at least a majority of the votes that all Stockholders are entitled to cast at an election of directors. In case the Board or any one or more Directors be so removed, one or more individuals may be appointed at the same meeting (or in the same written consent) at which such director or directors have been

so removed to fill the vacancy or vacancies created thereby, to serve for the remainder of the terms, respectively, of the Director or Directors so removed.

ARTICLE 4

COMMITTEES OF THE BOARD

The Board may designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. 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. If a member of a committee shall be absent from any meeting, or disqualified from voting thereat, the remaining member or members present at the meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may, by a unanimous vote, appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by applicable ~~law~~Law, shall have and may exercise all 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 to the extent so authorized by the Board. Unless the Board provides otherwise, at all meetings of such committee, a majority of the then authorized members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board provides otherwise, each committee designated by the Board may make, alter and repeal rules and procedures for the conduct of its business. In the absence of such rules and procedures each committee shall conduct its business in the same manner as the Board conducts its business pursuant to ARTICLE 3.

ARTICLE 5

OFFICERS

5.1 Positions; Election. The officers of the Corporation shall be a President, a Secretary, a Treasurer and any other officers as the Board may elect from time to time, who shall exercise such powers and perform such duties as shall be determined by the Board from time to time. Any number of offices may be held by the same person. The Board may designate one or more Vice Presidents as Executive Vice Presidents and may use descriptive words or phrases to designate the standing, seniority or areas of special competence of the Vice Presidents elected or appointed by it.

5.2 Term of Office. Each officer of the Corporation shall hold office until such officer's successor is elected and qualifies or until such officer's earlier death, resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Such resignation shall take effect at the date of receipt of such notice or at such later time as is therein specified. The resignation of an officer shall be without prejudice to the contract rights of the Corporation, if any. Any officer may be removed at any time with or without cause by the Board. Any vacancy occurring in any office of the Corporation may be filled by the Board. The election or appointment of an officer shall not of itself create contract rights.

5.3 Chairman. The Chairman may or may not be an executive of the Corporation. The Chairman, or in the absence of the Chairman, a chairman chosen by a majority of the Directors present, shall preside at all meetings of the Board and shall exercise such powers and perform such other duties as shall be determined from time to time by the Board.

5.4 President. The President shall have general supervision over the business of the Corporation and other duties incident to the office of President, and any other duties as may from time to time be assigned to the President by the Board and subject to the control of the Board in each case. The President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts and other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these By-laws to some other officer or agent of the Corporation, or shall be required by applicable ~~law~~[Law](#) otherwise to be signed or executed.

5.5 Vice Presidents. Vice Presidents shall have the duties incident to the office of Vice President and any other duties that may from time to time be assigned to the Vice President by the President or the Board. Any Vice President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these By-laws to some other officer or agent of the Corporation, or shall be required by applicable ~~law~~[Law](#) otherwise to be signed or executed.

5.6 Secretary. The Secretary shall attend all meetings of the Board and
of the Stockholders, record all the proceedings of the meetings of the Board and of the Stockholders in a book to be kept for that purpose and perform like duties for committees of the Board, when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board and of the Stockholders and perform such other duties as may be prescribed by the Board or by the President. The Secretary shall have custody of the corporate seal of the Corporation, and the Secretary or an Assistant Secretary, shall have authority to affix the same on any instrument that may require it, and when so affixed, the seal may be attested by the signature of the

Secretary 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 same by such officer's signature. The Secretary or an Assistant Secretary may also attest all instruments signed by the President or any Vice President. The Secretary shall have charge of all the books, records and papers of the Corporation relating to its organization and management, see that the reports, statements and other documents required by applicable ~~law~~Law are properly kept and filed and, in general, perform all duties incident to the office of Secretary of a corporation and such other duties as may from time to time be assigned to the Secretary by the Board or the President.

5.7 Treasurer. The Treasurer shall have charge and custody of, and be

responsible for, all funds, securities and notes of the Corporation, receive and give receipts for moneys due and payable to the Corporation from any sources whatsoever; deposit all such moneys and valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board, against proper vouchers, cause such funds to be disbursed by checks or drafts on the authorized depositories of the Corporation signed in such manner as shall be determined by the Board and be responsible for the accuracy of the amounts of all moneys so disbursed, regularly enter or cause to be entered in books or other records maintained for the purpose full and adequate account of all moneys received or paid for the account of the Corporation, have the right to require from time to time reports or statements giving such information as the Treasurer may desire with respect to any and all financial transactions of the Corporation from the officers or agents transacting the same, render to the President or the Board, whenever the President or the Board shall require the Treasurer so to do, an account of the financial condition of the Corporation and of all financial transactions of the Corporation, disburse the funds of the Corporation as ordered by the Board and, in general, perform all duties incident to the office of Treasurer of a corporation and such other duties as may from time to time be assigned to the Treasurer by the Board or the President.

5.8 Assistant Secretaries and Assistant Treasurers. Assistant

Secretaries and Assistant Treasurers shall perform such duties as shall be assigned to them by the Secretary or by the Treasurer, respectively, or by the Board or the President.

ARTICLE 6

INDEMNIFICATION

6.1 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable ~~law~~Law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is an authorized representative of the Corporation, and who was or is a party,

or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such person was or is an authorized representative of the Corporation, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board. For purposes of this Article 6, "authorized representative" means (i) any and all directors of the Corporation, (ii) the Corporation's Chief Executive Officer, Chief Financial Officer, General Counsel, Treasurer, Secretary, Division Presidents and Executive Vice Presidents and any and all other officers of the Corporation that are appointed by the Board and (iii) any person designated as an authorized representative by the Board (which may, but need not, include any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise).

6.2 Prepayment of Expenses. To the extent not prohibited by applicable ~~law~~Law, the Corporation shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable ~~law~~Law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this ARTICLE 6 or otherwise.

6.3 Claims. If a claim for indemnification or advancement of expenses under this ARTICLE 6 is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable ~~law~~Law.

6.4 Nonexclusivity of Rights. The rights conferred on any Covered Person by this ARTICLE 6 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of these By-laws, the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise.

6.5 Other Sources. The Corporation (i) shall be the indemnitor of first

resort (i.e., its obligation to a Covered Person are primary and any obligation of any indemnification and/or insurance providers other than the Corporation (a “Secondary Indemnitor”) to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Covered Person are secondary), (ii) shall be required to advance the full amount of expenses contemplated by Section 6.2 that are incurred by a Covered Person and shall be liable for the full amount of all such expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of these By-laws, the Certificate of Incorporation or any agreement between the Corporation and such Covered Person, and (iii) shall, to the extent a Covered Person has received any payment of amounts otherwise indemnifiable hereunder from any Secondary Indemnitor, upon request by such Covered Person, reimburse such amounts to such Secondary Indemnitor.

6.6 Amendment or Repeal. Any amendment or repeal of the foregoing provisions of this ARTICLE 6 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment or repeal.

6.7 Other Indemnification and Prepayment of Expenses. This ARTICLE 6 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable ~~law~~Law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

6.8 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 the person and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article 6.

GENERAL PROVISIONS

7.1 Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates or all of such shares shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock, or a combination of both. If shares are represented by certificates (if any) such certificates shall be in the form approved by the Board. The certificates representing shares of stock of each class shall be signed by, or in the name of, the Corporation by the Chairman, the President or any Vice President, and by the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer. Any or all such signatures may be facsimiles. Although any officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such

officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still such at the date of its issue.

7.2 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agents and registry offices or agents at such place or places as may be determined from time to time by the Board.

7.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or his legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

7.4 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be maintained on any information storage device or method; provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to applicable ~~law~~Law.

7.5 Seal. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

7.6 Fiscal Year. The fiscal year of the Corporation shall be determined by the Board.

7.7 Amendments. These By-laws may be amended or repealed and new By-laws may be adopted by the Board, but the Stockholders may make additional By-laws and may alter and repeal any By-laws whether such By-laws were originally adopted by them or otherwise.

7.8 Conflict with Applicable Law or Certificate of Incorporation. These By-laws are adopted subject to any applicable ~~law~~Law and the Certificate of Incorporation. Whenever these By-laws may conflict with any applicable ~~law~~Law or the Certificate of Incorporation, such conflict shall be resolved in favor of such ~~law~~Law or the Certificate of Incorporation.

7.9 Forum for Adjudication of Certain Disputes. Unless the

Corporation consents in writing to the selection of an alternative forum (an “Alternative Forum Consent”), the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation arising out of or relating to any provision of the DGCL or the Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine of the State of Delaware; provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 7.9. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation’s ongoing consent right as set forth above in this Section 7.9.

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Exhibit 6.17-4

**Claims, Defenses, Cross-Claims, and
Counter-Claims Related to Litigation and Possible Litigation**

The following Exhibit 6.17-4 includes Entities, affiliates, subsidiaries and successors and assigns, that are party to or that the Debtor believes may become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. Unless otherwise released by the Plan, the Debtor expressly reserves all claims, defenses, cross claims, and counterclaims against or related to all Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, regardless of whether such Entity is included on the schedule accompanying this Exhibit 6.17-4.

For the avoidance of doubt, no Entity may rely on its omission from Exhibit 6.17-4 as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available Causes of Action against them. The Debtor and the Reorganized Debtor expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.

EXIDE TECHNOLOGIES

RETAINED CAUSES OF ACTION

EXHIBIT 6.17-4 CLAIMS, DEFENSES, CROSS-CLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

PARTY	ADDRESS	CAPTION OF SUIT, CASE NUMBER, AND JURISDICTION (IF APPLICABLE) / DISRIPTION
<u>CITY OF FRISCO</u>	<u>6101 FRISCO SQUARE BOULEVARD FRESCO, TX 75034 UNITED STATES</u>	<u>Any and all claims, causes of action, indemnifications, demands, or liabilities of every kind and nature whatsoever, including those arising under contract, statute, or common law, whether or not known or suspected against the City of Frisco based upon, arising out of, related to, or by reason of any event, contract, cause, thing, act, statement, or omission.</u>
<u>TESLA MOTORS, INC.</u>	<u>3500 DEER CREEK ROAD PALO ALTO, CA 94304 UNITED STATES</u>	<u>Any and all claims, causes of action, indemnifications, demands, or liabilities of every kind and nature whatsoever, including those arising under contract, statute, or common law, whether or not known or suspected against Tesla Motors, Inc. based upon, arising out of, related to, or by reason of any event, contract, cause, thing, act, statement, or omission.</u>

EXHIBIT 7.1

GUC TRUST AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Plan, the Debtor and the Trustee agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Use of Plan Definitions. All capitalized terms which are used in this Agreement but not defined herein shall have the meaning set forth in the Plan, and if not in the Plan, in the Bankruptcy Code.

1.2 Definitions.

1.2.1 “Additional Distribution” means an amount no more than the difference between (a) what the Holders of Class A2 Senior Notes Alternative Distribution Class Claims would be entitled to receive under the Plan on account of their Senior Notes Deficiency Claims if net recoveries from GUC Trust Assets were distributed Pro Rata based on the aggregate amount of Allowed Senior Notes Deficiency Claims, Allowed Class D, and Allowed Class E Claims without regard to the GUC Trust Settlement Agreement and the allocation and distribution formulas included therein with respect to such other GUC Trust Assets and (b) what the Holders of Senior Notes Alternative Distribution Claims are entitled to receive under the Plan on account of their Senior Notes Deficiency Claims from such GUC Trust Assets subject to the allocation and distribution formulas included herein; provided however, that the Additional Distribution, together with the Preference Proceeds Distribution, shall not exceed the amount needed to enable Holders of Senior Notes Alternative Distribution Claims to receive on account of their Senior Notes Deficiency Claims what such Holders would have received in subsection (a) of this provision.

~~1.2.1~~1.2.2 “**Beneficiaries**” means the Holders of Allowed (i) General Unsecured Claims, (ii) Subordinated Notes Claims, and (iii) Senior Notes Deficiency Claims, whether their Claims are Allowed before or after the Effective Date.

~~1.2.2~~1.2.3 “**Creditors’ Committee**” means the official committee of unsecured creditors appointed pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Case on June 18, 2013, as may be reconstituted from time to time.

~~1.2.3~~1.2.4 “**Disputed Claims Reserve**” means Cash in an amount required by order of the Bankruptcy Court, or in the absence of such order, equal to the Distributions which would have been made to the Holders of Disputed Trust Claims if such claims were Allowed.

~~1.2.4~~1.2.5 “**Disputed Trust Claims**” means the General Unsecured Claims which are Disputed as that term is defined in the Plan.

~~1.2.5~~1.2.6 “**Distribution**” means a distribution of property to a Beneficiary on account of a Trust Claim pursuant to this Agreement and the Plan.

~~1.2.6~~1.2.7 “**Distribution Date**” means any date on which Distributions are made in accordance with this Agreement.

~~1.2.7~~1.2.8 “**DTCC**” means the Depository Trust & Clearing Corporation and its successors and assigns.

~~1.2.8~~1.2.9 “**Entity**” has the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

~~1.2.9~~1.2.10 “**Exchange Act**” means the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

~~1.2.10~~1.2.11 **“Final Preference Repayment Date”** means the date on which the Trust shall have fully repaid \$3,000,000 in Net Proceeds from GUC Trust Preference Actions to the Reorganized Debtor.

~~1.2.11~~1.2.12 **“GUC Trust Assets”** means the assets transferred to and vested in the Trust on the Effective Date pursuant to the Plan (or subsequent thereto), which assets are comprised of (a) the GUC Trust Cash Contribution, (b) the GUC Trust IP Transaction Proceeds, (c) the GUC Trust LME Pricing Litigation Assets, and (d) the GUC Trust Causes of Action.

~~1.2.12~~1.2.13 **“GUC Trust Board”** means the three (3) member oversight board for the Trust, two (2) members of which shall be selected by the Creditors’ Committee and one (1) member of which shall be selected by the Unofficial Noteholder Committee. The initial members of the GUC Trust Board are identified on Exhibit A annexed hereto.

~~1.2.13~~1.2.14 **“GUC Trust Cash Contribution”** means the \$3,000,000.00 to be contributed by the Debtor or the Reorganized Debtor to the Trust on the Effective Date to fund the Trust’s costs and expenses, which amount shall be repaid by the Trust to the Reorganized Debtor from the first \$3,000,000.00 in Net Proceeds from GUC Trust Preference Actions, but which is otherwise not repayable.

~~1.2.14~~1.2.15 **“GUC Trust Causes of Action”** means (a) the GUC Trust Preference Actions, (b) the LME Pricing Claims, and (c) such other Causes of Action that may be identified and either (i) agreed to among the Debtor or Reorganized Debtor, the Creditors’ Committee and the Unofficial Noteholder Committee or (ii) ordered to be contributed to the Trust pursuant to a Final Order of the Bankruptcy Court, prior to the Effective Date, pursuant to and in accordance with the terms of the GUC Trust Settlement Agreement and Article 7.5

of the Plan, and as set forth in Exhibit 7.3 of the Plan, in each circumstance only to the extent such Causes of Action are not released pursuant to Article 12.6 of the Plan.

~~1.2.15~~1.2.16 “**GUC Trust IP Transaction Proceeds**” means the 45% of the IP Transaction Proceeds allocable to the Trust: (i) 55% of which shall be distributable ~~Pro Rata~~first, to Beneficiaries who are Holders of Allowed Senior Notes Alternative Distribution Claims to satisfy the requirements of the Additional Distribution, and subsequently on a Pro Rata basis to all Holders of Allowed Senior Notes Deficiency Claims, and (ii) 45% of which shall be distributable Pro Rata to Beneficiaries who are Holders of Allowed Other General Unsecured Claims.

~~1.2.16~~1.2.17 “**GUC Trust LME Pricing Litigation Assets**” means (a) the right to pursue LME Pricing Claims pursuant to and in accordance with the terms of the GUC Trust Settlement Agreement and the Net Proceeds thereof, which shall be deposited in the Trust, with (i) 45% distributable ~~Pro Rata to the~~first, to Beneficiaries who are Holders of Allowed Senior Notes Alternative Distribution Claims to satisfy the requirements of the Additional Distribution, and subsequently on a Pro Rata basis to all Holders of Allowed Senior Notes Deficiency Claims, and (ii) 55% distributable Pro Rata to the Beneficiaries who are Holders of Allowed Other General Unsecured Claims, in accordance with the terms of the GUC Trust Settlement Agreement, and (b) the Net Proceeds arising from any monetary compensation, rights of restitution, or other pecuniary benefits to which the Debtor or Reorganized Debtor, as applicable, is entitled as a result of a public/governmental antitrust enforcement action relating to LME Pricing Claims, which shall be deposited in the Trust for distribution Pro Rata to Beneficiaries who are the Holders of Allowed General Unsecured Claims in accordance with the terms of the GUC Trust Settlement Agreement.

~~1.2.17~~1.2.18 **“GUC Trust Preference Actions”** means those certain Avoidance Actions arising under sections 547 and 550 of the Bankruptcy Code, transferred to the Trust on the Effective Date, which Avoidance Actions have been agreed among the Debtor, the Creditors’ Committee, and the Unofficial Noteholder Committee, pursuant to and in accordance with the GUC Trust Settlement Agreement and which are or shall be identified on Exhibit B.

~~1.2.18~~1.2.19 **“GUC Trust Settlement Agreement”** means that certain agreement approved by the Bankruptcy Court on February 4, 2015 (Docket No. 3093), as may be amended, supplemented, restated, or otherwise modified from time to time with the written agreement of the parties thereto, which sets forth the terms of the settlement among the Debtor, the Creditors’ Committee, and certain members of the Unofficial Noteholder Committee.

~~1.2.19~~1.2.20 **“Investment Company Act”** means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

~~1.2.20~~1.2.21 **“IP Transaction”** means the monetization of intellectual property through any offset or similar transaction identified by the Reorganized Debtor in its reasonable business judgment and in consultation with the Trustee in accordance with the GUC Trust Settlement Agreement.

~~1.2.21~~1.2.22 **“IP Transaction Proceeds”** means the Net Proceeds from any IP Transaction (which amount shall be determined by the Reorganized Debtor in its reasonable business judgment and in consultation with the Trustee, after reimbursement to the Reorganized Debtor for the IP Advisor’s fees and expenses), which shall be distributed 55% to the

Reorganized Debtor and 45% to the Trust, in accordance with the terms of the GUC Trust Settlement Agreement.

~~1.2.22~~1.2.23 “**LME Pricing Claims**” means any private antitrust action, price competition action, or similar action to the extent permitted by applicable law, whether the foregoing arises under United States law or the laws of foreign jurisdictions, for damages to the Debtor and/or its Subsidiaries or Affiliates resulting from alleged lead price manipulation that is the subject of the investigation conducted by the Creditors’ Committee and the Debtor beginning in or about April 2014, pursuant to and in accordance with the terms and conditions of the GUC Trust Settlement Agreement.

~~1.2.23~~1.2.24 “**Net Proceeds**” means the gross proceeds generated through the liquidation and monetization of the GUC Trust Assets or any portion thereof, less charges, costs and expenses that are rightly deducted and attributable to the liquidation and monetization of such GUC Trust Assets.

~~1.2.24~~1.2.25 “**Other General Unsecured Claims**” means all Subordinated Notes Claims and all General Unsecured Claims.

1.2.26 “Preference Proceeds Distribution” means an amount from net proceeds of GUC Trust Preference Actions distributable to Holders of Senior Notes Eligible Holder Claims equal to (a) \$1.5 million divided by Allowed Class D Claims plus the Allowed Class E Claims multiplied by (b) the Senior Notes Deficiency Claim of Holders of Senior Notes Alternative Distribution Claims.

~~1.2.25~~1.2.27 “**Pro Rata**” means with respect to Claims at any time, the proportion that the Face Amount of a Claim in a particular Class or Classes bears to the

aggregate Face Amount of all Claims (including Disputed Claims, but excluding disallowed Claims) in such Class or Classes.

~~1.2.26~~1.2.28 “**Securities Act**” means the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder.

~~1.2.27~~1.2.29 “**Senior Notes**” means the 8.625% Senior Secured Notes due 2018 issued by Exide Technologies pursuant to the Senior Notes Indenture.

~~1.2.28~~1.2.30 “**Senior Notes Deficiency Claim**” means the portion of the Senior Notes Claim that is unsecured pursuant to section 506(a) of the Bankruptcy Code, which shall be Allowed for all purposes under the Plan in the amount of [\$659.8] million.

~~1.2.29~~1.2.31 “**Senior Notes Indenture**” means that certain indenture dated as of January 25, 2011, pursuant to which the Senior Notes were issued.

~~1.2.30~~1.2.32 “**Senior Notes Indenture Trustee**” means the indenture trustee for the Senior Notes appointed under the Senior Notes Indenture.

~~1.2.31~~1.2.33 “**Subordinated Notes**” means those floating rate convertible senior subordinated notes due September 18, 2013 issued pursuant to the Subordinated Notes Indenture.

~~1.2.32~~1.2.34 “**Subordinated Notes Claim**” means a Claim of a Subordinated Notes Holder arising under or as a result of the Subordinated Notes, which Claims shall be Allowed for all purposes under the Plan in the aggregate amount of \$51,900,000, and which for the avoidance of doubt shall not be subject to any avoidance, reductions, recharacterization, counterclaim, defense, disallowance, impairment, objection, or any challenges under applicable law or regulation, provided, however, that the rights of holders of Class A2 Senior Notes

Alternative Distribution Class Claims who voted against the Plan shall not be waived or impaired, provided further however, that the subordination rights of the Holders of Senior Notes Alternative Distribution Claims that voted against the Plan shall only be enforced to the extent of such Holder's Pro Rata share of any distributions that would otherwise be made to all Holders of Senior Notes, but for the waiver of subordination provided for in the Plan.

~~1.2.33~~1.2.35 “**Subordinated Notes Indenture**” means that certain indenture for the Subordinated Notes between Exide Technologies and the Subordinated Notes Indenture Trustee, dated as of March 18, 2005.

~~1.2.34~~1.2.36 “**Subordinated Notes Indenture Trustee**” means U.S. Bank National Association, in its capacity as indenture trustee for the Subordinated Notes pursuant to the Subordinated Notes Indenture.

~~1.2.35~~1.2.37 “**Trust**” means the liquidating trust established pursuant to the terms of this Agreement, and is the liquidating trust referred to as the “GUC Trust” in the Plan.

~~1.2.36~~1.2.38 “**Trust Claim(s)**” means the Claims of the Beneficiaries on account of which the Beneficiaries are entitled to receive a Distribution pursuant to the terms of the Plan and this Agreement.

~~1.2.37~~1.2.39 “**Trustee**” shall mean (a) initially, the individual identified as the “Trustee” above, and (b) any successors or replacements duly appointed under the terms of this Agreement, and who is referred to as the “GUC Trust Trustee” in the Plan.

~~1.2.38~~1.2.40 “**UCC Trust Board Member**” shall mean the two (2) members of the GUC Trust Board appointed by the Creditors’ Committee, and any successors thereto.

~~1.2.39~~1.2.41 “**UNC Trust Board Member**” shall mean the one (1) member of the GUC Trust Board appointed by the Unofficial Noteholder Committee, and any successors thereto.

~~1.2.40~~1.2.42 “**Unofficial Noteholder Committee**” means the unofficial committee of unaffiliated holders (which include holders or investment advisors or managers of discretionary accounts) of Senior Notes represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and Young Conaway Stargatt & Taylor, LLP.

1.3 Headings; Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that Section or Article under this Agreement. The words “hereof,” “herein,” “hereunder,” and similar terms shall refer to this entire Agreement and not to any particular Section or Article of this Agreement.

ARTICLE II

DECLARATION OF TRUST

2.1 Establishment of the Trust. Pursuant to the Plan, the Debtor hereby constitutes and establishes the Trust on behalf of, and for the benefit of, the Beneficiaries effective as of the Effective Date of the Plan. The Trustee may conduct the affairs of the Trust under the name of the “Exide Creditors’ Liquidating Trust.” The sole purpose of the Trust is the liquidation and distribution of the GUC Trust Assets in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or

2.8 Safekeeping of GUC Trust Assets. All GUC Trust Assets shall, until distributed as provided herein, be held in trust for the benefit of the Beneficiaries in accordance with the Plan and this Agreement. The Trustee shall be under no liability for interest or producing income on any moneys received by it hereunder and held for distribution to the Beneficiaries, except as such interest or income shall actually be received by the Trust.

ARTICLE III

THE TRUSTEE AND THE ADMINISTRATION OF THE TRUST

3.1 Appointment. Pursuant to the Plan, ~~_____~~ Peter Kravitz of Province Inc. has been designated to serve as the initial Trustee, and, as of the Effective Date, he hereby accepts such appointment and agrees to serve in such capacity. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf of, and for the benefit of the Beneficiaries, by the Debtor or the Reorganized Debtor of all of its rights, title, and interest in the GUC Trust Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan and the Confirmation Order. The Trustee shall be deemed to be appointed pursuant to Bankruptcy Code section 1123(b)(3)(B).

3.2 Generally. The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Trust and the Trustee shall act in the best interests of the Beneficiaries and in furtherance of the purpose of the Trust and the Trustee shall use commercially reasonable efforts to resolve the GUC Trust Causes of Action and to make timely distributions of any proceeds therefrom and to otherwise monetize the GUC Trust Assets and not unreasonably prolong the duration of the Trust. The Trustee shall have authority to bind the Trust, and for all purposes of this Agreement, shall be acting as

(c) The first \$3,000,000.00 of the Net Proceeds of the GUC Trust Preference Actions shall be used to reimburse the Reorganized Debtor for the GUC Trust Cash Contribution. The next \$1,500,000.00 in Net Proceeds of the GUC Trust Preference Actions shall be allocated and distributable on a Pro Rata basis to the Beneficiaries who are Holders of Allowed Other General Unsecured Claims pursuant to and in accordance with the terms of the GUC Trust Settlement Agreement and Plan. Any additional Net Proceeds of the GUC Trust Preference Actions shall be allocated and distributable Pro Rata to the Beneficiaries who are Holders of Allowed Other General Unsecured Claims and Senior Notes Deficiency Claims, provided, however, that in order to allow for holders of Senior Notes Alternative Distribution Claims to receive up to a pro rata distribution of net proceeds of the GUC Trust Assets, the Preference Proceeds Distribution shall be allocated and distributed Pro Rata to Holders of Senior Notes Alternative Distribution Claims from any Net Proceeds of the GUC Trust Preference Actions otherwise distributable to Holders of Senior Notes Eligible Claims.

3.12 General Unsecured Claims Resolution. The Reorganized Debtor shall be responsible for (a) all aspects of the General Unsecured Claims reconciliation process (except making Distributions to Holders of General Unsecured Claims, and (b) all of the costs associated with such reconciliation. The Reorganized Debtor shall consult with the Trustee on a periodic basis as is reasonably requested by the Trustee regarding the Claims reconciliation process. The Reorganized Debtor shall (x) object to General Unsecured Claims and shall provide the Trustee with notice and an opportunity to object to all Claims that the Reorganized Debtor seeks to resolve for an amount greater than \$20,000, and (y) use commercially reasonable efforts in administering all aspects the Claims reconciliation process. If the Trustee cannot agree with the Reorganized Debtor with respect to the resolution of any Claim greater

3.17 Reliance by Trustee. The Trustee may absolutely and unconditionally rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Trustee in good faith to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with legal counsel, financial or accounting advisors, and other professionals to be selected by the Trustee and may rely, in good-faith, on the advice thereof, and shall not be liable for any action taken or omitted to be taken in accordance with the advice thereof.

3.18 Compensation of the Trustee and Others.

(a) The Trustee shall be entitled to receive compensation payable from the GUC Trust Assets in accordance with the terms set forth in Exhibit C annexed hereto. ~~With respect to the success fee component of the Trustee's compensation structure, the~~ The Trustee shall provide ~~a written billing statement to~~ the GUC Trust Board ~~requesting any such fee and outlining the basis for the calculation of such fee~~ with monthly invoices for all of his fees and expenses (with supporting documentation as applicable). The GUC Trust Board shall have 15 Business Days from the receipt of ~~the billing statement~~ any invoice to provide the Trustee with a written objection to the requested ~~fee~~ fees and expenses. In the event no objections are timely raised, the Trustee may pay the ~~fee~~ fees and expenses, or that portion of the ~~fee~~ fees and expenses, that is not subject to an objection. In the event any dispute regarding the ~~fee~~ fees and expenses are not resolved consensually, either the Trustee or the GUC Trust Board may file a motion with the Bankruptcy Court, on notice to the other party, seeking a resolution of the dispute. The Trustee may pay his compensation and other costs and expenses of the Trust before approving or making any Distributions to Beneficiaries.

of interest or the Bankruptcy Court, on motion of a party in interest, determines one exists. In the event the Trustee is unwilling or unable to appoint a disinterested Person to handle any such matter, the Bankruptcy Court, upon the request of a party in interest, and after a notice and hearing, may do so.

3.21 Term of Service. The duties, responsibilities and powers of the Trustee shall terminate on the date the Trust is dissolved pursuant to Article IX of this Agreement, under applicable law, by an Order of the Bankruptcy Court, or the effective date of the resignation or removal of the Trustee, *provided, that* sections 3.15 to 3.18 above shall survive such termination and dissolution.

3.22 Resignation. The Trustee may resign at any time by giving the GUC Trust Board at least 30 days' written notice of the Trustee's intention to do so, in which case the resignation shall be effective no earlier than the 30th day following issuance of such notice or such other date agreed to by the Trustee and GUC Trust Board. In the event of a resignation, the resigning Trustee shall render to the GUC Trust Board a full and complete accounting of monies and assets received, disbursed, and held during the term of office of the resigning Trustee and such other information as reasonably requested by the GUC Trust Board. In the event of a resignation of the Trustee, the resigning Trustee shall be entitled to payment of all compensation earned by the Trustee through and including the effective date of such resignation. Any disputes regarding the compensation to be paid to the Trustee shall be determined by the Bankruptcy Court.

3.23 Removal. The Trustee may be removed upon the unanimous vote of the GUC Trust Board with or without cause. Any [GUC Trust Board member may seek an order of the Bankruptcy Court, on notice to the Trustee and other GUC Trust Board members to remove](#)

the Trustee for cause, provided, however, the member seeking such removal must establish that cause exists for such removal. Any removal of the Trustee shall become effective on such date as may be specified by the GUC Trust Board, or, in the event of removal by order of the Bankruptcy Court, upon such date ordered by the Bankruptcy Court. In the event of the removal of the Trustee, the removed Trustee shall render to the GUC Trust Board a full and complete accounting of monies and assets received, disbursed, and held during the term of office of the removed Trustee and such other information as reasonably requested by the GUC Trust Board. In the event of the removal of the Trustee, the Trustee shall be entitled to payment of all compensation earned by the Trustee through and including the effective date of such removal. Any disputes regarding the compensation to be paid to the Trustee shall be determined by the Bankruptcy Court.

3.24 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, the UCC Trust Board Members shall promptly and unanimously appoint a successor Trustee to fill the vacancy so created. If the UCC Trust Board Members fail to timely appoint the successor Trustee, the Bankruptcy Court shall do so upon motion or application by any member of the GUC Trust Board. Any successor Trustee so appointed shall consent to and accept in writing, to be filed with the Bankruptcy Court, the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. Thereupon, such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his predecessor in the Trust with like effect as if originally named herein; *provided, however,* that a removed or resigning Trustee shall, nevertheless, when reasonably

Trust Claims are Disputed and whether any Disputed Trust Claims became Allowed Trust Claims and if so the Allowed amount. The Reorganized Debtor shall promptly provide an updated Claims Register upon the Trustee's reasonable request, provided, however, that such requests shall not be made more than once per quarter. None of the Debtor, Reorganized Debtor, the Trust and the Trustee ~~and~~, members of the GUC Trust Board, [the Senior Notes Indenture Trustee, and the Subordinated Notes Trustee](#) shall incur any liability in connection with the determination of the interests of the Beneficiaries in the Trust and the size of the Disputed Claims Reserve [unless such determination is based on their own fraud, gross negligence, or willful misconduct](#). The Trust and the Trustee shall have the absolute and unconditional right to rely on the information provided by the Debtor or the Reorganized Debtor, as applicable, for purposes of notices and distributions under this Agreement and neither the Trust, the Trustee nor the members of the GUC Trust Board shall incur any liability by relying on the information it receives under this section 5.1, and the Reorganized Debtor shall not incur any liability in connection therewith. Each Beneficiary (shall furnish, in writing, its name, address, tax identification number, and completed IRS Form W-9 or, if applicable, IRS Form W-8, to the Trustee within ~~thirtysixty~~ [\(3060\)](#) days of a written request from the Trustee. As provided in the Plan, the failure to comply with the preceding sentence shall result in the Beneficiary forfeiting their Trust interest and rights to any Distribution, and any such forfeited amounts shall be distributed to the remaining Beneficiaries in accordance with the Plan and the allocation and distribution formulas included in the GUC Trust Settlement Agreement.

[Notwithstanding the foregoing, each individual holder of a Senior Notes Deficiency Claim or Subordinated Notes Claim is not required to provide the Trustee with an IRS Form W-9 or](#)

IRS Form W-8 and, instead, this requirement shall be deemed satisfied by the receipt of either an IRS Form W-9 or IRS Form W-8 from the DTCC.

5.2 Rights of Beneficiaries. Each Beneficiary shall take and hold its beneficial interest in the Trust subject to all of the terms and provisions of this Agreement and the Plan. A Beneficiary shall have no title or right to, or possession, management, or control of, the GUC Trust Assets except as may expressly provide herein. The interest of a Beneficiary in the Trust is in all respects personal property, and the death, insolvency, or incapacity of an individual Beneficiary shall not terminate or affect the validity of this Agreement. No surviving spouse, heir, or devisee of any deceased Beneficiary shall have any right of dower, homestead, inheritance, partition, or any other right, statutory or otherwise, in the GUC Trust Assets, and their sole interest shall be the rights and benefits given to the Beneficiaries under this Agreement.

5.3 Limit on Transfers. The interests of the Beneficiaries in the Trust shall be uncertificated, and shall be reflected only on the books and records of the Trust maintained by the Trustee. Such interests are not negotiable and not transferable except (a) pursuant to applicable laws of descent and distribution (in the case of a deceased individual Beneficiary) or (b) by operation of law. The Trustee shall not be required to record any transfer which, in the Trustee's sole discretion, may be construed to create any uncertainty or ambiguity as to the identity of the holder of the interest in the Trust. Until a transfer is, in fact, recorded on the books and records maintained by the Trustee for the purpose of identifying Beneficiaries, the Trustee, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications as though he or she has

Trustee at least five (5) business days in advance of the Trustee making distributions to Beneficiaries on account of their Allowed Senior Notes Deficiency Claims. The Senior Notes Indenture Trustee shall only be required to act and make distributions in accordance with the Plan, and this Agreement and shall not be required to independently verify or review the calculations prepared by the Trustee with respect to distributions to be made to Beneficiaries on account of their Allowed Senior Notes Deficiency Claims, and shall have no liability for actions taken in accordance with the Plan or in reliance upon distribution information and distribution calculations provided by the Trustee, except solely for actions or omissions arising out of the Senior Notes Indenture Trustee's intentional fraud, willful misconduct, gross negligence or criminal conduct. Further, the Senior Notes Indenture Trustee shall have no obligation or liability for distributions under the Plan to any party who does not (i) hold a Claim against the Debtor as of the Distribution Record Date or (ii) otherwise comply with the terms of the Plan, except solely for actions or omissions arising out of the Indenture Trustees' intentional fraud, willful misconduct, gross negligence or criminal conduct.

7.4 Delivery of Distributions on Account of Senior Notes Deficiency Claims. Upon the occurrence of the Effective Date, the Claims of the Senior Notes Indenture Trustee for the Senior Notes Deficiency Claims shall be, for purposes under the Plan, including without limitation, the right to receive Distributions, substituted for all Trust Claims of Beneficiaries on account of their Allowed Senior Notes Deficiency Claims. Distributions on account of such Senior Notes Deficiency Claims shall be made by the Trustee to (i) the Senior Notes Indenture Trustee ~~or~~, (ii) with the prior written consent of the Senior Notes Indenture Trustee, by means of book-entry exchange through the facilities of DTCC in accordance with DTCC's customary practices, or (iii) at the direction of the Senior Notes Indenture Trustee, to the Claims and

[Solicitation Agent for further distribution to the holders of the Senior Notes Deficiency Claims.](#)

If a Distribution is made to the Senior Notes Indenture Trustee, the Senior Notes Indenture Trustee, in its capacity as a distribution agent, shall administer the Distribution in accordance with the Plan and the applicable Indenture. Nothing herein shall be deemed to impair, waive or extinguish any right of the Senior Notes Indenture Trustee with respect to the Charging Lien against applicable Distributions.

7.5 Service of the Subordinated Notes Indenture Trustee. The Subordinated Notes Indenture Trustee and its respective agents, successors and assigns, and the Trustee shall facilitate the making of the Distributions to Beneficiaries on account of their Allowed Subordinated Notes Claims, in accordance with the Plan and the Subordinated Notes Indenture, and upon completion thereof, shall be discharged of all of its obligations associated with the Subordinated Notes Claims. The Trustee shall be obligated to calculate the Distributions to be made to Beneficiaries on account of their Allowed Subordinated Notes Claims and shall provide such distribution calculations and related information to the Subordinated Notes Indenture Trustee at least five (5) business days in advance of the Trustee making distributions on account of Allowed Subordinated Notes Claims. The Subordinated Notes Indenture Trustee shall only be required to act and make distributions in accordance with the Plan, shall not be required to independently verify or review the calculations prepared by the Trustee with respect to distributions to be made to Beneficiaries on account of their Allowed Subordinated Notes Claims, and shall have no liability for actions taken in accordance with the Plan or in reliance upon distribution information and distribution calculations provided by the Trustee, except solely for actions or omissions arising out of the Subordinated Notes Indenture Trustee's intentional fraud, willful misconduct, gross negligence or criminal conduct. Further,

(e) Compliance with Laws. Any and all Distributions hereunder shall be made in compliance with applicable laws, including but not limited to, applicable federal and state securities laws.

(f) Abandonment. With the approval of the GUC Trust Board, the Trustee may abandon, in any commercially reasonable manner (including abandonment or donation to a charitable organization of his or her choice), any property that the Trustee reasonably concludes is of no benefit to the Beneficiaries. For the avoidance of doubt, no notice to, or approval from the Bankruptcy Court shall be required for any such abandonment.

(g) Distribution Agents. The Trustee shall have the authority to enter into agreements with one or more distribution agents to facilitate the distributions required under the Plan and this Agreement. The Trustee may pay to such distribution agents all reasonable and documented fees and expenses of the distribution agents without the need for any approvals, authorizations, actions or consents.

7.8 Compliance with Tax Requirements. The Trustee shall be authorized to require each Beneficiary to provide it with a current executed IRS Form W-9, Form W-8, or similar tax form as a condition precedent to being sent a Distribution. The Trustee shall provide advance written notice of any such requirement to each Beneficiary affected thereby. The notice shall provide each Beneficiary with a minimum of ~~90~~60 days after the date of mailing of such notice to provide a current executed Form W-9, Form W-8 or similar tax form to the Trustee and shall expressly state that a failure to provide such form within the stated period shall result in a forfeiture of the right to receive any Distribution from the Trust or the proceeds of the GUC Trust Assets, that any such Distribution shall revert to the Trust for distribution on account of other Allowed Trust Claims and that the Allowed Trust Claim of the

Beneficiary originally entitled to such Distribution shall be waived, discharged, cancelled, and forever barred without further order of the Bankruptcy Court. If a Beneficiary does not provide the Trustee with a current executed Form W-9, Form W-8 or similar tax form within the time period specified in such notice, or such later time period agreed to by the Trustee in writing in its discretion, such Beneficiary shall be deemed to have forfeited the right to receive any Distribution on account of its Allowed Trust Claim under the Plan, and any such Distribution shall revert to the Trust for Distribution on account of other Allowed Trust Claims of Beneficiaries and the Allowed Trust Claim of the Beneficiary originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court. Notwithstanding the foregoing, each individual holder of a Senior Notes Deficiency Claim or Subordinated Notes Claim is not required to provide the Trustee with an IRS Form W-9 or IRS Form W-8 and, instead, this requirement shall be deemed satisfied by the receipt of either an IRS Form W-9 or IRS Form W-8 from the DTCC.

7.9 Distributions After Allowance or Disallowance of a Disputed Trust Claim. As soon as reasonably practicable after a Disputed Trust Claim becomes an Allowed Trust Claim, the Trustee shall distribute to the Holder thereof, from the Disputed Claims Reserve, such amount as would have been distributed to such Holder if its Disputed Trust Claim had been a Trust Claim that was Allowed on the Effective Date. The Trustee shall no longer reserve for a Disputed Trust Claim and shall distribute to the Beneficiaries on the next Distribution Date, pursuant to this Agreement, their Pro Rata share of the funds held in the Disputed Claim Reserve on account of any Disputed Trust Claim that becomes Disallowed.

7.10 Undeliverable Distributions and Unclaimed Property. In the event that any Distribution of Cash to any Beneficiary is returned as undeliverable, no further Distribution to

such Beneficiary shall be made unless and until the Trustee or his/her disbursing agent is notified in writing of such Beneficiary's then-current address, at which time such Distribution shall be made to such Beneficiary without interest; *provided, however*, that unless a Beneficiary asserts a claim for an undeliverable Distribution within 120 days after such Distribution is returned as undeliverable, such Distribution shall be deemed unclaimed property within the meaning of section 347(b) of the Bankruptcy Code and all title to and beneficial interest in the GUC Trust Assets represented by any such undeliverable Distributions shall be cancelled and revert to and/or remain in the Trust automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial or state escheat, abandoned or unclaimed property laws to the contrary), and such undeliverable Distributions shall be distributed to the Beneficiaries on account of their Trust Claims in accordance with this Agreement and the allocation and distribution formulas included in the GUC Trust Settlement Agreement. In the event any check sent to a Beneficiary respecting a Distribution to such Beneficiary has not been cashed within six months of the date of the respective Distribution, such check shall be cancelled and ~~no additional Distribution shall be made to such Beneficiary,~~ such Distribution shall be deemed unclaimed property within the meaning of section 347(b) of the Bankruptcy Code, and the Trust Claims of the Beneficiaries that may have been entitled to such Distribution shall be discharged and forever barred from receiving Distributions under this Agreement. After such date, all uncashed Distributions shall become Trust property and revert to the Trust, and shall be redistributed in accordance with this Agreement to the Beneficiaries; *provided, however, the Trustee shall file a notice on the Bankruptcy Court docket listing any such unclaimed Distributions fourteen (14) days' prior to the date such unclaimed Distributions revert to the Trust.* The Trustee may, in its sole

11.5 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

11.6 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Entity can bind, pledge, encumber, execute upon, garnish, or attach the GUC Trust Assets in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Any such payment shall be governed solely by the Plan and this Agreement.

11.7 Plan and Confirmation Order. The terms of this Agreement are intended to supplement and effectuate the terms provided by the Plan and the Confirmation Order. Accordingly, to the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of this Agreement shall govern and control, provided, however, to the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan with respect to a matter that relates to the Senior Notes Deficiency Claim, then the terms of the Plan shall control over the terms of this Agreement only where a matter relates to the Senior Notes Deficiency Claim. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control. Any immaterial effectuating provisions of the Plan or this Agreement may be interpreted by the Trustee in such a manner that is consistent with the overall purpose and intent of the Plan and this Agreement all without further Bankruptcy Court order.

11.8 Severability. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void,

EXHIBIT A

[List of GUC Trust Board Members]

1. ~~Andrew L. Sole, Esq.~~ [Esopus Creek Management LLC](#)
2. Carl E. Ailara Jr., Esq. [for HCL America, Inc.](#)
3. ~~TBD~~ [Ocean Ridge Capital Advisors LLC](#)

EXHIBIT C

[Terms of Compensation for Trustee and GUC Trust Board Members]

~~{To Be Provided}~~

1. Trustee Compensation - \$2,500 per month plus 2.75% of gross recoveries. The percentage component does not apply to recoveries from Preference Actions until the GUC Trust Cash Contribution is paid back to the Debtor.
2. GUC Trust Board Members – Each member of the GUC Trust Board shall be paid \$40,000 per year for the first two years after the GUC Trust is established. After the second anniversary of the establishment of the GUC Trust, the GUC Trustee and GUC Trust Board Members shall confer with one another to determine whether the annual compensation for each GUC Trust Board Member shall be adjusted downward.

EXHIBIT 9.1

ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Exhibit 9.1-1 Assumed Executory Contracts and Unexpired Leases

COUNTERPARTY	COUNTERPARTY ADDRESS	DESCRIPTION OF AGREEMENT(S) TO BE ASSUMED, OR ASSUMED AND ASSIGNED, AS APPLICABLE	CURE AMOUNT
GINGULAR WIRELESS LLC	ATTN: SENIOR CONTRACT MANAGER FOR SUPPLIER'S ACCOUNT 5565 GLENRIDGE CONNECTOR ATLANTA, GA 30342	Master Supplier Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Effective Date: 10/30/2006	\$0.00
CITY OF FRISCO, TEXAS	ATTN: GEORGE PUREFOY CITY HALL 6101 FRISCO SQUARE, FIFTH FLOOR FRISCO, TX 75034	Master Settlement Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Dated: 06/6/2012	See Confirmation Order
CITY OF FRISCO, TEXAS	ATTN: GEORGE PUREFOY CITY HALL 6101 FRISCO SQUARE, FIFTH FLOOR FRISCO, TX 75034	Escrow Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Dated: 06/15/2012	See Confirmation Order
CITY OF FRISCO, TEXAS	ATTN: GEORGE PUREFOY CITY HALL 6101 FRISCO SQUARE, FIFTH FLOOR FRISCO, TX 75034	Voluntary Cleanup Program Agreement (#2541), and any related amendments, modifications, renewals, and extensions thereto	See Confirmation Order
CRICKET COMMUNICATIONS, INC.	ATTN: LEGAL DEPARTMENT; ATTN: PROCUREMENT 5887 COPLEY DRIVE SAN DIEGO, CA 92111	Mutual Non-Disclosure Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Effective Date: 02/17/2011	\$0.00
DARAMIC, LLC	ATTN: GENERAL COUNSEL 11430 NORTH COMMUNITY HOUSE RD, SUITE 350 CHARLOTTE, NC 28277	Supply Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Dated: 09/04/2012	\$78,461.34
ILLINOIS CENTRAL RAILROAD COMPANY	17641 ASHLAND AVENUE HOMEWOOD, IL 60430	Right of Entry Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Dated: 05/31/2005	\$0.00
SYNTERRA CORPORATION	ATTN: ERIC SNIDER 148 RIVER STREET, SUITE 220 GREENVILLE, SC 29601	Master Services Agreement, and any related amendments, modifications, renewals, and extensions thereto Contract Dated: 08/20/2012	\$0.00
UNION PACIFIC RAILROAD	ATTN: REAL ESTATE FOLDER 2565-12 1400 DOUGLAS STREET, MAIL STOP 1690 OMAHA, NE 68179	Industry Track Contract - Audit Number 62355, and any related amendments, modifications, renewals, and extensions thereto Contract Dated: 06/26/1945	\$0.00

Exhibit 9.1-2 Disputed Executory Contracts and Unexpired Leases

COUNTERPARTY	COUNTERPARTY ADDRESS	DESCRIPTION OF AGREEMENT(S) TO BE ASSUMED, OR ASSUMED AND ASSIGNED, AS APPLICABLE	CURE AMOUNT
<u>CINGULAR WIRELESS LLC</u>	<u>ATTN: SENIOR CONTRACT MANAGER FOR SUPPLIER'S ACCOUNT</u> <u>5565 GLENRIDGE CONNECTOR</u> <u>ATLANTA, GA 30342</u>	<u>Master Supplier Agreement, and any related amendments, modifications, renewals, and extensions thereto</u> <u>Contract Effective Date: 10/30/2006</u>	<u>Disputed</u>
<u>CRICKET COMMUNICATIONS, INC.</u>	<u>ATTN: LEGAL DEPARTMENT; ATTN: PROCUREMENT</u> <u>5887 COPLEY DRIVE</u> <u>SAN DIEGO, CA 92111</u>	<u>Mutual Non-Disclosure Agreement, and any related amendments, modifications, renewals, and extensions thereto</u> <u>Contract Effective Date: 02/17/2011</u>	<u>Disputed</u>