
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported)
July 2, 2024**

**HA SUSTAINABLE INFRASTRUCTURE CAPITAL,
INC.**

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-35877
(Commission
File Number)

46-1347456
(IRS Employer
Identification No.)

**One Park Place,
Suite 200
Annapolis, Maryland 21401**
(Address of principal executive offices)
(Zip Code)

Registrant's telephone number, including area code: (410) 571-9860

Hannon Armstrong Sustainable Infrastructure Capital, Inc.

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	HASI	New York Stock Exchange

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

Emerging Growth Company

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

Item 3.03 Material Modification to Rights of Security Holders.

Reincorporation

On July 2, 2024, HA Sustainable Infrastructure Capital, Inc. (f/k/a Hannon Armstrong Sustainable Infrastructure Capital, Inc.) (“us,” “we,” “our,” “HASI,” or the “Company”) changed its state of incorporation from the State of Maryland to the State of Delaware (the “Reincorporation”) by means of a Plan of Conversion, effective July 2, 2024 (the “Plan of Conversion”). The Reincorporation, including the principal terms of the Plan of Conversion, was submitted to a vote of, and approved by, the Company’s stockholders at the Company’s 2024 Annual Meeting of Stockholders held on June 6, 2024 (the “2024 Annual Meeting”), as set forth in the Company’s definitive proxy statement on Schedule 14A filed with the U.S. Securities and Exchange Commission (the “SEC”) on April 15, 2024 (the “Definitive Proxy Statement”).

The Reincorporation was accomplished by filing: (i) Articles of Conversion with the Secretary of State of the State of Maryland (the “Maryland Articles of Conversion”); (ii) a Certificate of Conversion with the Secretary of State of the State of Delaware (the “Delaware Certificate of Conversion”); and (iii) a Certificate of Incorporation with the Secretary of State of the State of Delaware (the “Certificate of Incorporation”). In connection with the Reincorporation, the Company’s board of directors adopted new bylaws (the “Bylaws”).

Upon the effectiveness of the Reincorporation on July 2, 2024:

- The Company’s affairs ceased to be governed by the Maryland General Corporation Law and the Company’s Maryland articles of incorporation and bylaws, in each case as in effect immediately prior to the Reincorporation, and the Company’s affairs became governed by the Delaware General Corporation Law (the “DGCL”), the Certificate of Incorporation, and the Bylaws;

- Pursuant to the Certificate of Incorporation, the Company's name was changed from Hannon Armstrong Sustainable Infrastructure Capital, Inc. to HA Sustainable Infrastructure Capital, Inc. The resulting Delaware corporation ("**HASI-Delaware**") (i) is deemed to be the same entity as the Company as incorporated in Maryland ("**HASI-Maryland**") for all purposes under Maryland and Delaware law and (ii) continues to have all of the rights, privileges, and powers of HASI-Maryland, except for the changes that result from being governed by Delaware law, the Delaware Certificate of Incorporation and the Delaware Bylaws;
- The capitalization of HASI-Delaware remains the same with each outstanding share of HASI-Maryland Common Stock automatically converted to represent an outstanding share of HASI-Delaware common stock;
- The Certificate of Incorporation included Charter Tax Benefit Provisions, which are intended to replace the Company's Tax Benefits Preservation Plan that was adopted in November 2023 and that was terminated on July 1, 2024 in anticipation of the Reincorporation, as described in "Proposal 4: Reincorporation to Delaware Corporation—Tax Benefits Preservation Provisions of the Delaware Charter" in the Definitive Proxy Statement and in the Description of Capital Stock attached hereto as Exhibit 99.2, both of which are incorporated herein by reference;
- All equity incentive plans of HASI-Maryland continue to be equity incentive plans of HASI-Delaware; and
- Each director and officer of HASI-Maryland continues to hold his or her respective office with HASI-Delaware.

Certain rights of the Company's stockholders changed as a result of the Reincorporation, and such changes are described in the Definitive Proxy Statement under the sections entitled "Proposal 4: Reincorporation to Delaware Corporation" more specifically, the heading thereunder entitled, "Select Comparison of Organizational Documents and Applicable Law," and such description is incorporated by reference in this Item 3.03. Additionally, a more detailed description of the Plan of Conversion and the effects of the Reincorporation is set forth in the Definitive Proxy Statement under the section entitled "Proposal 4: Reincorporation to Delaware Corporation," which description is incorporated by reference in this Item 3.03. The foregoing description of the Plan of Conversion, the Certificate of Incorporation, the Bylaws, the Maryland Articles of Conversion, and the Delaware Certificate of Conversion, is only a summary and is qualified in its entirety by reference to the full text of the Plan of Conversion, the Certificate of Incorporation, the Bylaws, the Maryland Articles of Conversion, and the Delaware Certificate of Conversion, which are filed as Exhibits 99.1, 3.1, 3.2, 3.3, and 3.4, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

The Reincorporation does not affect the trading of the Company's shares of common stock on the New York Stock Exchange (the "**NYSE**") in any respect. The Company, as a Delaware corporation, will continue to file periodic reports and other documents as and when required by the rules and regulations of the SEC. Stockholders who are holding their shares of common stock of the Company in electronic form at brokerage firms do not have to take any action as a result of the Reincorporation.

The Company believes that the Reincorporation will not affect any of the Company's material contracts with any third parties, and the Company's rights and obligations under such material contractual arrangements will continue to be rights and obligations of the Company after the Reincorporation. The Reincorporation did not result in any change in headquarters, business, jobs, management, location of any of the offices or facilities, number of employees, assets, liabilities, or net worth (other than as a result of the costs incident to the Reincorporation) of the Company.

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

As disclosed in Item 3.03 above, effective July 2, 2024, the Company changed its state of incorporation from Maryland to Delaware pursuant to the Plan of Conversion. As of that date, the rights of the Company's stockholders began to be governed by Delaware corporation laws, the Certificate of Incorporation, and the Bylaws. The Certificate of Incorporation and the Bylaws are filed herewith as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference. Certain rights of the Company's stockholders were changed as a result of the Reincorporation. A more detailed description of the Certificate of Incorporation and Bylaws, and the changes in rights of the Company's stockholders as a result of the Reincorporation, is set forth in the Company's Definitive Proxy Statement, which description is incorporated herein by reference.

As disclosed in Item 3.03, upon effectiveness of the Reincorporation, pursuant to the Certificate of Incorporation, the Company's name was changed from Hannon Armstrong Sustainable Infrastructure Capital, Inc. to HA Sustainable Infrastructure Capital, Inc. (the "**Name Change**").

The information contained in Item 3.03 of this Current Report on Form 8-K is incorporated by reference in this Item 5.03.

Item 8.01 Other Events.

Sales Agreement Amendment

As previously reported, on May 13, 2020, the Company entered into an At Market Issuance Sales Agreement (the "**Original Agreement**") with B. Riley Securities, Inc. ("**B. Riley**"), Robert W. Baird & Co. Incorporated, BofA Securities, Inc. ("**BofA**"), Loop Capital Markets LLC, SMBC Nikko Securities America, Inc. ("**SMBC**") and Nomura Securities International, Inc. ("**Nomura**") (collectively, the "**Original Agents**"), as amended by an amendment dated February 26, 2021 (the "**First Amendment**") by and among Hannon Armstrong and the Original Agents, as further amended by an amendment dated March 1, 2022 (the "**Second Amendment**") by and among Hannon Armstrong, B. Riley, Barclays Capital Inc. ("**Barclays**"), BofA, Credit Suisse Securities (USA) LLC ("**Credit Suisse**"), J.P. Morgan Securities LLC ("**JPMorgan**"), Morgan Stanley & Co. LLC ("**Morgan Stanley**"), Nomura, SMBC and Wells Fargo Securities, LLC ("**Wells Fargo**"), as further amended by an amendment dated February 22, 2023 (the "**Third Amendment**") by and among Hannon Armstrong, B. Riley, Barclays, BofA, Credit Suisse, Goldman Sachs & Co. LLC ("**Goldman Sachs**"), JPMorgan, Morgan Stanley, Nomura, SMBC, Truist Securities, Inc. ("**Truist**") and Wells Fargo, as further amended by an amendment dated May 10, 2023 (the "**Fourth Amendment**") by and among B. Riley, Barclays, BofA, Credit Suisse, Goldman Sachs & Co. LLC, Jefferies LLC ("**Jefferies**"), JPMorgan, Morgan Stanley, KeyBanc Capital Markets Inc. ("**KeyBanc**"), Nomura, Truist and Wells Fargo (each, individually, an "**Agent**" and collectively, the "**Agents**"), and as further amended by an amendment dated September 5, 2023 (the "**Fifth Amendment**") by and among the Agents and Hannon Armstrong, pursuant to which Hannon Armstrong may sell, from time to time, shares of Hannon Armstrong's common stock, par value \$0.01 per share ("**common stock**"), having an aggregate offering price of up to \$500,000,000, through the Agents either as agents or principals.

On July 3, 2024, the Company entered into a further amendment to the Original Agreement (the "**Sixth Amendment**," and the Original Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, the "**Sales Agreement**") with B. Riley, Barclays, BofA, Goldman Sachs, Jefferies, JPMorgan, Morgan Stanley, KeyBanc, Nomura, Truist and Wells Fargo in order to reflect, among other things, the Name Change and the Reincorporation.

Copies of the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment are filed as Exhibits 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 respectively, to this Current Report on Form 8-K, and the descriptions of the material terms of the Sales Agreement in this Item 8.01 are qualified in their entirety by reference to such Exhibits, which are incorporated herein by reference.

This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy any security nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Updated Disclosures Related to Reincorporation

HASI currently has on file with the SEC:

- (i) a shelf registration statement on Form S-3 (333-263169);
- (ii) three registration statements on Form S-3 (Nos. 333-198158, 333-275969, and 333-265594) that relate to the resale of shares of common stock that may be offered for sale from time to time by the selling stockholders named in the prospectuses included as part of such registration statements;
- (iii) a registration statement on Form S-3 (No. 333-269145) that relates to HASI's Dividend Reinvestment and Stock Purchase Plan; and
- (iv) four Registration Statements on Form S-8 (Nos. 333-188070, 333-212913, 333-230548 and 265595) that relate to HASI's current and prior equity incentive plans.

This Current Report on Form 8-K is automatically incorporated by reference into each of the registration statements listed above, thereby amending each of them. In addition, the Description of Capital Stock and specimen stock certificate set forth on Exhibits 99.2 and 99.3, respectively, are being filed for the purpose of providing an updated description of the capital stock of HASI and shall be incorporated by reference into such registration statements and any registration statement on Form S-3 or Form S-8 (or applicable successor or similar forms) that may be filed in the future by the HASI with the SEC under the Securities Act of 1933, as amended, until and to the extent that such description of capital stock or stock certificate is subsequently amended or modified by any amendment or report filed by the HASI with the SEC under the Exchange Act for the purpose of updating such description or such certificate. The Description of Capital Stock summarizes the material terms of HASI's capital stock as of the date hereof. This summary is not a complete description of the terms of HASI's capital stock and is qualified by reference to the Certificate of Incorporation and Bylaws, each filed herewith, as well as applicable provisions of the DGCL.

Indemnification of Directors and Officers

Section 102(b)(7) of the DGCL allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Certificate of Incorporation provides for this limitation of liability.

Section 145 of the DGCL ("**Section 145**"), provides, among other things, that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any persons who were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, provided further that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorneys' fees) which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to 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 or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify such person under Section 145.

The Bylaws provide that we must indemnify and advance expenses to our directors and officers to the full extent authorized by the DGCL.

We have entered into indemnification agreements with each of our directors and executive officers. Such agreements may require us, among other things, to advance expenses and otherwise indemnify our executive officers and directors against certain liabilities that may arise by reason of their status or service as executive officers or directors, to the fullest extent permitted by law. We intend to enter into indemnification agreements with any new directors and executive officers in the future.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, any provision of the Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Notwithstanding the foregoing, we shall not be obligated to indemnify a director or officer in respect of a proceeding (or part thereof) instituted by such director or officer, unless such proceeding (or part thereof) has been authorized by the Board pursuant to the applicable procedure outlined in the Bylaws.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held jointly and severally liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing such director's dissent to such actions to be entered in the books containing the minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

We maintain and expect to maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

These provisions may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against officers and directors pursuant to these indemnification provisions.

We believe that these provisions, the insurance and the indemnity agreements are necessary to attract and retain talented and experienced officers and directors.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	<u>At Market Issuance Sales Agreement, dated May 13, 2020 by and between Hannon Armstrong Sustainable Infrastructure Capital, Inc., B. Riley FBR, Inc., Robert W. Baird & Co. Incorporated, BofA Securities, Inc., Loop Capital Markets LLC, SMBC Nikko Securities America, Inc. and Nomura Securities International, Inc. (incorporated by reference to Exhibit 1.1 to the Registrant's Form 8-K (No. 001-35877), filed on May 13, 2020).</u>
1.2	<u>Amendment No. 1 to the At Market Issuance Sales Agreement, dated February 26, 2021, by and among Hannon Armstrong Sustainable Infrastructure Capital, Inc., B. Riley FBR, Inc., Robert W. Baird & Co. Incorporated, BofA Securities, Inc., Loop Capital Markets LLC, SMBC Nikko Securities America, Inc. and Nomura Securities International, Inc. (incorporated by reference to Exhibit 1.2 to the Registrant's Form 8-K (No.001-35877), filed on March 1, 2021).</u>
1.3	<u>Amendment No. 2 to the At Market Issuance Sales Agreement, dated February 28, 2022, by and among Hannon Armstrong Sustainable Infrastructure Capital, Inc., B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Nomura Securities International, Inc., SMBC Nikko Securities America, Inc. and Wells Fargo Securities, LLC (incorporated by reference to Exhibit 1.3 to the Registrant's Form 8-K (No.001-35877), filed on March 2, 2022).</u>
1.4	<u>Amendment No. 3 to the At Market Issuance Sales Agreement, dated February 22, 2023, by and among Hannon Armstrong Sustainable Infrastructure Capital, Inc., B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Credit Suisse Securities (USA) LLC, Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Nomura Securities International, Inc., SMBC Nikko Securities America, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC (incorporated by reference to Exhibit 1.4 to the Registrant's Form 8-K (No.001-35877), filed on February 23, 2023).</u>
1.5	<u>Amendment No. 4 to the At Market Issuance Sales Agreement, dated May 10, 2023, by and among Hannon Armstrong Sustainable Infrastructure Capital, Inc., B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Credit Suisse Securities (USA) LLC, Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., Jefferies LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Nomura Securities International, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC. (incorporated by reference to Exhibit 1.5 to the Registrant's Form 8-K (No. 001-35877), filed on May 11, 2023).</u>
1.6	<u>Amendment No. 5 to the At Market Issuance Sales Agreement, dated September 5, 2023, by and among Hannon Armstrong Sustainable Infrastructure Capital, Inc., B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Credit Suisse Securities (USA) LLC, Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., Jefferies LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Nomura Securities International, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC (incorporated by reference to Exhibit 1.6 to the Registrant's Form 8-K (No. 001-35877), filed on September 5, 2023).</u>
1.7	<u>Amendment No. 6 to the At Market Issuance Sales Agreement, dated July 3 2024, by and among HA Sustainable Infrastructure Capital, Inc., B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Morgan Stanley & Co. LLC, Nomura Securities International, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC.</u>
3.1	<u>Certificate of Incorporation of HA Sustainable Infrastructure Capital, Inc., filed with the Secretary of Delaware on July 1, 2024 and effective, July 2, 2024.</u>
3.2	<u>Bylaws of HA Sustainable Infrastructure Capital, Inc. (a Delaware Corporation) effective July 2, 2024.</u>
3.3	<u>Articles of Conversion, filed by Hannon Armstrong Sustainable Infrastructure Capital, Inc. with the State Department of Assessments and Taxation of Maryland on July 1, 2024 and effective July 2, 2024.</u>
3.4	<u>Certificate of Conversion, filed by HA Sustainable Infrastructure Capital, Inc. with the Secretary of State of Delaware on July 1, 2024 and effective July 2, 2024.</u>
5.1	<u>Opinion of Clifford Chance US LLP (including consent of such firm).</u>
23.1	<u>Consent of Clifford Chance US LLP (included in Exhibit 5.1).</u>
99.1	<u>Plan of Conversion of Hannon Armstrong Sustainable Infrastructure Capital, Inc. (a Maryland corporation) to HA Sustainable Infrastructure Capital, Inc. (a Delaware corporation), dated July 1, 2024 and effective July 2, 2024.</u>

99.2	<u>Description of Capital Stock of HA Sustainable Infrastructure Capital, Inc.</u>
99.3	<u>Specimen Common Stock Certificate of HA Sustainable Infrastructure Capital, Inc.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.

By: /s/ Steven L. Chuslo
Steven L. Chuslo
Executive Vice President and Chief Legal Officer

Date: July 3, 2024

HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.
Amendment No. 6 to the At Market Issuance Sales Agreement

July 3, 2024

B. Riley Securities, Inc.
 299 Park Avenue, 21st Floor
 New York, New York 10171

Barclays Capital Inc.
 745 Seventh Avenue
 New York, New York, 10019

BofA Securities, Inc.
 One Bryant Park
 New York, New York 10036

Goldman Sachs & Co. LLC
 200 West Street
 New York, New York 10282

Jefferies LLC
 520 Madison Avenue
 New York, New York 10022

J.P. Morgan Securities LLC
 383 Madison Avenue
 New York, New York 10179

KeyBanc Capital Markets Inc.
 127 Public Square, 7th Floor
 Cleveland, Ohio 44114

Morgan Stanley & Co. LLC
 1585 Broadway
 New York, NY 10036

Nomura Securities International, Inc.
 Worldwide Plaza
 309 West 49th Street
 New York, New York 10019

Truist Securities, Inc.
 3333 Peachtree Road NE, 11th Floor
 Atlanta, Georgia 30326

Wells Fargo Securities, LLC
 500 West 33rd Street
 New York, New York 10001

Ladies and Gentlemen:

Reference is made to the At Market Issuance Sales Agreement, dated May 13, 2020, as amended by Amendment No. 1 to the At Market Issuance Sales Agreement, dated February 26, 2021, as further amended by Amendment No. 2 to the At Market Issuance Sales Agreement, dated March 1, 2022, as further amended by Amendment No. 3 to the At Market Issuance Sales Agreement, dated February 22, 2023, as further amended by Amendment No. 4 to the At Market Issuance Sales Agreement, dated May 10, 2023, and as further amended by Amendment No. 5 to the At Market Issuance Sales Agreement, dated September 5, 2023 (as amended, the “**Agreement**”), among HA Sustainable Infrastructure Capital, Inc., a Delaware corporation (formerly incorporated in Maryland as Hannon Armstrong Sustainable Infrastructure Capital, Inc.) (the “**Company**”), and B. Riley Securities, Inc. (formerly B. Riley FBR, Inc.), Barclays Capital Inc., BofA Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Morgan Stanley & Co. LLC, Nomura Securities International, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC, as an agent and/or principal (each, an “**Agent**” or collectively, the “**Agents**”), with respect to the issuance and sale from time to time by the Company of shares of Common Stock having an aggregate gross sales price not to exceed \$500,000,000 on the terms set forth in the Agreement.

In connection with the foregoing and in light of the Company's conversion from a Maryland corporation to a Delaware corporation (the "**Reincorporation**"), the parties hereto wish to amend the Agreement through this Amendment No. 6 to the At Market Issuance Sales Agreement (this "**Amendment**") to make certain changes to the Agreement with effect on and after the date hereof (the "**Effective Date**").

SECTION 1. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings assigned thereto in the Agreement.

SECTION 2. Amendments. The parties hereto agree, from and after the Effective Date, that:

(a) *Addressees*:

(i) The list of Agents on page 1 of the Agreement and their respective addresses are amended and restated as follows:

B. Riley Securities, Inc.
299 Park Avenue, 21st Floor
New York, New York 10171

Barclays Capital Inc.
745 Seventh Avenue
New York, New York, 10019

BofA Securities, Inc.
One Bryant Park
New York, New York 10036

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

Jefferies LLC
520 Madison Avenue
New York, New York 10022

J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, Ohio 44114

Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

Nomura Securities International, Inc.
Worldwide Plaza
309 West 49th Street
New York, New York 10019

Truist Securities, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

Wells Fargo Securities, LLC
500 West 33rd Street
New York, New York 10001

(b) *Introductory Paragraph:*

- (i) The first sentence of the first paragraph of the Agreement is amended and restated as follows:

HA Sustainable Infrastructure Capital, Inc., a Delaware corporation (formerly incorporated in Maryland as Hannon Armstrong Sustainable Infrastructure Capital, Inc.) (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time to or through either of B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Morgan Stanley & Co. LLC, Nomura Securities International, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC as sales agent and/or principal (each, an "Agent" and together, the "Agents"), shares (the "Shares") of the Company's common stock, \$0.01 par value (the "Common Stock"), having an aggregate gross sales price not to exceed \$500,000,000, on the terms set forth in this At Market Issuance Sales Agreement, as amended.

- (ii) For the avoidance of doubt, the amounts sold counted against the aggregate gross sales price shall include amounts sold pursuant to the Agreement after September 5, 2023.

(c) *Section 1 (Representations and Warranties):*

- (i) The representations and warranties set forth in Section 1 of the Agreement are hereby updated to give effect to the Reincorporation.

(d) *Section 1(ix) (Good Standing of the Company):*

- (i) The reference to "Maryland" in Section 1(ix) of the Agreement is hereby replaced with "Delaware".

(e) *Section 1(xxxv) (REIT Status):*

- (i) Section 1(xxxv) of the Agreement is hereby removed in its entirety.

(f) *Section 2(h) (Sale and Delivery of Shares):*

- (i) The reference to "second business day" in the first sentence of Section 2(h) is hereby replaced with "first business day".

(g) *Section 3(j) (Notice of Certain Actions):*

- (i) The reference to "Article VII" in Section 2(j) is hereby replaced with "Article X".

(h) *Section 3(v) (REIT Status):*

- (i) Section 3(v) of the Agreement is hereby removed in its entirety.

(i) *Section 5(c) (Opinion of Counsel to the Company):*

- (i) Section 5(c) of the Agreement is hereby amended and restated as follows:

Opinion of Counsel to the Company. On the date of this At Market Issuance Sales Agreement, the Agents shall have received the favorable written opinion or opinions of (i) Clifford Chance US LLP, counsel to the Company, dated such date, to the effect set forth in Exhibit A-1 hereto and (ii) the General Counsel or Deputy General Counsel of the Company, to the effect set forth in Exhibit A-2 hereto and to such further effect as the Agents may reasonably request.

(j) *Section 10 (Notices):*

- (i) Section 10 of the Agreement is hereby amended and restated as follows:

Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Agents shall be directed to B. Riley Securities, Inc. at 299 Park Avenue, 21st Floor, New York, NY 10171, to Barclays Capital Inc. at 745 7th Avenue, New York, New York, 10019, Attention: Syndicate Registration, (fax number: 646-834 8133), to BofA Securities, Inc. at One Bryant Park, New York, NY 10036, Attention: DG ATM Execution (email: dg.atm_execution@bofa.com), to Goldman Sachs & Co. LLC at 200 West Street, New York, New York 10282, Facsimile: (212) 902-9316, Attention: Registration Department, to Jefferies LLC, 520 Madison Avenue, New York, New York 10022, Attention: General Counsel, with a copy to CorpEqDeriv@jefferies.com, to J.P. Morgan Securities LLC at 383 Madison Avenue, 6th Floor, New York, New York 10179, Attention: Sanjeet Dewal, Facsimile: (212) 622-8783, Email: sanjeet.s.dewal@jpmorgan.com, to KeyBanc Capital Markets Inc. at 127 Public Square, 7th Floor, Cleveland, OH 44114, Attention: Chris Malik (cmalik@key.com), Michael Jones (michael.c.jones@key.com) and John Salisbury (john.salisbury@key.com), Telephone: (216) 689-3910, to Morgan Stanley & Co. LLC at 1585 Broadway, 6th Floor, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department, to Nomura Securities International, Inc. at Worldwide Plaza, 309 West 49th Street New York, New York 10019, Attention: Equity Capital Markets, Americas, email: NomuraATMExecution@nomura.com, Fax: (646) 587-9562 with a copy to the Head of IBD Legal, Fax: (646)587-9548, to Truist Securities, Inc. at 3333 Peachtree Road NE, 11th Floor, Atlanta, Georgia 30326, Attention: Equity Capital Markets (email: dl.atm.offering@truist.com) and to Wells Fargo Securities, LLC at 500 West 33rd Street, New York, New York, 10001, Attention: Equity Syndicate Department (fax no: (212) 214-5918) or email a request to cmclientsupport@wellsfargo.com; and notices to the Company shall be directed to it at 1906 Towne Centre Blvd, Suite 370, Annapolis, MD 21401 (facsimile: (410) 571-6199), attention of Office of the General Counsel.

(k) *Exhibit A-2 and Exhibit A-3:*

- (i) Exhibit A-2 is hereby removed in its entirety and Exhibit A-3 is hereby renamed as Exhibit A-2.

SECTION 3. No Further Amendment. The Agreement, as amended by the Amendment, is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the Agreement or any of the documents referred to therein.

SECTION 4. Governing Law. This Amendment and any claim, counterclaim, controversy or dispute of any kind or nature whatsoever arising out of or in any way relating to this Amendment, directly or indirectly, shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 5. Counterparts. This Amendment may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

SECTION 6. Headings. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Amendment.

[Signature pages follow]

If the foregoing correctly sets forth the understanding between the Company and each of the Agents, please so indicate in the space provided below for that purpose, whereupon this Amendment and your acceptance shall constitute a binding agreement among the Company and each of the Agents.

Very truly yours,

HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.

By: /s/ Marc Pangburn

Name: Marc Pangburn

Title: Executive Vice President and Chief
Financial Officer

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

Accepted and agreed as of the date first above written:

B. RILEY SECURITIES, INC.

By: /s/ Patrice McNicoll
Name: Patrice McNicoll
Title: Co-Head of Investment Banking

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

BARCLAYS CAPITAL INC.

By: /s/ Robert Stowe

Name: Robert Stowe

Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

BOFA SECURITIES, INC.

By: /s/ Ricardo C. Cuenca

Name: Ricardo C. Cuenca

Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

By: /s/ Charles Park
Name: Charles Park
Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

JEFFERIES LLC

By: /s/ Donald Lynaugh
Name: Donald Lynaugh
Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

By: /s/ Sanjeet Dewal

Name: Sanjeet Dewal

Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

KEYBANC CAPITAL MARKETS INC.

By: /s/ Christopher Malik
Name: Christopher Malik
Title: Managing Director, Equity Capital
Markets

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

By: /s/ Mauricio Dominguez
Name: Mauricio Dominguez
Title: Vice President

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

By: /s/ Jason Eisenhauer

Name: Jason Eisenhauer

Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

TRUIST SECURITIES, INC.

By: /s/ Geoffrey Fennel
Name: Geoffrey Fennel
Title: Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

By: /s/ Rebecca Kotkin
Name: Rebecca Kotkin
Title: Managing Director

[Signature Page to Amendment No. 6 to the At Market Issuance Sales Agreement]

**CERTIFICATE OF INCORPORATION
OF
HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.**

I, the undersigned, for the purposes of incorporating and organizing a corporation under the General Corporation Law of the State of Delaware, do execute this Certificate of Incorporation (the “**Certificate of Incorporation**”) and do hereby certify as follows:

ARTICLE I.

NAME

The name of the corporation (the “**Corporation**”) is HA Sustainable Infrastructure Capital, Inc.

ARTICLE II.

REGISTERED OFFICE/AGENT

The address of the Corporation’s registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808. The name of its registered agent at such address is the Corporation Service Company.

ARTICLE III.

PURPOSE

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 (the “**DGCL**”). The Corporation is being incorporated in connection with the conversion of Hannon Armstrong Sustainable Infrastructure Capital, Inc., a Maryland corporation (the “**Maryland Corporation**”), to the Corporation and this Certificate of Incorporation is being filed simultaneously with the Certificate of Conversion of the Maryland Corporation to the Corporation (the “**Certificate of Conversion**”).

ARTICLE IV.

STOCK

Section 4.1. **Authorized Shares.** The Corporation has authority to issue a total of 500,000,000 shares of stock, consisting of 450,000,000 shares of Common Stock, \$0.01 par value per share (“**Common Stock**”), and 50,000,000 shares of Preferred Stock, \$0.01 par value per share (“**Preferred Stock**”). Upon the effectiveness of the Certificate of Conversion and this Certificate of Incorporation (the “**Effective Time**”), without any action required on the part of the Corporation or any former holder of stock of the Maryland Corporation, each share of common stock of the Maryland Corporation issued and outstanding immediately prior to the Effective Time will be converted into, and shall be deemed to be, one issued and outstanding, fully paid and nonassessable share of Common Stock. From and after the Effective Time, any stock certificate representing issued and outstanding shares of common stock of the Maryland Corporation immediately prior to the Effective Time shall represent the same number of shares of Common Stock of the Corporation until surrendered to the Corporation.

Section 4.2. **Common Stock.** Except as may otherwise be specified herein, each share of Common Stock shall entitle the holder thereof to one vote.

Section 4.3. **Preferred Stock.** The Board of Directors of the Corporation (the “**Board of Directors**”) is hereby expressly 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 powers (including voting powers (if any)) of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, 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.

Section 4.4. **Increase or Decrease in Authorized Shares.** Subject to the terms of any series of Preferred Stock, the number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) without a separate vote of any holders of shares of Common Stock or Preferred Stock, irrespective of the provisions of Section 242(b)(2) of the DGCL.

Section 4.5. **Amendments to Terms of Preferred Stock.** Except as otherwise required by law or this Certificate of Incorporation (including any certificate of designation), holders of shares of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any amendment to any certificate of designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series of Preferred Stock are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designation) or the DGCL.

ARTICLE V.

ACTION BY CONSENT

Subject to the terms of any series of Preferred Stock that expressly permit the holders of such series to act by consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders and may not be effected by consent in lieu of a meeting.

ARTICLE VI.
THE BOARD OF DIRECTORS

Section 6.1. **Number of Directors.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock, shall be fixed from time to time exclusively by the Board of Directors.

Section 6.2. **Vacancies and Newly Created Directorships.** Subject to Section 6.4 of this Article VI, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause may be filled solely by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next annual meeting of stockholders and until his or her successor has been duly elected and qualified, subject, however, to such director's earlier death, resignation, disqualification or removal.

Section 6.3. **Removal of Directors.** Subject to the rights of holders of one or more classes or series of Preferred Stock to elect or remove one or more directors, any director, or the entire Board of Directors, may be removed from office at any time, with or without cause, by the affirmative vote of holders of at least two-thirds of the shares then entitled to vote at an election of directors.

Section 6.4. **Preferred Stock Directors.** During any period when the holders of one or more series of Preferred Stock have the separate right to elect additional directors as provided for or fixed pursuant to the provisions of Section 4.3 of Article IV hereof (including any certificate of designation) (a "**Preferred Stock Director**"), and upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such number of directors that the holders of any series of Preferred Stock have a right to elect, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions; and (ii) each Preferred Stock Director shall serve until such Preferred Stock Director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, disqualification or removal. Except as otherwise provided for or fixed pursuant to the provisions of Section 4.3 of Article IV hereof (including any certificate of designation), whenever the holders of one or more series of Preferred Stock having a separate right to elect additional directors cease to have or are otherwise divested of such right pursuant to said provisions, the terms of office of all Preferred Stock Directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such Preferred Stock Director shall cease to be qualified as a director and shall cease to be a director) and the total authorized number of directors of the Corporation shall be automatically reduced accordingly.

ARTICLE VII.
WRITTEN BALLOT

Unless and except to the extent that the Bylaws of the Corporation (as amended and/or restated from time to time, the **Bylaws**) shall so require, the election of directors need not be by written ballot.

ARTICLE VIII.
AMENDMENTS

Section 8.1. **Amendments to the Certificate of Incorporation.** The Corporation reserves the right at any time and from time to time to make any amendment, alteration, repeal or change to any provision in the Certificate of Incorporation, and to add or insert other provisions authorized at such time by the laws of the State of Delaware, in the manner now or hereafter authorized by law. All rights and powers conferred by the Certificate of Incorporation on stockholders, directors, officers or any other person are granted subject to this reservation.

Section 8.2. **Amendments to the Bylaws.** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the Bylaws. The stockholders of the Corporation may also adopt, amend or repeal the Bylaws by the affirmative vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon, provided, however, that the affirmative vote of the holders of at least two-thirds of the outstanding shares of stock entitled to vote thereon shall be required for the stockholders to adopt, amend or repeal Article IX (Indemnification and Advancement of Expenses) or Article XI (Amendment of Bylaws) of the Bylaws or any provision inconsistent therewith.

ARTICLE IX.
LIMITATION OF LIABILITY

A director or officer of the corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director or officer of the corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

ARTICLE X.

STOCK TRANSFER AND OWNERSHIP RESTRICTIONS

Section 10.1. Definitions. For purposes of this Article X only:

(a) “**Affiliate**” and “**Associate**” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the Exchange Act Regulations, and shall also include, with respect to any Person, any other Person whose Corporation Securities would be deemed to be constructively owned by such first Person, owned by a single “entity” as defined in Section 1.382-3(a)(1) of the Treasury Regulations with respect to such first Person, or otherwise aggregated with Corporation Securities owned by such first Person pursuant to the provisions of Section 382 of the Code and the Treasury Regulations thereunder;

(b) A Person shall be deemed the “**Beneficial Owner**” of, to have “**Beneficial Ownership**” of, and to “**Beneficially Own**” any Corporation Securities:

(i) that such Person actually owns (directly or indirectly) or would be deemed to actually or constructively own pursuant to Section 382 of the Code and the Treasury Regulations thereunder, including any “coordinated acquisition” of Corporation Securities by any Persons who have a formal or informal understanding with respect to such acquisition (to the extent that ownership of such Corporation Securities would be attributed to such Person under Section 382 of the Code and the Treasury Regulations thereunder), or are otherwise aggregated with Corporation Securities owned by such Person pursuant to the provisions of Section 382 of the Code, or any successor provisions or replacement provisions and the Treasury Regulations promulgated thereunder;

(ii) that such Person or any of such Person’s Affiliates or Associates Beneficially Owns, directly or indirectly, within the meaning of Rules 13d-3 or 13d-5 of the Exchange Act Regulations;

(iii) that such Person or any of such Person’s Affiliates or Associates has (A) the right or ability to vote, cause to be voted or control or direct the voting of pursuant to any agreement, arrangement or understanding, whether or not in writing; provided that a Person shall not be deemed the Beneficial Owner of, or to Beneficially Own, any security if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable Exchange Act Regulations and (2) is not also then reportable on a statement on Schedule 13D under the Exchange Act (or any comparable or successor report) or (B) the right or the obligation to become the Beneficial Owner (whether such right is exercisable or such obligation is required to be performed immediately or only after the passage of time, the occurrence of conditions, the satisfaction of regulatory requirements or otherwise) pursuant to any agreement, arrangement or understanding, whether or not in writing (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), written or otherwise, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise, through conversion of a security, pursuant to the power to revoke a trust, discretionary account or similar arrangement, pursuant to the power to terminate a repurchase or similar so-called “stock-borrowing” agreement or arrangement, or pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided that a Person shall not be deemed to be the Beneficial Owner of, or to Beneficially Own, Corporation Securities tendered pursuant to a tender or exchange offer made pursuant to, and in accordance with, the applicable Exchange Act Regulations until such tendered securities are accepted for purchase or exchange;

(iv) that are Beneficially Owned (within the meaning of the preceding subsections of this [Section 10.1\(b\)](#)), directly or indirectly, by any other Person with which such first Person, or any of such first Person's Affiliates or Associates, has any agreement, arrangement or understanding, whether or not in writing, for the purpose of acquiring, holding, voting or disposing of any Corporation Securities or cooperating in obtaining, changing, or influencing control of the Corporation; or

(v) that are the subject of, or the reference securities for, or that underlie, any Derivative Position of such Person or any of such Person's Affiliates or Associates, with the number of Corporation Securities deemed Beneficially Owned in respect of a Derivative Position being the notional or other number of Corporation Securities in respect of such Derivative Position (without regard to any short or similar position) that is specified in (A) one or more filings with the Securities and Exchange Commission by such Person or any of such Person's Affiliates or Associates or (B) the documentation evidencing such Derivative Position as the basis upon which the value or settlement amount of such Derivative Position, or the opportunity of the holder of such Derivative Position to profit or share in any profit, is to be calculated in whole or in part (whichever of (A) or (B) is greater), or if no such number of Corporation Securities is specified in such filings or documentation (or such documentation is not available to the Board of Directors), as determined by the Board of Directors in its sole discretion;

provided, however, that no Person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such Person's status or authority as such, to be the "Beneficial Owner" of, to have "Beneficial Ownership" of or to "Beneficially Own" any Corporation Securities that are "Beneficially Owned" (as defined in this [Section 10.1\(b\)](#)), including, without limitation, in a fiduciary capacity, by such Exempt Person or by any other officer, director or employee of such Exempt Person; provided, further, that nothing in this [Section 10.1\(b\)](#) shall cause (y) a Person engaged in business as an underwriter of securities or (z) an initial purchaser in a bona fide offering pursuant to Section 144A of the Securities Act to be the Beneficial Owner of, to Beneficially Own or have Beneficial Ownership of, any Corporation Securities acquired through such Person's participation in good faith in a firm commitment underwriting or a bona fide offering pursuant to Section 144A of the Securities Act, as applicable, until the expiration of forty days after the date of such acquisition, and then only if such Corporation Securities continue to be owned by such Person at such expiration of forty days;

(c) "**Code**" shall mean the Internal Revenue Code of 1986, as amended;

(d) "**Corporation Securities**" means (i) shares of Common Stock of the Corporation, (ii) shares of Preferred Stock (other than preferred stock described in Section 1504(a)(4) of the Code) of the Corporation, (iii) warrants, rights, convertible debt or options (including options within the meaning of Section 1.382-4(d)(9) of the Treasury Regulations) to purchase stock (other than preferred stock described in Section 1504(a)(4) of the Code) of the Corporation, and (iv) any other interest that would be treated as "stock" of the Corporation pursuant to Section 1.382-2T(f)(18) of the Treasury Regulations;

(e) "**Derivative**" shall mean any option, warrant, convertible security, stock appreciation right, or other security, contract right or derivative position or similar right (including any "swap" transaction with respect to any security, other than a broad-based market basket or index);

(f) **“Derivative Position”** shall mean any Derivative, whether or not presently exercisable, that (i) has an exercise or conversion privilege or a settlement payment or mechanism at a price related to the value of Corporation Securities or a value determined in whole or in part with reference to, or derived in whole or in part from, the value of Corporation Securities and that increases in value as the market price or value of Corporation Securities increases or that provides an opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of Corporation Securities and (ii) is capable of being settled, in whole or in part, through delivery of cash or Corporation Securities (whether on a required or optional basis, and whether such settlement may occur immediately or only after the passage of time, the occurrence of conditions, the satisfaction of regulatory requirements or otherwise), in each case regardless of whether (A) it conveys any voting rights in such Corporation Securities to any Person or (B) any Person (including the holder of such Derivative Position) may have entered into other transactions that hedge its economic effect;

(g) **“Excess Shares”** means any Corporation Securities the Transfer or ownership of which would (x) result in a Prohibited Ownership Percentage or (y) increase the Percentage Stock Ownership of any Person with a Prohibited Ownership Percentage under Section 10.2;

(h) **“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended;

(i) **“Exchange Act Regulations”** shall mean the General Rules and Regulations under the Exchange Act;

(j) **“Exempt Person”** shall mean (i) the Corporation or any Subsidiary of the Corporation, in each case, including, without limitation, in its fiduciary capacity, (ii) any employee benefit plan of the Corporation or of any Subsidiary of the Corporation, or (iii) any entity or trustee holding (or acting in a fiduciary capacity in respect of) Common Stock for or pursuant to the terms of any such plan referenced in clause (ii) or for the purpose of funding any such plan or funding other employee benefits for employees of the Corporation or any Subsidiary of the Corporation;

(k) **“Expiration Date”** means the earliest of (i) the repeal, amendment or modification of Section 382 of the Code (or any comparable successor provisions), if the Board of Directors determines that the restrictions in this Article X are no longer necessary or desirable for the preservation of the Tax Benefits, (ii) the date that the Board of Directors determines that (x) an ownership change (within the meaning of Section 382 of the Code and the Treasury Regulations thereunder) would not result in a substantial limitation on the ability of the Corporation (or a direct or indirect subsidiary of the Corporation) to use otherwise available Tax Benefits, (y) no significant value attributable to the Tax Benefits would be preserved by continuing the Transfer restrictions herein, or (z) it is not in the best interests of the Corporation to continue the Transfer restrictions herein, (iii) the date that is the third anniversary of the filing and effectiveness of this Certificate of Incorporation, or (iv) any other date as the Board of Directors shall fix in accordance with Section 10.8 of this Article X;

(l) **“Initial Substantial Shareholder”** shall mean any Person who, alone or together with its Affiliates and Associates, holds a Prohibited Ownership Percentage as of the Effective Time, other than the initial direct Public Group of the Corporation; provided, however, that, if an Initial Substantial Shareholder ceases to hold a Prohibited Ownership Percentage at any time after the Effective Time, such Person shall cease to be treated as an Initial Substantial Shareholder for all purposes of this Article X;

(m) **“Percentage Stock Ownership”** shall mean, as of any date or time, with respect to any Person who is the Beneficial Owner of Corporation Securities, the greater of (i) the percentage of Corporation Securities Beneficially Owned by such Person as of such date or time, as determined under clause (i) of the definition of Beneficial Ownership in accordance with Sections 1.382-2(a)(3), 1.382-2T(g), (h), (j) and (k), 1.382-3(a), and 1.382-4(d) of the Treasury Regulations (or in accordance with any future Treasury Regulations promulgated under Section 382 (or any successor provisions or replacement provisions)), including, without limitation, the deemed exercise of options warrants and other rights to acquire stock under certain circumstances; provided, however, that (x) for purposes of applying Treasury Regulation Section 1.382-2T(k)(2) to this definition, the Corporation shall be treated as having “actual knowledge” of the beneficial ownership of all outstanding Corporation Securities that would be attributed to any Person, and (y) for the sole purpose of determining the percentage ownership of any entity (and not for the purpose of determining the percentage ownership of any other Person) under this definition, Treasury Regulation Section 1.382-2T(h)(2)(i) (A) (treating stock attributed to an entity pursuant to Section 318(a)(2) of the Code as no longer being owned by the entity from which it is being attributed) shall not apply, and (ii) the percentage of Corporation Securities Beneficially Owned by such Person as of such date or time, as determined under clauses (ii), (iii), (iv) and (v) of the definition of Beneficial Ownership and, solely with respect to such Person, by taking into account all issued and outstanding Corporation Securities as of such date or time, together with the number of Corporation Securities not actually issued and outstanding as of such date or time, but which such Person would be deemed to be the Beneficial Owner of, to Beneficially Own or have Beneficial Ownership of, as of such date or time, pursuant to clauses (ii)-(v) of the definition of Beneficial Ownership; provided, further, that for the avoidance of doubt, and notwithstanding anything to the contrary set forth herein, the Percentage Stock Ownership of any Person holding outstanding options, warrants, rights or similar interests (including any contingent rights) to acquire Corporation Securities shall be determined as of any date or time, solely with respect to such Person, by including the number of Corporation Securities that, as of such date or time, are issued and outstanding, together with the number of Corporation Securities that are not actually issued and outstanding, but which such Person has the right to acquire upon the exercise of such options, warrants, rights or similar interests and which such Person is deemed, as of such date or time, to Beneficially Own or have Beneficial Ownership of pursuant to the terms of clauses (ii)-(v) of the definition of Beneficial Ownership;

(n) a **“Person”** shall mean any individual, entity, firm, corporation, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, private foundation within the meaning of Section 509(a) of the Code, company,

limited liability company, partnership, joint venture, or similar organization (including the Corporation if appropriate in the context) and also includes a “group” as that term is used for purposes of Section 13(d)(3) of the Exchange Act, or a group of persons making a “coordinated acquisition” of Corporation Securities or otherwise treated as an “entity” within the meaning of Treasury Regulation Section 1.382-3(a)(1) or otherwise, and includes, without limitation, an unincorporated group of persons who, by formal or informal agreement or arrangement (whether or not in writing), have embarked on a common purpose or act, and also includes any successor (by merger or otherwise) of any such individual or entity;

(o) “**Prohibited Distributions**” means any and all dividends or other distributions paid by the Corporation with respect to any Excess Shares received by a Purported Acquiror with respect to any Excess Shares;

(p) “**Prohibited Ownership Percentage**” shall mean a Percentage Stock Ownership by any Person (other than an Exempt Person or any Initial Substantial Shareholder), together with all Affiliates and Associates of such Person, of 4.8% or more;

(q) “**Prohibited Transfer**” shall mean any purported Transfer of Corporation Securities to the extent that such purported Transfer is prohibited and void under this Article X;

(r) a “**Public Group**” shall have the meaning contained in Section 382 and the Treasury Regulations thereunder;

(s) “**Purported Acquiror**” shall mean any Person or Public Group that purports to acquire Beneficial Ownership or record, legal or any other ownership of any Excess Shares. If there is more than one Purported Acquiror with respect to certain Excess Shares (for example, if the Purported Acquiror of record ownership of such Excess Shares is not the Purported Acquiror of Beneficial Ownership of such Excess Shares), then all references herein to “Purported Acquiror” shall include any and all of such Purported Acquirors, as necessary to carry out the purposes of this Article X;

(t) “**Securities Act**” shall mean the Securities Act of 1933, as amended;

(u) “**Subsidiary**” shall mean, with respect to any Person, any other Person that is an entity of which such first Person (i) Beneficially Owns or otherwise directs or controls the voting of, directly or indirectly, an amount of voting securities or other equity interests having voting power sufficient to elect at least a majority of the directors or members of an equivalent governing body having similar functions or (ii) otherwise has the power to control or direct the management of such corporation or other entity;

(v) “**Tax Benefits**” shall mean the net operating loss carryovers, capital loss carryovers, general business credit carryovers, disallowed net business interest expense carryforwards under Section 163(j), foreign tax credit carryovers and any other item that may reduce or result in any credit against any income taxes owed by the Corporation or any of its direct or indirect Subsidiaries or refundable credits, including, but not limited to, any item subject to limitation under Section 382 or Section 383 of the Code and Treasury Regulations thereunder, as well as any “net unrealized built-in loss” (within the meaning of Section 382 of the Code) of the Corporation or any direct or indirect Subsidiary thereof;

(w) “**Transfer**” shall mean, subject to the last sentence of this definition, any direct or indirect sale, transfer, assignment, conveyance, pledge, other disposition or other action taken by a Person, other than the Corporation, that alters the Percentage Stock Ownership of any Person. A Transfer also shall include the creation or grant of an option (within the meaning of Treasury Regulation Section 1.382-4(d)(9)) other than the grant of an option by the Corporation or the modification, amendment or adjustment of an existing option granted by the Corporation. A Transfer shall not include (i) any unilateral issuance or grant by the Corporation of Corporation Securities (including shares of restricted stock) to any directors, officers, or employees of the Corporation or any of its Subsidiaries, (ii) pre-arranged purchases of any Corporation Securities by directors, officers or employees of the Corporation or its Subsidiaries pursuant to a dividend reinvestment plan sponsored by the Corporation or (iii) the exercise by any director, officer or employee of the Corporation or any of its Subsidiaries of any options, warrants, rights or similar interests to purchase Corporation Securities granted by the Corporation to such director, officer or employee pursuant to contract or any equity compensation plan of the Corporation;

(x) “**Transferee**” means any Person to whom Corporation Securities are Transferred; and

(y) “**Treasury Regulations**” shall mean the income tax regulations (whether temporary, proposed or final) promulgated under the Code and any successor regulations. References to any subsection of such regulations include references to any successor subsection thereof.

Section 10.2. Transfer and Ownership Restrictions. Except to the extent provided in Section 10.3, to preserve the Tax Benefits of the Corporation until the Expiration Date, any purported Transfer of Corporation Securities prior to the Expiration Date, and any purported Transfer of Corporation Securities pursuant to an agreement, arrangement or understanding entered into prior to the Expiration Date, shall be prohibited and shall be null and void *ab initio* if and to the extent such purported Transfer (or any series of Transfers of which such Transfer is part): (a) would cause the Purported Acquiror to have, or result in any other Person or Public Group having, a Prohibited Ownership Percentage (other than any increase in the Percentage Stock Ownership of a Public Group by reason of a Transfer from an Initial Substantial Shareholder); or (b) would increase the Percentage Stock Ownership of any Person or Public Group that has a Prohibited Ownership Percentage (other than any increase in the Percentage Stock Ownership of a Public Group by reason of a Transfer from an Initial Substantial Shareholder). The Corporation may require, as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities, that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to the Beneficial Ownership of such Corporation Securities.

Section 10.3. Waiver of Restrictions. Notwithstanding anything herein to the contrary, the Board of Directors, in its sole discretion, may cause the Corporation to waive the application of any of the restrictions contained in Section 10.2, including, without limitation, to any Transfer of Corporation Securities that otherwise would be prohibited by the restrictions in Section 10.2,

notwithstanding the effect such waiver could have on any Tax Benefits. The Board of Directors may impose any conditions that it deems reasonable and appropriate in connection with granting any such a waiver, including without limitation, restrictions on the ability of any Transferee to Transfer any or all of the Corporation Securities it acquires through a Transfer that is the subject of such waiver. As a condition to granting its approval, the Board of Directors may, in its discretion, require (at the expense of the transferor and/or transferee) an opinion of counsel selected by the Board of Directors that the Transfer will not result in the application of any limitation on the use of the Tax Benefits under Sections 382 or 383 of the Code. Any waiver of the Board of Directors pursuant to this Section 10.3 shall be in writing and executed on behalf of the Corporation by any duly authorized officer, and may be given prospectively or retroactively and in whole or in part with respect to any Transfer. The Board of Directors, to the fullest extent permitted by law, may exercise the authority granted by this Section 10.3 through duly authorized officers or agents of the Corporation.

Section 10.4. Purported Transfer in Violation of Transfer and Ownership Restrictions Unless a waiver has been obtained in accordance with Section 10.3 with respect to a purported Transfer that, if completed, would result in a Transfer of Excess Shares (other than a Transfer of Excess Shares pursuant to Section 10.5(b) or (c) or pursuant to an automatic transfer as provided in this Section 10.4), (a) such purported Transfer shall constitute a Prohibited Transfer for all purposes of this Article X, shall be null and void *ab initio* and shall not be effective to Transfer Beneficial Ownership or any record, legal, or other ownership of such Excess Shares to the Purported Acquiror, (b) no officer, employee or agent of the Corporation shall record such Prohibited Transfer in the Corporation's stock transfer books and (c) such Purported Acquiror shall not be entitled to any rights whatsoever with respect to such Excess Shares and shall not be recorded as the owner thereof in the Corporation's stock ledger, and (c) such Excess Shares shall be automatically Transferred pursuant to DGCL Section 202(c)(4) to an agent designated by the Corporation (the "**Agent**"). Any dividends or distributions payable on any Excess Shares following such automatic Transfer to the Agent shall be paid to the Agent until the Excess Shares are sold by the Agent in accordance with Section 10.5(b). A Prohibited Transfer of Excess Shares that is null and void under this Section 10.4 shall not adversely affect the validity of any other Transfer of any Corporation Securities, including any such Transfer in the same or any other related transaction, whether to the same Purported Acquiror of Excess Shares or to any other Person. Once Excess Shares have been acquired in a Transfer, pursuant to this Section 10.4 or Section 10.5, that is not a Prohibited Transfer, the relevant Corporation Securities shall cease to be Excess Shares. For the avoidance of doubt, any Transfer of Excess Shares not in accordance with the provisions of this Section 10.4 or Section 10.5 shall also be a Prohibited Transfer.

Section 10.5.

(a) Demand by Corporation. Unless a waiver has been obtained in accordance with Section 10.3, if the Board of Directors determines that there has been or is threatened a purported Transfer of Excess Shares to a Purported Acquiror, or that a Person proposes to take any other action in violation of this Article X (whether or not such action is intentional), the Corporation shall make a demand on the Purported Acquiror to transfer or cause the transfer of any certificate or other evidence of purported ownership of the Excess Shares within the Purported Acquiror's possession or control, along with any and all Prohibited Distributions, to the Agent.

(b) **Treatment of Excess Shares.** No officer, director, employee or agent of the Corporation shall record any Prohibited Transfer, and a Purported Acquiror shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of Excess Shares. The Purported Transferee shall not be entitled with respect to such Excess Shares to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Shares and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Shares shall be deemed to remain with the transferor unless and until the Excess Shares are transferred to the Agent pursuant to Section 10.4 or until a waiver is obtained under Section 10.3. Once the Excess Shares have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Shares. For this purpose, any Transfer of Excess Shares not in accordance with the provisions of Section 10.4 or Section 10.5 shall also be a Prohibited Transfer. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as the Board of Directors may determine to be necessary or advisable to implement this Section 10.5(b), including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of Corporation Securities and other evidence that a Transfer will not be prohibited by Section 10.2.

(c) **Transfer of Excess Shares and Prohibited Distributions to Agent.** Upon demand by the Corporation, the Purported Acquiror shall transfer or cause the transfer of any certificate or other evidence of purported ownership of the Excess Shares within the Purported Acquiror's possession or control, along with any and all Prohibited Distributions paid in respect of such Excess Shares, to the Agent. Any failure by the Purported Acquiror to transfer or cause the transfer of any certificate or other evidence of purported ownership of the Excess Shares to the Agent shall not negate the automatic transfer of such Excess Shares to the Agent pursuant to Section 10.5(b). The Agent shall sell to a buyer or buyers, which may include the Corporation, in an arms-length transaction (through The Nasdaq Stock Market, if possible, but in any event consistent with applicable law) any Excess Shares; provided, however, that any such sale must not constitute a Prohibited Transfer, provided, further, that the Agent shall, in its reasonable discretion, effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's reasonable discretion, such sale or sales would disrupt the market for the Common Stock or other Corporation Securities or would otherwise substantially adversely affect the value of the Corporation Securities. The proceeds of such sale shall be referred to as "**Sales Proceeds**." If, after purportedly acquiring the Excess Shares, the Purported Acquiror has purported to sell some or all of the Excess Shares to an unrelated party in an arms-length transaction, the Purported Acquiror shall be deemed to have sold such Excess Shares on behalf of the Agent, and in lieu of transferring any certificate or other evidence of purported ownership of the Excess Shares and any Prohibited Distributions to the Agent, the Purported Acquiror shall transfer to the Agent the Prohibited Distributions and the proceeds of such sale (the "**Resale Proceeds**"), except to the extent that the Agent grants written permission to the Purported Acquiror to retain a portion of the Resale Proceeds not exceeding the amount that would have been payable by the Agent to the Purported Acquiror pursuant to Section 10.5(d) if the Excess Shares had been sold by the Agent rather than by the Purported Acquiror.

(d) **Allocation of Sale Proceeds, Resale Proceeds and Prohibited Distributions.** The Sales Proceeds, the Resale Proceeds, if applicable, and Prohibited Distributions, if applicable, shall be allocated as follows: (1) first to the Agent in an amount equal to the expenses incurred in selling such Excess Shares and exercising its duties hereunder; then (2) second, to the Purported Acquiror up to the following amount: (a) the purported purchase price paid or value of consideration surrendered by the Purported Acquiror to acquire the Excess Shares, or (b) where the purported Transfer of the Excess Shares to the Purported Acquiror was by gift, inheritance, or any similar purported Transfer, the fair market value of the Excess Shares at the time of such purported Transfer, in each case, which amount shall be determined by the Board of Directors; and then (3) third any remaining amounts to an entity designated by the Corporation that is described in Section 501(c)(3) of the Code, contributions to which must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code; provided, however, that if the Excess Shares (including any Excess Shares arising from a previous Prohibited Transfer not sold by the Agent in a prior sale or sales), represent a 4.8% or greater Percentage Stock Ownership, then any such remaining amounts shall be paid to two or more such organizations. The Purported Acquiror's sole right with respect to such Excess Shares shall be limited to the amount payable to the Purported Acquiror pursuant to this Section 10.5(d). In no event shall any Excess Shares, Sales Proceeds, Resale Proceeds or Prohibited Distributions inure to the benefit of the Corporation or the Agent, except to the extent used to cover expenses incurred by the Agent in performing its duties hereunder.

(e) **Other Securities.** In the event of any Transfer which does not involve a transfer of securities of the Corporation within the meaning of Delaware law ("Securities," and individually, a "Security") but which would cause a Purported Acquiror to violate a restriction on Transfers provided for in this Article X, the application of Section 10.5(b), (c) and (d) shall be modified as described in this Section 10.5(e). In such case, no such Purported Acquiror shall be required to dispose of any interest that is not a Security, but such Purported Acquiror and/or any Person whose ownership of Securities is attributed to such Purported Acquiror shall be required to dispose of sufficient Securities (which Securities shall be disposed of in the inverse order in which they were acquired) to cause such Purported Acquiror, following such disposition, not to be in violation of this Article X. Such disposition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such number of Securities that are disposed of shall be considered Excess Shares and shall be disposed of through the Agent as provided in Section 10.5(c) and (d), except that the maximum aggregate amount payable either to such Purported Acquiror, or to such other Person that was the direct holder of such Excess Shares, in connection with such sale shall be the fair market value of such Excess Shares at the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Shares shall be paid out of any amounts due such Purported Acquiror or such other Person. The purpose of this Section 10.5(e) is to apply the provisions in Section 10.5(b), (c) and (d) to situations in which there is a Prohibited Transfer without a direct Transfer of Securities, and this Section 10.5(e), along with the other provisions of this Article X, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

(f) **Remedies.** Without limiting any other remedies available to the Corporation, if a Purported Acquiror shall fail to comply with any provision of Section 10.5(b) within thirty (30) days of the Corporation's demand, and unless a waiver is obtained in accordance with Section 10.3, the Corporation shall promptly take all cost effective actions that it believes appropriate to compel the Purported Acquiror to surrender to the Agent any certificates or other evidence of purported ownership of Excess Shares, the Resale Proceeds, and/or the Prohibited

Distributions or to enjoin or rescind any such purported Transfer. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Article X, including, without limitation, refusing to give effect on the books of the Corporation to any Prohibited Transfer. The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce or prevent a violation of the provisions of this Article X. Nothing in this Section 10.5(f) shall (i) be deemed inconsistent with any Prohibited Transfer of Excess Shares provided in this Article X being void *ab initio* or (ii) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand.

(g) **Securities Exchange Transactions.** Nothing in this Article X (including, without limitation, any determinations made, or actions taken, by the Board of Directors or the Corporation pursuant to this Article X) shall preclude the settlement of any transaction entered into through the facilities of a national securities exchange or any national securities quotation system. The fact that such settlement of any transaction occurs shall not negate the effect of any other provision of this Article X and any Purported Acquiror in such transaction shall be subject to all of the provisions and limitations set forth in this Article X.

(h) **Liability.** If any Person shall knowingly violate, or knowingly cause any other Person under the control of such Person (“**Controlled Person**”) to violate, the provisions of this Article X, then that Person and any such Controlled Person shall be jointly and severally liable for, and shall pay to the Corporation, such amount as will, after taking account of all taxes imposed with respect to the receipt or accrual of such amount and all costs incurred by the Corporation as a result of such violation, put the Corporation in the same financial position as it would have been in had such violation not occurred, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation’s ability to utilize its Tax Benefits, and attorneys’ and auditors’ fees incurred in connection with such violation.

Section 10.6. **Obligation to Provide Information.** At the request of the Corporation or as a condition to the registration of the Transfer of any Corporation Securities, any Person who is a Beneficial Owner or legal or record holder of Corporation Securities, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Corporation may request from time to time to determine compliance with this Article X or the status of the Corporation’s Tax Benefits. Any Purported Acquiror who attempts to acquire Corporation Securities in excess of the limitations set forth in this Article X shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request to determine the effect, if any, of such Prohibited Transfer on the preservation and usage of the Tax Benefits.

Section 10.7. **Legends.** The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Corporation Securities that are subject to the restrictions on Transfer and ownership contained in this Article X and, if applicable, to conditions, including restrictions on the Transfer of such shares, imposed by the Board of Directors under Section 10.3 bear a conspicuous legend referencing the applicable restrictions.

Section 10.8. Authority of Board of Directors. The Board of Directors shall have the exclusive power to (i) determine all matters necessary for administering and determining compliance with this Article X and (ii) exercise all rights and powers as may be advisable in the administration of this Article X, including without limitation, the right and power to (w) interpret the provisions of this Article X, (x) make all calculations and determinations deemed necessary or advisable for the administration of this Article X, and (y) determine value in good faith, which determination shall be conclusive, in each case, to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or other provisions of law. Nothing contained in this Article X shall limit the authority of the Board of Directors to take such other action to the extent permitted by law as it deems necessary, desirable or advisable to preserve the Tax Benefits. In addition, the Board of Directors may from time to time establish, modify, amend or rescind Bylaws, regulations and procedures of the Corporation not inconsistent with the express provisions of this Article X for purposes of determining whether any Transfer of Corporation Securities would jeopardize the Corporation's ability to preserve or utilize any Tax Benefits, or for the orderly application, administration and implementation of the provisions of this Article X. Without limiting the generality of the foregoing, in the event of a change in law (including applicable regulations) making one or more of the following actions necessary or desirable or in the event that the Board of Directors believes one or more of such actions is in the best interest of the Corporation, the Board of Directors may accelerate or extend the Expiration Date; provided that the Board of Directors shall determine in writing that such acceleration or extension is reasonably necessary or desirable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary or desirable to preserve the Tax Benefits, as the case may be. In the case of an ambiguity in the application of any of the provisions of this Article X, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this Article X requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article X. All actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith in accordance with this Section 10.8 shall be final, conclusive and binding on the Corporation, the Agent, and all other parties for all purposes of this Article X absent manifest error. The Board of Directors may delegate all or any portion of its duties and powers under this Article X to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this Article X through duly authorized officers or agents of the Corporation. Notwithstanding anything herein to the contrary, nothing in this Article X shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

Section 10.9. Reliance. To the fullest extent permitted by law, the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements provided by the Corporation's Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer and Treasurer, Secretary and Chief Legal Officer or Assistant Secretary, or by the Corporation's outside legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents (including the Agent) as to matters reasonably believed to be within their professional or expert competence in making any determinations and findings contemplated by this Article X, and the members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by any stockholder, the Corporation is entitled to rely on the existence and absence of filings on Schedule 13D or 13G under the Exchange Act (or similar filings), if any, as of any date, subject to its actual knowledge of the ownership of Corporation Securities.

Section 10.10. **Benefits of this Article X.** Nothing in this Article X shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Article X. This Article X shall be for the sole and exclusive benefit of the Corporation and the Agent.

Section 10.11. **Severability.** If any provision of this Article X or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article X.

Section 10.12. **Waiver.** With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Article X, (i) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (ii) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

**ARTICLE XI.
INCORPORATOR**

The incorporator of the Corporation is Steven Chuslo, whose mailing address is One Park Place, Suite 200, Annapolis, Maryland 21401.

**ARTICLE XII.
INITIAL BOARD OF DIRECTORS**

The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware. The names and mailing addresses of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of stockholders of the corporation and until their successors are duly elected and qualified, are:

<u>Name</u>	<u>Address</u>
Jeffery W. Eckel	One Park Place, Suite 200 Annapolis, Maryland 21401
Jeffrey A. Lipson	One Park Place, Suite 200 Annapolis, Maryland 21401
Teresa M. Brenner	One Park Place, Suite 200 Annapolis, Maryland 21401
Lizabeth A. Ardisana	One Park Place, Suite 200 Annapolis, Maryland 21401

Clarence D. Armbrister	One Park Place, Suite 200 Annapolis, Maryland 21401
Nancy C. Floyd	One Park Place, Suite 200 Annapolis, Maryland 21401
Charles M. O'Neil	One Park Place, Suite 200 Annapolis, Maryland 21401
Richard J. Osborne	One Park Place, Suite 200 Annapolis, Maryland 21401
Steven G. Osgood	One Park Place, Suite 200 Annapolis, Maryland 21401
Kimberly A. Reed	One Park Place, Suite 200 Annapolis, Maryland 21401

* * *

This Certificate of Incorporation shall be effective at 11:59 p.m. Eastern time on July 2, 2024.

[SIGNATURE PAGE FOLLOWS]

The undersigned incorporator hereby acknowledges that the foregoing certificate of incorporation is his act and deed on this the 1st day of July, 2024.

/s/ Steven Chuslo

Steven Chuslo
Incorporator

[Signature Page to Delaware Charter]

HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.

BYLAWS

ARTICLE I.

OFFICES

Section 1. **Registered Office.** The registered office of the Corporation in the State of Delaware shall be located at such place as the Board of Directors of the Corporation (the “**Board of Directors**”) may from time to time designate and as shall be set forth in the Certificate of Incorporation of the Corporation (as it may be amended and/or restated from time to time, the “**Certificate of Incorporation**”).

Section 2. **Additional Offices.** The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS

Section 1. **Place.** All meetings of stockholders shall be at such place as shall be designated by the Board of Directors and stated in the notice of the meeting. The Board of Directors may, in its sole discretion, determine that a meeting shall not be held at any place, but instead may be held solely by means of remote communication in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “**DGCL**”).

Section 2. **Annual Meeting.** An annual meeting of the stockholders for the election of directors and the transaction of any other proper business shall be held on the date and at the time set by the Board of Directors.

Section 3. **Special Meetings.**

- (a) Except as provided in paragraph (b) of this Section 3, a special meeting of the stockholders may be called at any time by the chair of the board, the chief executive officer, the president or the Board of Directors. Business transacted at such special meeting of the stockholders shall be limited to the purpose stated in the notice of meeting.
- (b) A special meeting of stockholders shall be called by the Secretary of the Corporation upon written request (a “**Special Meeting Request**”) of one or more holders of record who “Own” at least a majority of the outstanding shares of common stock of the Corporation (the “**Requisite Percentage**”) and who have complied in full with the requirements set forth in these Bylaws.
 - (i) A Special Meeting Request must be delivered to the attention of the Secretary at the principal executive offices of the Corporation. A Special Meeting Request shall be valid only if it is signed and dated by each stockholder of record submitting the Special Meeting Request and the beneficial owners, if any, on whose behalf the Special Meeting Request is being made, or such stockholder’s or beneficial owner’s duly authorized agent (each, a “**Requesting Stockholder**”) collectively representing the Requisite Percentage, and includes (A) a statement of the specific purpose(s) of the special meeting and the reasons for conducting such business at the special meeting; (B) as to any director nominations proposed to be presented at the special meeting and any matter (other than a director nomination) proposed to be conducted at the special meeting and as to each Requesting Stockholder, the information, statements, representations, agreements and other documents that would be required to be set forth in or included with a stockholder’s notice of a nomination pursuant to

Section 11 of this Article II (including any nominee's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected) and/or a stockholder's notice of business proposed to be brought before a meeting pursuant to Section 11 of this Article II, as applicable; (C) a representation that a Requesting Stockholder or a qualified representative (as defined in Section 11 of this Article II) thereof intends to appear in person or by proxy at the special meeting to present the nomination(s) or business to be brought before the special meeting; (D) an agreement by the Requesting Stockholders to notify the Corporation promptly in the event of any disposition prior to the date of the special meeting of shares of the Corporation owned beneficially or of record and an acknowledgement that any such disposition shall be deemed to be a revocation of such Special Meeting Request with respect to such disposed shares; and (E) documentary evidence that the Requesting Stockholders Own the Requisite Percentage; provided, however, that if the Requesting Stockholders are not the beneficial owners of the shares representing the Requisite Percentage, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary within 10 days after the date on which the Special Meeting Request is delivered to the Secretary) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially Own the Requisite Percentage. In addition, the Requesting Stockholders and the beneficial owners, if any, on whose behalf the Special Meeting Request is being made shall (x) further update and supplement the information provided in the Special Meeting Request, if necessary, so that the information provided or required to be provided therein shall be true and correct as of the record date for the special meeting and as of the date that is 10 Business Days prior to the special meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than 5 days after the later of the record date for the meeting or the date notice of the record date is first publicly disclosed in the case of the update and supplement required to be made as of the record date and not later than 8 Business Days prior to the date of the special meeting or any adjournment or postponement thereof in the case of the update and supplement required to be made as of 10 Business Days prior to the special meeting or any adjournment or postponement thereof and (y) promptly provide any other information reasonably requested by the Corporation.

- (ii) A Special Meeting Request shall not be valid, and a special meeting requested by stockholders shall not be held, if (A) the Special Meeting Request does not comply with this Section 3; (B) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law (as determined in good faith by the Board of Directors); (C) the Special Meeting Request is delivered during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of the next annual meeting; (D) an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item"), other than the election of directors, was presented at an annual or special meeting of stockholders held not more than 12 months before the Special Meeting Request is delivered; (E) a Similar Item was presented at an annual or special meeting of stockholders held not more than 90 days before the Special Meeting Request is delivered (and, for purposes of this clause (E), the election of directors shall be deemed to be a "Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the

Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); (F) a Similar Item is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within 90 days of the receipt by the Corporation of a Special Meeting Request; or (G) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law.

- (iii) Special meetings of stockholders called pursuant to this Section 3 shall be held at such place, if any, on such date, and at such time as the Board of Directors shall fix; provided, however, that the special meeting shall not be held more than 90 days after receipt by the Corporation of a valid Special Meeting Request.
- (iv) The Requesting Stockholders may revoke a Special Meeting Request by written revocation delivered to the Secretary at the principal executive offices of the Corporation at any time prior to the special meeting. If, at any point after 60 days of the first date on which a Special Meeting Request is delivered to the Corporation, the unrevoked requests from Requesting Stockholders (whether by specific written revocation or deemed revocation pursuant to clause (D) of paragraph (b)(i) of this Section 3) represent in the aggregate less than the Requisite Percentage, the Board of Directors, in its discretion, may cancel the special meeting.
- (v) In determining whether a special meeting of stockholders has been requested by the Requesting Stockholders representing in the aggregate at the least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary of the Corporation will be considered together only if (A) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting, in each case as determined by the Board of Directors (which, if such purpose is the election or removal of directors, changing the size of the Board of Directors and/or the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors, will mean that the exact same person or persons are proposed for election or removal in each relevant Stockholder Meeting Request), and (B) such Special Meeting Requests have been dated and delivered to the Secretary of the Corporation within 60 days of the first date on which a Special Meeting Request is delivered to the Corporation.
- (vi) If none of the Requesting Stockholders appear or send a qualified representative to present the nomination and/or business to be presented for consideration as specified in the Special Meeting Request, the Corporation need not present such nomination and/or business for a vote at the special meeting, notwithstanding that proxies in respect of such nomination and/or may have been received by the Corporation.
- (vii) Business transacted at any special meeting called pursuant to this paragraph (b) of Section 3 shall be limited to (A) the purpose(s) stated in the valid Special Meeting Request received from the Requisite Percentage of record holders and (B) any additional matters that the Board of Directors determines to include in the Corporation's notice of the special meeting.
- (viii) For purposes of this Section 3, a stockholder shall be deemed to "Own" (as defined below) only those outstanding shares of common stock of the Corporation entitled to vote in the election of directors as to which such person possesses both (A) the full voting and investment rights pertaining to the shares; and (B) the full economic interest in (including the opportunity

for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares sold by such person or any of its affiliates in any transaction that has not been settled or closed, including any short sale; borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell; or subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised by either party would have, the purpose or effect of reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares; and/or hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or its affiliates. The terms "Owned," "Owning" and other variations of the word "Own," when used with respect to a stockholder or beneficial owner, shall have correlative meanings. A stockholder or beneficial owner shall "Own" shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. The person's Ownership of shares shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person.

(c) The Board of Directors may postpone, reschedule or cancel any previously scheduled special meeting.

Section 4. **Notice.** Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, not less than ten nor more than 60 days before each meeting of stockholders, the Corporation shall give to each stockholder entitled to vote at such meeting notice in writing or by electronic transmission stating the date, time and place, if any, of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose for which the meeting is called. The notice shall be given in accordance with Section 232 of the DGCL. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such a stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the Corporation under any provision of applicable law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice permitted under this paragraph, shall be deemed to have consented to receiving such single written notice.

No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice. The Corporation may reschedule, postpone or cancel any previously scheduled meeting of stockholders.

Section 5. **Organization and Conduct.** Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chair of the meeting or, in the absence of such appointment or appointed individual, by the chair of the board or, in the case of a vacancy in the office or absence of the chair of the board, by one of the following officers present at the meeting in the following order: the vice chair of the board, if there is one, the chief executive officer, the president, the vice presidents in their order of rank and seniority and the secretary. The secretary, or, in the secretary's absence, an assistant secretary, or, in the absence of both the secretary and assistant secretaries, an individual appointed by the Board of Directors or, in the absence of such appointment, an individual appointed by the chair of the meeting shall act as secretary. In the event that the secretary presides at a meeting of stockholders, an assistant secretary, or, in the absence of all assistant secretaries, an individual appointed by the Board of Directors or the chair of the meeting, shall record the minutes of the meeting. Even if present at the meeting, the person designated by the Board of Directors or these Bylaws to act as chair of the meeting may delegate to another person the power to act as chair of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chair of the meeting. The chair of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chair and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies and other such individuals as the chair of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chair of the meeting may determine; (d) limiting the time allotted to questions or comments; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chair of the meeting; (h) convening or concluding a meeting or (for any or no reason) recessing and/or adjourning the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. **Quorum; Adjournment.** (a) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at any meeting of stockholders, the presence in person or by proxy of holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall constitute a quorum. If such quorum is not established at any meeting of the stockholders, the chair of the meeting or the stockholders so present, by the affirmative vote of the holders of a majority in voting power of the shares of the Corporation which are present in person or by proxy and entitled to vote thereon, may adjourn the meeting from time to time in the manner provided in Section 6(b). The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

- (b) Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken or are provided in any other manner permitted by the DGCL. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

Section 7. **Voting.** A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. Unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, a majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting. Unless otherwise provided by statute or by the Certificate of Incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be viva voce unless the chair of the meeting shall order that voting be by ballot or otherwise.

Section 8. **Proxies.** A stockholder of record entitled to vote a meeting of stockholders may vote in person or by proxy, but no such proxy shall be voted or acted upon after three years from its date unless otherwise provided in the proxy. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 9. **Stock List.** The Corporation shall prepare, no later than the tenth day before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of 10 days ending on the day before the meeting date (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (b) during ordinary business hours at the principal place of business of the Corporation. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 9 or to vote in person or by proxy at any meeting of stockholders.

Section 10. **Inspectors.** The Corporation may, and shall if required by law, appoint, before any meeting of stockholders, one or more inspectors for the meeting, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the chair of the meeting shall 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 to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors so appointed or designated shall (a) determine the number of shares of stock of the Corporation outstanding and the voting power of each such share (b) determine the number of shares of stock of the Corporation 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 of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 11. Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals

(a) Annual Meetings of Stockholders.

- (i) Nominations of individuals for election to the Board of Directors and proposals of other business to be considered at an annual meeting of stockholders by the stockholders may only be made (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors or authorized committee thereof or (C) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time of giving of notice by the stockholder as provided for in this Section 11(a) and at the time of the annual meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with this Section 11(a).
- (ii) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(i) of this Section 11, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation and any such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information, representations and undertaking required under this Section 11 and shall be delivered to the secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern time, on the 120th day prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(iii) of this Article II) for preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after the first anniversary of the date of the preceding year's annual meeting, or if the Corporation did not prepare a proxy statement in connection with the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such meeting is first made. The postponement or adjournment of an annual meeting (or the public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.
- (iii) Such stockholder's notice shall set forth:
 - (A) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "**Proposed Nominee**"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) promulgated under the Exchange Act;
 - (B) as to any other business that the stockholder proposes to bring before the meeting, (1) a description of such business, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that business includes a proposal to amend the Bylaws, the language of the proposed amendment), the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such

stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom and (2) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Regulation 14A (or any successor provision) of the Exchange Act;

- (C) as to the stockholder giving the notice and any Stockholder Associated Person,
1. the class, series and number of all shares of stock or other securities of the Corporation (collectively, the “**Company Securities**”), if any, which are owned (beneficially or of record) by such stockholder, Proposed Nominee or any Stockholder Associated Person (including any Company Securities as to which such stockholder or any Stockholder Associated Persons have a right to acquire beneficial ownership at any time in the future), the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person;
 2. whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the previous six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of (x) Company Securities or (y) any security of any entity that was listed in the Peer Group in the Stock Performance Graph in the most recent annual report to security holders of the Corporation (a “Peer Group Company”) for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation (or, as applicable, in any Peer Group Company) disproportionately to such person’s economic interest in the Company Securities (or, as applicable, in any Peer Group Company), and
 3. any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, in the Corporation, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class or series;
- (D) as to the stockholder giving the notice and any Stockholder Associated Person with an interest or ownership referred to in clauses (A) or (B) of paragraph (3)(iii) of this Section 11(a):
1. the name and address of such stockholder, as they appear on the Corporation’s stock ledger, and the current name and business address, of each such Stockholder Associated Person and any Proposed Nominee;

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2. the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person that is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;
- (E) to the extent known by the stockholder giving the notice, the name and address of any other person supporting financially the nominee for election or reelection as a director or the proposal of other business on the date of such stockholder's notice;
 - (F) if the stockholder is proposing one or more Proposed Nominees, a representation that such stockholder, Proposed Nominee or Stockholder Associated Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee, (2) otherwise to solicit proxies or votes in support of such proposal or nomination, and/or (3) to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of Proposed Nominees in accordance with Rule 14a-19 of the Exchange Act;
 - (G) as to the stockholder giving the notice, a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination;
 - (H) a description of any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement or understanding pursuant to which such stockholder or Stockholder Associated Persons have or share a right, directly or indirectly, to vote any shares of any class or series of capital stock of the Corporation,
 - (I) a description of any agreement, arrangement or understanding with respect to any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such stockholder or Stockholder Associated Persons that are separated or separable pursuant to such agreement, arrangement or understanding from the underlying shares of the Corporation; and
 - (J) all other information regarding the stockholder giving the notice and each Stockholder Associated Person that would be required to be disclosed by the stockholder in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act.

The foregoing notice requirements of paragraph (a)(iii) of this Section 11 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

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- (iv) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by a:
- (A) written representation and undertaking executed by the Proposed Nominee:
1. that such Proposed Nominee (I) is not, and will not become, a party to any agreement, arrangement or understanding with, and has given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question that has not been disclosed to the Corporation or that could limit or interfere with such proposed nominee's fiduciary duties under applicable law, (II) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (III) consents to be named in the Company's proxy statement and accompanying proxy card as a nominee, (IV) consents to serve as a director of the Corporation if elected (V) will notify the Corporation simultaneously with the notification to the stockholder of the Proposed Nominee's actual or potential unwillingness or inability to serve as a director and (VI) does not need any permission or consent from any third party to serve as a director of the Corporation, if elected, that has not been obtained, including any employer or any other board or governing body on which such Proposed Nominee serves; and
 2. a completed and signed Proposed Nominee questionnaire with respect to the background, qualification and independence of such proposed nominee (which questionnaire shall be provided by the Corporation, upon request, to the stockholder providing the notice.
- (B) representation and undertaking executed by the stockholder that such stockholder will:
1. comply with Rule 14a-19 promulgated under the Exchange Act in connection with such stockholder's solicitation of proxies in support of any Proposed Nominee;
 2. notify the Corporation as promptly as practicable of any determination by the stockholder to no longer solicit proxies for the election of any Proposed Nominee as a director at the annual meeting;
 3. furnish such other or additional information as the Corporation may request for the purpose of determining whether the requirements of this Section 11 have been complied with and of evaluating any nomination or other business described in the stockholder's notice;
 4. be in compliance, if elected as a director of the Corporation, and comply with, all applicable publicly disclosed corporate governance, code of conduct and ethics, conflict of interest, confidentiality, corporate opportunities, trading and any other policies and guidelines of the Corporation applicable to directors; and
 5. appear in person or by proxy at the meeting to nominate any Proposed Nominees or to bring such business before the meeting, as applicable, and acknowledges that if the stockholder does not so appear in person or by proxy at the meeting to nominate such Proposed Nominees or bring such business before the meeting, as applicable, the Corporation shall not bring such Proposed Nominee or such business for a vote at such meeting and any proxies or votes cast in favor of the election of any such Proposed Nominee or of any proposal related to such other business shall not be counted or considered.

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- (v) Notwithstanding anything in subsection (a) of this Section 11 to the contrary, in the event that the number of directors to be elected to the Board of Directors at the annual meeting is increased, effective after the time period for which nominations would otherwise be due under paragraph (a)(2) of this Section 11 and there is no public announcement by the Corporation naming the nominees for the additional directorship at least 130 days prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(3) of this Article II) for preceding year's annual meeting, a stockholder's notice required by this Section 11 shall also be considered timely, but only with respect to nominees for the additional directorship, if it shall be delivered to the secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern time, on the tenth day following the day on which such public announcement is first made by the Corporation.
- (vi) For purposes of this Section 11, "**Stockholder Associated Person**" of any stockholder means (i) any beneficial owner on whose behalf the nomination or proposal is made and (ii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such beneficial owner.
- (b) **Special Meetings of Stockholders.** Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board of Directors or (ii) provided that the special meeting has been called in accordance with Section 3(i) of this Article II for the purpose of electing directors, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 11 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 11. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any such stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice, containing the information, representations and undertakings required by paragraphs (a)(iii) and (iv) of this Section 11, is delivered to the secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting. The postponement or adjournment of a special meeting (or the public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.
- (c) **General.**
- (i) If any information, representation or undertaking submitted pursuant to this Section 11 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders, including any information, representation or undertaking from a Proposed Nominee, shall be inaccurate in any material respect, such information, representation or undertaking may be deemed not to have been provided in accordance with this Section 11. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information, representation or undertaking. Upon written request by the secretary of the Corporation or the Board of Directors, any such stockholder or Proposed Nominee shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification,

satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11, (B) a written update of any information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting and, if applicable, satisfy the requirements of Rule 14a-19(a)(3)) submitted by the stockholder pursuant to this Section 11 as of an earlier date and (C) an updated representation and undertaking by each Proposed Nominee that such individual will serve as a director of the Corporation if elected. If a stockholder or Proposed Nominee fails to provide such written verification, update, representation or undertaking within such period, the information as to which such written verification, update, representation or undertaking was requested may be deemed not to have been provided in accordance with this Section 11.

- (ii) Only such individuals who are nominated in accordance with this Section 11 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 11. A stockholder proposing a Proposed Nominee shall have no right to (A) nominate a number of Proposed Nominees that exceed the number of directors to be elected at the meeting or (B) substitute or replace any Proposed Nominee unless such substitute or replacement is nominated in accordance with this Section 11 (including the timely provision of all information, representations and undertakings with respect to such substitute or replacement Proposed Nominee in accordance with the deadlines set forth in this Section 11). If the Corporation provides notice to a stockholder that the number of Proposed Nominees proposed by such stockholder exceeds the number of directors to be elected at a meeting, the stockholder must provide written notice to the Corporation within five Business Days stating the names of the Proposed Nominees that have been withdrawn so that the number of Proposed Nominees proposed by such stockholder no longer exceeds the number of directors to be elected at a meeting. If any individual who is nominated in accordance with this Section 11 becomes unwilling or unable to serve on the Board of Directors, then the nomination with respect to such individual shall no longer be valid and no votes may validly be cast for such individual. The chair of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 11.
- (iii) Notwithstanding the foregoing provisions of this Section 11, the Corporation shall disregard any proxy authority granted in favor of, or votes for, director nominees other than the Corporation's nominees if the stockholder or Stockholder Associated Person (each, a "Soliciting Stockholder") soliciting proxies in support of such director nominees abandons the solicitation or does not (A) comply with Rule 14a-19 promulgated under the Exchange Act, including any failure by the Soliciting Stockholder to (1) provide the Corporation with any notices required thereunder in a timely manner or (2) comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act or (B) timely provide sufficient evidence in the determination of the Board of Directors sufficient to satisfy the Corporation that such Soliciting Stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence. Upon request by the Corporation, such Soliciting Stockholder shall deliver to the Corporation, no later than five Business Days prior to the applicable meeting, sufficient evidence in the judgment of the Board of Directors that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

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- (iv) For purposes of this Section 11, “the date of the proxy statement” shall have the same meaning as “the date of the company’s proxy statement released to shareholders” as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. “Public announcement” shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act. “Business Day” shall mean any day other than Saturday, Sunday or a day on which banks are closed in New York City, New York.
- (v) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, the Corporation’s proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 11 shall require disclosure of revocable proxies received by, or routine solicitation contacts made by or on behalf of, the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of a definitive proxy statement on Schedule 14A by such stockholder or Stockholder Associated Person
- (vi) Notwithstanding anything in these Bylaws to the contrary, if the stockholder giving notice as provided for in this Section 11 (or a qualified representative of the stockholder) does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting notwithstanding that such proposal or nomination is set forth in the notice of meeting or other proxy materials and notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 11, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

ARTICLE III.

DIRECTORS

Section 1. **General Powers.** The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors.

Section 2. **Number and Tenure.** The number of directors may be determined from time to time by resolutions of the Board of Directors. The tenure of office of a director shall not be affected by any decrease in the number of directors. Any director of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the chair of the board or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation.

Section 3. **Annual and Regular Meetings.** An annual meeting of the Board of Directors shall be held immediately after the annual meeting of stockholders, no notice other than this Bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place, if any, for the holding of regular meetings of the Board of Directors without other notice than such resolution.

Section 4. **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the chair of the board, the chief executive officer, the president or a majority of the directors then in office.

Section 5. **Notice.** Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or U.S. mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by U.S. mail shall be given at least 72 hours prior to the meeting. Notice by courier shall be given at least 48 hours prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by U.S. mail shall be deemed to be given when deposited in the U.S. mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 6. **Quorum.** A majority of the total number directors shall constitute a quorum for transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. **Voting.** The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Certificate of Incorporation or these Bylaws.

Section 8. **Organization.** At each meeting of the Board of Directors, the chair of the board or, in the absence of the chair, the vice chair of the board, if any, shall act as chair of the meeting. In the absence of both the chair and vice chair of the board, the chief executive officer (if also a director) or, in the absence of any chief executive officer or if the chief executive officer is not a director, the president (if also a director) or, in the absence of the president or if the president is not a director, a director chosen by a majority of the directors present, shall act as chair of the meeting. The secretary or, in his or her absence, an assistant secretary of the Corporation, or, in the absence of the secretary and all assistant secretaries, an individual appointed by the chair of the meeting, shall act as secretary of the meeting.

Section 9. **Telephone Meetings.** Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 10. **Consent by Directors Without a Meeting** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by all members of the Board of Directors. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors.

Section 11. **Vacancies and Newly Created Directorships.** Any newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause may be filled solely by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next annual meeting of stockholders and until his or her successor has been duly elected and qualified, subject, however, to such director's earlier death, resignation, disqualification or removal.

Section 12. **Compensation.** Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 13. **Chair of the Board; Vice Chair of the Board** The Board of Directors may designate a chair of the board. The chair of the board shall be a director, and may, but not need be, an officer of the Corporation. The chair of the board shall preside over the meetings of the Board of Directors and of the stockholders at which he or she shall be present. The chair of the board shall perform such other duties as may be assigned to him or her by the Board of Directors. The Board of Directors may also designate a vice chair of the board. The vice chair of the board shall be a director, and may, but not need be, an officer of the Corporation. The vice chair of the board shall perform such other duties as may be assigned to him or her by the Board of Directors.

Section 14. **Lead Independent Director.** A majority of the independent members of the Board of Directors may elect from among the independent members of the Board of Directors, a Lead Independent Director, but the election of a Lead Independent Director shall not be required. The Lead Independent Director may be removed as a Lead Independent Director by vote of a majority of the independent members of the Board of Directors. If a Lead Independent Director shall be elected, then the Lead Independent Director shall have such duties and authority as may be prescribed by the Board of Directors from time to time. For purposes of this Section 14, "independent" has the meaning (1) in accordance with the independence criteria established by the Board of Directors from time to time and (2) set forth in the NYSE listing standards, unless the Corporation's common stock ceases to be listed on the NYSE and is listed on another exchange, in which case, such exchanges definition of independent director shall apply.

Section 15. **Emergency Provisions.** Notwithstanding any other provision in the Certificate of Incorporation or these Bylaws, this Section 15 shall apply during any emergency resulting from an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of its Board of Directors or its stockholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government, or other similar emergency condition, as a result of which a quorum of the Board of Directors under Article III of these Bylaws cannot readily be obtained (an "**Emergency**"). During any Emergency, unless otherwise provided by the Board of Directors, (a) a meeting of the Board of Directors or a committee thereof may be called by

any director or officer by any means feasible under the circumstances; (b) notice of any meeting of the Board of Directors during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio; and (c) the number of directors necessary to constitute a quorum shall be one-third of the entire Board of Directors.

ARTICLE IV. COMMITTEES

Section 1. **Number, Tenure and Qualifications.** The Board of Directors may appoint from among its members an Executive Committee, an Audit Committee, a Compensation Committee, a Nominating and Corporate Governance Committee and one or more other committees, composed of one or more directors, to serve at the pleasure of the Board of Directors.

Section 2. **Powers.** The Board of Directors may delegate to committees appointed under Section 1 of this Article IV, in accordance with a written charter or by resolution, any of the powers of the Board of Directors, except as prohibited by law.

Section 3. **Meetings.** Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members then serving on a committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting where a quorum is present shall be the act of such committee. The Board of Directors may designate a chair of any committee, and such chair or, in the absence of a chair, any two members of any committee (if there are at least two members of the committee) may fix the time and place, if any, of its meeting unless the Board shall otherwise provide. In the absence or disqualification of a member of any such committee, the member or members thereof present at any meeting, whether or not he, she or they constitute a quorum, may unanimously appoint another director to act at the meeting in the place of such absent or disqualified member.

Section 4. **Telephone Meetings.** Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. **Consent by Committees Without a Meeting** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by all members of the committee. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of such committee.

Section 6. **Vacancies.** Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V. OFFICERS

Section 1. **General Provisions.** The officers of the Corporation shall include a president, a secretary and a treasurer and may include a chief executive officer, one or more executive vice presidents, senior vice presidents and vice presidents, a chief operating officer, a chief financial officer, a chief investment officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board of Directors, the chief executive officer or the president may from time to time designate other officers with such powers and duties as they shall deem necessary or desirable. The president, chief executive officer and any executive vice presidents of the Corporation shall be elected

by the Board of Directors. Any of the Board of Directors, the chief executive officer and the president may from time to time appoint any number of other officers as it, he or she deems necessary or desirable. Each officer shall serve until his or her successor is elected and qualifies subject to his or her earlier death, resignation or removal. Any two or more offices except president and vice president may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. **Removal and Resignation.** The president, chief executive officer and any executive vice president may be removed, with or without cause, only by the Board of Directors and any other officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors, the president or chief executive officer, if, in its, his or her judgment, the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the chair of the board, the chief executive officer, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. **Vacancies.** A vacancy in the office of the president, chief executive officer or any executive vice president may be filled by the Board of Directors for the balance of the term. A vacancy in any other office may be filled by the Board of Directors, the president or the chief executive officer.

Section 4. **Chief Executive Officer.** The Board of Directors may designate a chief executive officer. A chief executive officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board of Directors, and for the management of the business and affairs of the Corporation. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed. The chief executive officer acting within the scope of his or her authority delegated by the Board of Directors may authorize the Corporation to enter into any contract or to execute and deliver any instrument and such authority may be general or confined to specific instances. The chief executive officer may authorize any officer or agent to execute and deliver any contract or instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. The chief executive officer shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5. **Chief Financial Officer.** The Board of Directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer.

Section 6. **President.** The Board of Directors shall designate a president of the Corporation. In the absence of a chief executive officer, the president shall in general supervise and control all of the business and affairs of the Corporation. In the absence of a designation of a chief executive officer by the Board of Directors, the president shall be the chief executive officer and shall assume all authority and responsibility of such office. The president shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 7. **Executive Vice President.** The Board of Directors may designate one or more executive vice presidents for particular areas of responsibility. An executive vice president shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer or the president.

Section 8. **Chief Investment Officer.** The Board of Directors or the chief executive officer may designate a chief investment officer. The chief investment officer shall have the responsibilities and duties as determined by the Board of Directors or the chief executive officer or the president.

Section 9. **Vice Presidents.** The Board of Directors, the chief executive officer or the president may designate one or more senior vice presidents and vice-presidents of the Corporation for particular areas of responsibility. Any senior vice president or vice-president of the Corporation shall perform such duties as from time to time may be assigned by the Board of Directors, the chief executive officer or the president.

Section 10. **Secretary.** The Board of Directors, the chief executive officer or the president shall designate a secretary of the Corporation. The secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the stock transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him or her by the Board of Directors, the chief executive officer or the president.

Section 11. **Treasurer.** The Board of Directors, the chief executive officer or the president shall designate a treasurer of the Corporation. The treasurer shall have the custody of the funds and securities of the Corporation, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors and shall perform such other duties as from time to time may be assigned to him or her by the Board of Directors, the chief executive officer or the president. In the absence of a designation of a chief financial officer, the treasurer shall be the chief financial officer of the Corporation.

The treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his or her transactions as treasurer and of the financial condition of the Corporation.

Section 12. **Assistant Secretaries and Assistant Treasurers.** The Board of Directors, the chief executive officer or the president may designate one or more assistant secretaries and assistant treasurers of the Corporation. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the Board of Directors, the chief executive officer or the president.

Section 13. **Compensation.** The salaries and other compensation of the officers shall be fixed from time to time by the Board of Directors (or in such a manner as determined by the Board of Directors) and no officer shall be prevented from receiving such salary or other compensation by reason of the fact that he or she is also a director.

ARTICLE VI.

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. **Contracts.** The Board of Directors or the chief executive officer acting within the scope of his or her authority delegated by the Board of Directors may authorize the Corporation to enter into any contract or to execute and deliver any instrument and such authority may be general or confined to specific instances. The Board of Directors or the chief executive officer may authorize any officer or agent to execute and deliver any contract or instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 2. **Checks and Drafts.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by the chief executive officer or such other officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors or the chief executive officer.

Section 3. **Deposits.** All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board of Directors, the chief executive officer, the president, the chief financial officer, the treasurer or any other officer designated by the Board of Directors or the chief executive officer may determine.

ARTICLE VII.

STOCK

Section 1. **Certificates.** The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation (it being understood that each of the chair of the Board of Directors, the vice chair of the Board of Directors, the President, the Chief Executive Officer, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary shall be an authorized officer for such purpose), certifying the number of shares owned by such holder in the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 2. **Transfers.** All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares, in person or by his or her attorney, in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Delaware.

Section 3. **Lost, Stolen or Destroyed Certificate.** The Corporation may issue a new certificate of stock or uncertificated share 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 such owner's 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 or uncertificated share.

Section 4. **Fixing of Record Date**

- (a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the

meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

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

ARTICLE VIII. DISTRIBUTIONS

Section 1. **Authorization.** Dividends upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the Certificate of Incorporation. Dividends may be paid in cash, property or stock of the Corporation as determined by the Board of Directors, subject to the provisions of law and the Certificate of Incorporation.

Section 2. **Contingencies.** Before payment of any dividends, there may be set aside out of any assets of the Corporation available for dividends such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

ARTICLE IX. INDEMNIFICATION AND ADVANCE OF EXPENSES

Section 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 made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, 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 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 in the specific case by the Board of Directors.

Section 2. **Advancement of Expenses.** The Corporation shall to the fullest extent not prohibited by applicable law 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 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 IX or otherwise.

Section 3. **Claims.** If a claim for indemnification under this Article IX (following the final disposition of such proceeding) is not paid in full within 60 days after the Corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article IX is not paid in full within thirty days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. 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.

Section 4. **Nonexclusivity of Rights.** The rights conferred on any Covered Person by this Article IX shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. **Other Sources.** The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6. **Amendment or Repeal.** Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

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

Section 8. **Officers.** Any reference to an officer of the Corporation in this Article IX shall be deemed to refer exclusively to the chief executive officer, president, chief financial officer, chief investment officer, secretary, any assistant secretary, treasurer and any assistant treasurer or other officer of the Corporation appointed by the Board of Directors, the chief executive officer or the president pursuant to Article V of these Bylaws, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the Board of Directors or equivalent governing body of such other entity pursuant to the certificate of incorporation and bylaws or equivalent organizational documents of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

ARTICLE X. WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given pursuant to the Certificate of Incorporation or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the

giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person 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.

ARTICLE XI.
AMENDMENT OF BYLAWS

These Bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors. The stockholders of the Corporation may also adopt, amend or repeal these Bylaws by the affirmative vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon, provided, however, that the affirmative vote of the holders of at least two-thirds of the outstanding shares of stock entitled to vote thereon shall be required for the stockholders to adopt, amend or repeal Article IX (Indemnification and Advancement of Expenses) or Article XI (Amendment of Bylaws) of these Bylaws or any provision inconsistent therewith.

ARTICLE XII.
EXCLUSIVE FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, (A) (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

Adopted: July 2, 2024

ARTICLES OF CONVERSION

converting

HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.
(a Maryland corporation)

to

HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.
(a Delaware corporation)

THIS IS TO CERTIFY THAT:

FIRST: Hannon Armstrong Sustainable Infrastructure Capital, Inc. (the **“Converting Corporation”**) is a Maryland corporation formed by the filing of Articles of Incorporation with the State Department of Assessments and Taxation of Maryland (the **“SDAT”**) on November 7, 2012, and, by virtue of these Articles of Conversion, is converting (the **“Conversion”**) to HA Sustainable Infrastructure Capital, Inc., a Delaware corporation (the **“Converted Corporation”**), on the terms and conditions set forth herein.

SECOND: Upon the completion of the Conversion in accordance with the Maryland General Corporation Law (the **“MGCL”**) and the Delaware General Corporation Law (the **“DGCL”**) and at the Effective Time, the Converted Corporation shall, for all purposes of the laws of the State of Maryland and the State of Delaware, continue as the same entity as the Converting Corporation, and the Conversion will have the effects set forth herein and in the MGCL and the DGCL. Upon completion of the Conversion and at the Effective Time (as defined below):

(a) Each share of common stock, par value \$0.01 per share, of the Converting Corporation (the **“Common Stock”**), issued and outstanding immediately before the Effective Time shall, without any action on the part of any stockholder of the Converting Corporation, be automatically converted into and exchanged for one share of common stock, par value \$0.01 per share, of the Converted Corporation; and

(b) No shares of stock of the Converting Corporation of any class or series other than the Common Stock are issued or outstanding.

THIRD: The terms and conditions of the Conversion were advised, authorized and approved by the Converting Corporation in the manner and by the vote required by the laws of the State of Maryland and the charter and Amended and Restated Bylaws of the Converting Corporation. The Conversion has been approved in accordance with the provisions of Subtitle 9 of the MGCL.

FOURTH: The address of the principal office of the Converted Corporation in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

FIFTH: The name and address of the resident agent of the Converted Corporation in the State of Maryland is CSC-Lawyers Incorporation Service Company, 7 St. Paul Street, Suite 820, Baltimore, MD 21202.

SIXTH: The Articles of Conversion shall become effective at 11:59 P.M. on July 2, 2024 (the **Effective Time**).

SEVENTH: The undersigned acknowledges these Articles of Conversion to be the act and deed of the Converting Corporation and, further, as to all matters or facts required to be verified under oath, the undersigned officer acknowledges that, to the best of his knowledge, information and belief, these matters and facts relating to the Converting Corporation are true in all material respects and that this statement is made under the penalties of perjury.

[signatures on next page]

IN WITNESS WHEREOF, these Articles of Conversion have been duly executed and attested on behalf of the Converting Corporation as of the 1st day of July, 2024.

ATTEST:

**HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE
CAPITAL, INC.,**
a Maryland corporation

/s/ Steven L. Chuslo
Name: Steven L. Chuslo
Title: Chief Legal Officer, Secretary
and Executive Vice President

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Chief Executive Officer and President

[Signature Page to Articles of Conversion]

**CERTIFICATE OF CONVERSION
OF
HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.
(a Maryland corporation)
TO
HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.
(a Delaware corporation)**

This Certificate of Conversion, dated July 1, 2024, is being duly executed and filed by Hannon Armstrong Sustainable Infrastructure Capital, Inc., a Maryland corporation (the “Maryland Corporation”), to convert the Maryland Corporation to HA Sustainable Infrastructure Capital, Inc., a Delaware corporation (the “Corporation”), pursuant to Section 265 of the General Corporation Law of the State of Delaware (the “General Corporation Law”).

1. The Maryland Corporation was first incorporated as a stock corporation on November 7, 2012, under the laws of the State of Maryland and was a stock corporation under the laws of the State of Maryland immediately prior to the filing of this Certificate of Conversion.

2. The name of the Maryland Corporation immediately prior to the filing of this Certificate of Conversion was Hannon Armstrong Sustainable Infrastructure Capital, Inc. Immediately prior to the filing of this Certificate of Conversion, the Maryland Corporation was a stock corporation under the laws of the State of Maryland.

3. The name of the Corporation as set forth in its certificate of incorporation filed in accordance with Section 265(b) of the General Corporation Law is HA Sustainable Infrastructure Capital, Inc.

4. The conversion of the Maryland Corporation to the Corporation shall be effective at 11:59 p.m. Eastern time on July 2, 2024.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion on the date first-above written.

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE CAPITAL, INC.,
a Maryland corporation

By: /s/ Marc Pangburn
Name: Marc Pangburn
Title: Executive Vice President and Chief Financial
Officer

[Signature Page to Certificate of Conversion]

CLIFFORD CHANCE US LLP

TWO MANHATTAN WEST
375 9TH AVENUE
NEW YORK, NY 10001
TEL +1 212 878 8000
FAX +1 212 878 8375
www.cliffordchance.com

July 3, 2024

HA Sustainable Infrastructure Capital Inc.
One Park Place
Suite 200
Annapolis, Maryland 21401

Ladies and Gentlemen:

We have acted as counsel to HA Sustainable Infrastructure Capital, Inc. (the “**Company**”) in connection with the registration statement (the “**Registration Statement**”) on Form S-3 (File No. 333-263169), filed with the Securities and Exchange Commission (the “**Commission**”) on March 1, 2022, under the Securities Act of 1933, as amended, and the rules and regulations thereunder (the “**Securities Act**”).

We are furnishing this letter to you in connection with the offer and sale by the Company from time to time of its common stock, par value \$0.01 per share (the “**Shares**”), having an aggregate offering price of up to \$500,000,000, which is to be sold by the Company in accordance with the terms of the At Market Issuance Sales Agreement, dated May 13, 2020, as amended on February 26, 2021, March 1, 2022, February 22, 2023, May 10, 2023, September 5, 2023 and July 3, 2023 (the “**Sales Agreement**”), by and among the Company, on the one hand, and B. Riley Securities, Inc., Barclays Capital Inc., BofA Securities, Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Morgan Stanley & Co. LLC, Nomura Securities International, Inc., Truist Securities, Inc. and Wells Fargo Securities, LLC as Agents named therein, on the other hand (the “**Agents**”).

In rendering the opinion expressed below, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of such corporate records, documents, certificates and other instruments as in our judgment are necessary or appropriate.

Based on the foregoing, and such other examination of law and fact as we have deemed necessary, we are of the opinion that following the (i) issuance of the Shares pursuant to the terms of the Sales Agreement and (ii) receipt by the Company of the consideration for the Shares specified in the resolutions of the board of directors, the Shares will be legally issued, fully paid, and nonassessable.

The opinion set forth in this letter relates only to the Delaware General Corporation Law, currently in effect, and we express no opinion as to the laws of another jurisdiction and we assume no responsibility for the applicability or effect of the law of any other jurisdiction.

We consent to the filing of this opinion as Exhibit 5.1 to a Current Report on Form 8-K that shall be incorporated by reference into the Registration Statement and to the reference to us under the caption “Legal Matters” in the prospectus supplement which is a part of the Registration Statement. In giving this consent, we do not concede that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Clifford Chance US LLP

**PLAN OF CONVERSION
OF HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.,
A MARYLAND CORPORATION TO HA SUSTAINABLE INFRASTRUCTURE CAPITAL, INC.,
A DELAWARE CORPORATION**

THIS PLAN OF CONVERSION, dated as of July 1, 2024 (this “Plan”), is hereby adopted by Hannon Armstrong Sustainable Infrastructure Capital, Inc., a Maryland corporation (the “Company”), in order to set forth the terms, conditions and procedures governing the conversion of the Company from a Maryland corporation to a Delaware corporation pursuant to Section 265 of the General Corporation Law of the State of Delaware, as amended (the “DGCL”), and Section 3-901 *et seq.* of the Maryland General Corporation Law (the “MGCL”).

RECITALS:

WHEREAS, the Company is a corporation incorporated and existing under the laws of the State of Maryland;

WHEREAS, conversion of a Maryland corporation into a Delaware corporation is permitted under Section 265 of the DGCL and Section 3-901 of the MGCL;

WHEREAS, the Board of Directors of the Company has determined that it is advisable and in the best interests of the Company for the Company to convert from a Maryland corporation to a Delaware corporation pursuant to Section 265 of the DGCL and Section 3-901 *et seq.* of the MGCL; and

WHEREAS, the Board of Directors has declared advisable the Conversion (as defined below) in accordance with this Plan and authorized, and approved this Plan and submitted the Conversion and this Plan to the Company’s stockholders for approval, and the Company’s stockholders have approved the Conversion and this Plan.

NOW, THEREFORE, the Company hereby adopts this Plan as follows:

1. CONVERSION; EFFECT OF CONVERSION.

(a) At the Effective Time (as defined in Section 3 below), the Company shall be converted from a Maryland corporation to a Delaware corporation pursuant to Section 265 of the DGCL and Section 3-901 *et seq.* of the MGCL (the “Conversion”) and the Company, as converted to a Delaware corporation (the “Converted Company”), shall thereafter be subject to all of the provisions of the DGCL, except that, notwithstanding Section 106 of the DGCL, the existence of the Converted Company shall be deemed to have commenced on the date the Company commenced its existence in the State of Maryland.

(b) At the Effective Time, by virtue of the Conversion and without any further action on the part of the Company or its shareholders, the Converted Company shall, for all purposes of the laws of the State of Delaware and the State of Maryland, be deemed to be the same entity as the Company. At the Effective Time, by virtue of the Conversion and without any further action on the part of the Company or its stockholders, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the Company, and all property, real, personal and mixed, and all debts due to the Company, as well as all other things and causes of action belonging to the Company, shall remain vested in the Converted Company and shall be the property of the Converted Company and the title to any real property vested by deed or otherwise in the Company shall not revert or be in any way impaired by reason of the Conversion; but all rights of creditors and all liens upon any property of the Company shall be preserved unimpaired, and all debts, liabilities and duties of the Company shall remain attached to the Converted Company at the Effective Time, and may be enforced against the Converted Company to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by the Converted Company in its capacity as a corporation of the State of Delaware. The rights, privileges, powers and interests in property of the Company, as well as the debts, liabilities and duties of the Company, shall not be deemed, as a consequence of the Conversion, to have been transferred to the Converted Company at the Effective Time for any purpose of the laws of the State of Delaware.

(c) The Company shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the Conversion shall not be deemed a dissolution of the Company and shall constitute a continuation of the existence of the Company in the form of a Delaware corporation. The Converted Company is the same entity as the Company. The Conversion shall not be deemed to affect any obligations or liabilities of the Company incurred prior to the Conversion or the personal liability of any person incurred prior to the Conversion.

(d) At the Effective Time, the name of the Converted Company shall be: HA Sustainable Infrastructure Capital, Inc.

(e) At the Effective Time, the street address of the principal place of business of the Converted Company shall be the same as the street address of the principal place of business of the Company, with such address being: One Park Place, Suite 200, Annapolis, MD 21401.

(f) The Company intends for the Conversion to constitute a reorganization within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended, and for this Plan to constitute a “plan of reorganization” within the meaning of Treasury Regulation Section 1.368-2(g).

2. FILINGS. As soon as practicable following the date hereof, the Company shall cause the Conversion to be effected by:

(a) executing and filing (or causing to be executed and filed) Articles of Conversion pursuant to Section 3-903 of the MGCL in a form reasonably acceptable to any officer of the Company (the “Maryland Articles of Conversion”) with the Maryland State Department of Assessments and Taxation (the “SDAT”);

(b) executing and filing (or causing to be executed and filed) a Certificate of Conversion pursuant to Sections 103 and 265 of the DGCL in a form reasonably acceptable to any officer of the Company (the “Delaware Certificate of Conversion”) with the Delaware Secretary of State (the “DSOS”); and

(c) executing, acknowledging and filing (or causing to be executed, acknowledged and filed) a Certificate of Incorporation of HA Sustainable Infrastructure Capital, Inc., substantially in the form approved by the Company’s shareholders and set forth on *Exhibit A* hereto (the “Delaware Certificate of Incorporation”) with the DSOS.

3. EFFECTIVE TIME. The Conversion shall become effective upon the filing and effectiveness of the Maryland Articles of Conversion with the SDAT and the Delaware Certificate of Conversion and the Delaware Certificate of Incorporation with the DSOS, or such later time as may be specified in the Maryland Articles of Conversion and the Delaware Certificate of Conversion (the time of the effectiveness of the Conversion, the “Effective Time”).

4. EFFECT OF CONVERSION ON OUTSTANDING STOCK.

(a) As of July 1, 2024, the following shares were authorized or outstanding: 450,000,000 shares of the Company’s common stock, par value \$0.01 per share (the “Company Common Stock”), were authorized, of which 114,033,939 shares of Company Common Stock were issued and outstanding (as of May 3, 2024), and 50,000,000 shares of the Company’s preferred stock, par value \$0.01 per share (the “Company Preferred Stock”), were authorized, of which 450,000 shares are classified and designated as “Series A Junior Participating Preferred Stock” (the “Series A Preferred Stock”) of which no shares of Company Preferred Stock were issued and outstanding. Other than the aforementioned shares, there are no other classes or series of capital stock of the Company issued or outstanding as of the date hereof.

(b) Upon the terms and subject to the conditions of this Plan, at the Effective Time, by virtue of the Conversion and without any further action on the part of the Company or its stockholders, each share of issued Company Common Stock shall convert into one validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Converted Company (the "Converted Company Common Stock").

(c) Upon the terms and subject to the conditions of this Plan, at the Effective Time, without any further action on the part of the Company's stockholders, each share of issued Series A Preferred Stock, if any, shall convert into the right to receive the Series A Liquidation Preference (as such term is defined in the charter of the Company).

5. EFFECT OF CONVERSION ON OUTSTANDING OPTIONS, WARRANTS AND OTHER RIGHTS. Upon the terms and subject to the conditions of this Plan, at the Effective Time, by virtue of the Conversion and without any further action on the part of the Company or its stockholders, each option, warrant or other right to acquire shares of Company Common Stock outstanding immediately prior to the Effective Time shall convert into an equivalent option, warrant or other right to acquire, upon the same terms and conditions as were in effect immediately prior to the Effective Time, the same number of shares of Converted Company Common Stock.

6. EFFECT OF CONVERSION ON STOCK CERTIFICATES. Upon the terms and subject to the conditions of this Plan, at the Effective Time, all of the outstanding certificates that immediately prior to the Effective Time represented shares of Company Common Stock immediately prior to the Effective Time shall be deemed for all purposes to continue to evidence ownership of and to represent the same number of shares of Converted Company Common Stock into which the shares represented by such certificates have been converted as provided herein. The registered owner on the books and records of the Converted Company or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Converted Company or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of the Converted Company evidenced by such outstanding certificate as provided above.

7. EFFECT OF CONVERSION ON EMPLOYEE BENEFIT, INCENTIVE COMPENSATION OR OTHER SIMILAR PLANS. Upon the terms and subject to the conditions of this Plan, at the Effective Time, by virtue of the Conversion and without any further action on the part of the Company or its stockholders, each employee benefit plan, incentive compensation plan or other similar plan to which the Company is a party shall continue to be a plan of the Converted Company. To the extent that any such plan provides for the issuance of Company Common Stock, at the Effective Time, such plan shall be deemed to provide for the issuance of Converted Company Common Stock. A number of shares of Converted Company Common Stock shall be reserved for issuance under such plan or plans equal to the number of shares of Company Common Stock so reserved immediately prior to the effective date of the Conversion.

8. FILING, LICENSES, PERMITS, TITLED PROPERTY, ETC. As necessary, following the Effective Time, the Converted Company shall apply for new qualifications to conduct business (including as a foreign corporation), licenses, permits and similar authorizations on its behalf and in its own name in connection with the Conversion and to reflect the fact that it is a corporation duly formed and validly existing under the laws of the State of Delaware. As required or appropriate, following the Effective Time, all real, personal or intangible property of the Company which was titled or registered in the name of the Company shall be re-titled or re-registered, as applicable, in the name of the Converted Company by appropriate filings or notices to the appropriate party (including, without limitation, any applicable governmental agencies).

9. FURTHER ASSURANCES. If, at any time after the Effective Time, the Converted Company shall determine or be advised that any deeds, bills of sale, assignments, agreements, documents or assurances or any other acts or things are necessary, desirable or proper, consistent with the terms of this Plan, (a) to vest, perfect or confirm, of record or otherwise, in the Converted Company its right, title or interest in, to or under any of the rights, privileges, immunities, powers, purposes, franchises, properties or assets of the Company, or (b) to otherwise carry out the purposes of this Plan, the Converted Company, its officers and directors and the designees of its officers and directors, are hereby authorized to solicit in the name of the Converted Company any third-party consents or other documents required to be delivered by any third-party, to execute and deliver, in the name and on behalf of the Converted Company all such deeds, bills of sale, assignments, agreements, documents and assurances and do, in the name and on behalf of the Converted Company, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, immunities, powers, purposes, franchises, properties or assets of the Company and otherwise to carry out the purposes of this Plan.

10. EFFECT OF CONVERSION ON DIRECTORS AND OFFICERS. The members of the Board of Directors of the Company and the officers of the Company immediately prior to the Effective Time shall continue in office following the Effective Time as the directors and officers of the Converted Company, respectively, until the expiration of their respective terms of office and until their successors have been duly elected and have qualified, or until their earlier death, resignation or removal.

11. DELAWARE BYLAWS. To the fullest extent permitted by law, at the Effective Time, the bylaws of the Converted Company shall be substantially in the form set forth on *Exhibit B* hereto (the "Delaware Bylaws"), and the Board of Directors of the Converted Company shall approve and ratify the Delaware Bylaws as promptly as practicable following the Effective Time.

12. TERMINATION OF TAX BENEFITS PRESERVATION PLAN. The Board of Directors of the Company, in accordance with Section 7(a) of the Tax Benefits Preservation Plan, dated as of November 2, 2023 (the "Tax Preservation Plan"), between the Company and Equiniti Trust Company, LLC, has determined that, effective immediately prior to the Effective Time, the Tax Preservation Plan is no longer necessary or desirable for the preservation of Tax Benefits (as defined in the Tax Preservation Plan) and is terminated.

13. IMPLEMENTATION AND INTERPRETATION. This Plan shall be implemented and interpreted, prior to the Effective Time, by the Board of Directors of the Company and, upon the Effective Time, by the Board of Directors of the Converted Company, (a) each of which shall have full power and authority to delegate and assign any matters covered hereunder to any other party or parties, including, without limitation, any officers of the Company or the Converted Company, as the case may be, and (b) the interpretations and decisions of which shall be final, binding, and conclusive on all parties.

14. AMENDMENT. This Plan may be amended or modified by the Board of Directors of the Company at any time prior to the Effective Time, provided that such an amendment shall not alter or change (a) the amount or kind of shares or other securities to be received hereunder by the stockholders of the Company or (b) any term of the Delaware Certificate of Incorporation, other than changes permitted to be made without shareholder approval by the DGCL.

15. TERMINATION OR DEFERRAL. At any time prior to the Effective Time, (a) this Plan may be terminated and the Conversion may be abandoned by action of the Board of Directors of the Company, notwithstanding the approval of this Plan by the stockholders of the Company, and (b) the consummation of the Conversion may be deferred for a reasonable period of time if, in the opinion of the Board of Directors of the Company, such action would be in the best interests of the Company. In the event of termination of this Plan, this Plan shall become void and of no effect and there shall be no liability on the part of the Company, its Board of Directors or stockholders with respect thereto.

16. THIRD PARTY BENEFICIARIES. This Plan shall not confer any rights or remedies upon any person other than as expressly provided herein.

17. SEVERABILITY. Whenever possible, each provision of this Plan will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Plan is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Plan.

18. GOVERNING LAW. This Plan shall be construed in accordance with and governed by the law of the State of Delaware, without regard to the conflict of laws provisions thereof.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Company hereby adopts the Plan of Conversion as of the date first written above.

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE CAPITAL, INC.

By: /s/ Marc Pangburn
Name: Marc Pangburn
Title: Executive Vice President and Chief
Financial Officer

[Signature Page to Plan of Conversion]

Exhibit A – Delaware Certificate of Incorporation

[Attached to Company's Form 8-K (No. 001-35877) as Exhibit 3.1, filed on July 3, 2024]

Exhibit B – Delaware Bylaws

[Attached to Company's Form 8-K (No. 001-35877) as Exhibit 3.2, filed on July 3, 2024]

Description of Capital Stock

The following descriptions summarize the most important terms of our capital stock. This summary does not purport to be complete and is qualified in its entirety by the provisions of our certificate of incorporation (our “**Certificate of Incorporation**”) and our bylaws (our “**Bylaws**”), copies of which have been filed by us with the Securities and Exchange Commission and are incorporated by reference herein. For a complete description of our capital stock, you should refer to our Certificate of Incorporation and our Bylaws and applicable provisions of the Delaware General Corporation Law (the “**DGCL**”). As used in this Description of Capital Stock, “the Company”, “HASI”, “we”, “us” and “our” mean HA Sustainable Infrastructure Capital, Inc., a Delaware corporation, and its successors, but not any of its subsidiaries.

General

The rights of the holders of our capital stock are governed by the DGCL, our Certificate of Incorporation, and our Bylaws.

Authorized Capital Stock

Our authorized capital stock consists of 450,000,000 shares of common stock, \$0.01 par value (our “Common Stock”), and 50,000,000 shares of preferred stock, \$0.01 par value (“Preferred Stock”). As of May 3, 2024, there were 114,033,939 shares of Common Stock issued and outstanding and no shares of Preferred Stock issued and outstanding.

Common Stock

Common Stock Outstanding. The outstanding shares of our Common Stock are duly authorized, validly issued, fully paid and nonassessable.

Voting Rights. Each share of our Common Stock is entitled to one vote on all stockholder matters. Shares of our Common Stock do not possess any cumulative voting rights. Generally, except for the election of directors, if a quorum is present at any meeting of stockholders, an action on a matter is approved if it receives the affirmative vote of the majority of the votes properly cast for such matter, unless otherwise required by applicable law, our Certificate of Incorporation, or our Bylaws. A plurality of the votes cast in the election of directors is sufficient to elect a director and there is no cumulative voting in the election of directors, which means that the holders of a majority of the outstanding shares of our Common Stock generally can elect all of the directors then standing for election, and the holders of the remaining shares will not be able to elect any directors. However, pursuant to our majority vote policy for the election of directors, in an uncontested election, any nominee who receives a greater number of votes “withheld” from his or her election than votes “for” such election is required to tender his or her resignation to our board of directors for its consideration. The rights, preferences, and privileges of holders of our Common Stock are subject to, and may be impacted by, the rights of the holders of shares of any series of Preferred Stock that we may designate and issue in the future. A majority of the stockholders can request that we call a special meeting by providing the notice and information required by our Bylaws.

Dividend Rights. Holders of our Common Stock are entitled to receive dividends ratably, if any, as may be declared by our board of directors out of legally available funds, subject to preferential dividend rights of any Preferred Stock then outstanding.

Liquidation and Dissolution Rights. Upon liquidation, dissolution or winding up, holders of our Common Stock will be entitled to receive pro rata the assets available for distribution to the stockholders after payment of liabilities and payment of preferential and other amounts, if any, payable on any outstanding Preferred Stock.

Other Rights. Holders of our Common Stock are not entitled to preemptive, subscription, redemption, or conversion rights, and no sinking fund provisions are applicable to our Common Stock. Under the DGCL, holders of our Common Stock have appraisal rights with respect to certain transactions such as certain mergers, consolidations, conversions and domestications.

Trading Market. Our Common Stock is listed for trading on the New York Stock Exchange under the symbol "HASI."

Preferred Stock

Our board of directors has the authority, without further action by our stockholders, to issue Preferred Stock in one or more series and to fix the rights, preferences, privileges, and restrictions thereof. These rights, preferences, and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms, and the number of shares constituting, or the designation of, such series, any or all of which may be greater than the rights of our Common Stock.

Anti-takeover effects of our Certificate of Incorporation and our Bylaws and Delaware Law

Our Certificate of Incorporation and our Bylaws include a number of provisions that may have the effect of delaying, deferring or preventing another party from acquiring control of us and encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include the items described below.

Removal of Directors and Filling of Vacancies. Our Certificate of Incorporation provide that directors may be removed with or without cause, and only upon the affirmative vote of holders of at least two-thirds of the outstanding shares of capital stock then entitled to vote in the election of directors. Our Certificate of Incorporation and our Bylaws provide that, subject to the rights, if any, of the holders of any series of Preferred Stock to elect directors and to fill vacancies in the board of directors related thereto, any and all vacancies in the board of directors, however occurring, including, without limitation, by reason of an increase in the size of the board of directors, or the death, resignation, disqualification, or removal of a director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum of the board of directors, and not by the stockholders. Any director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term for which the new directorship was created or the vacancy occurred and until such director's successor shall have been duly elected and qualified or until his or her earlier resignation, death, or removal.

Limitations of Liability and Indemnification. The DGCL authorizes corporations to limit or eliminate the personal liability of directors and certain officers to corporations and their stockholders for monetary damages for breaches of directors' or certain officers' fiduciary duties, subject to certain exceptions. Our Certificate of Incorporation includes a provision that eliminates the personal liability of our directors and officers for monetary damages to the Company or its stockholders for any breach of fiduciary duty as a director or an officer, to the fullest extent permitted by the DGCL. The effect of these provisions is to eliminate the rights of us and our stockholders, through stockholders' derivative suits on our behalf, to recover monetary damages from a director or an officer for breach of fiduciary duty as a director or an officer, including breaches resulting from grossly negligent behavior. However, exculpation does not apply to any breaches of the duty of loyalty, any acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, any authorization of dividends or stock redemptions or repurchases paid or made in violation of the DGCL, or for any transaction from which the director derived an improper personal benefit.

Our Certificate of Incorporation and our Bylaws generally provide that we must indemnify and advance expenses to our directors and officers to the fullest extent permitted by the DGCL. We believe that these indemnification and advancement provisions are useful to attract and retain qualified directors and officers.

The limitation of liability, indemnification and advancement provisions in our Certificate of Incorporation and our Bylaws may discourage stockholders from bringing a lawsuit against directors or officers for breach of their fiduciary duty. These provisions may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against officers and directors pursuant to these indemnification provisions.

We have entered into indemnification agreements with each of our directors and [executive officers]. Such agreements may require us, among other things, to advance expenses and otherwise indemnify our executive officers and directors against certain liabilities that may arise by reason of their status or service as executive officers or directors, to the fullest extent permitted by law. We intend to enter into indemnification agreements with any new directors and executive officers in the future.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Company pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

No Cumulative Voting. Under the DGCL, the right to vote cumulatively does not exist unless the certificate of incorporation specifically authorizes cumulative voting. Our Certificate of Incorporation does not authorize cumulative voting. Therefore, stockholders holding a majority in voting power of the shares of our stock entitled to vote generally in the election of directors will be able to elect all our directors.

No Written Consent of Stockholders. Our Certificate of Incorporation provides that, subject to the terms of any series of Preferred Stock that expressly permit the holders of such series to act by consent, any action required or permitted to be taken by the stockholders of the Company at any annual or special meeting of stockholders of the Company must be effected at a duly called annual or special meeting of stockholders and may not be taken or effected by a written consent of stockholders in lieu thereof.

Amendment to our Certificate of Incorporation and our Bylaws by Stockholders As required by the DGCL, any amendment of our Certificate of Incorporation must first be approved by a majority of our board of directors, and if required by law or our Certificate of Incorporation, must thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment and a majority of the outstanding shares of each class entitled to vote thereon as a class.

Our Bylaws may be amended by our board of directors, subject to any limitations set forth in our Bylaws, and may also be amended at any annual meeting or special meeting called for such purpose by the affirmative vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon, provided, however, that the affirmative vote of the holders of at least two-thirds of the outstanding shares of stock entitled to vote thereon shall be required for the stockholders to adopt, amend or repeal Article IX (Indemnification and Advancement of Expenses) or Article XI (Amendment of Bylaws) of our Bylaws or any provision inconsistent therewith..

Preferred Stock. Our Certificate of Incorporation provides for 50,000,000 authorized shares of Preferred Stock. The existence of authorized but unissued shares of Preferred Stock may enable our board of directors to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest, or otherwise. For example, if in the due exercise of its fiduciary obligations, our board of directors were to determine that a takeover proposal is not in the best interests of our stockholders, our board of directors could cause shares of Preferred Stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group. In this regard, our Certificate of Incorporation grants our board of directors broad power to establish the rights and preferences of authorized and unissued shares of Preferred Stock. The issuance of shares of Preferred Stock could decrease the amount of earnings and assets available for distribution to holders of shares of our Common Stock. The issuance may also adversely affect the rights and powers, including voting rights, of these holders and may have the effect of delaying, deterring or preventing a change in control of us.

Choice of Forum. Our Bylaws provide that unless the Company consents in writing to the selection of an alternative forum, (A)(i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, our Certificate of Incorporation or our Bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. In addition, Section 27 of the Securities Exchange Act

of 1934, as amended (the “**Exchange Act**”) creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the forum provision in our certificate of incorporation will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. These forum provisions may impose additional costs on stockholders, may limit our stockholders’ ability to bring a claim in a forum they find favorable, and the designated courts may reach different judgements or results than other courts.

Advance Notice Requirements. Our Bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 120 days nor more than 150 days prior to the first anniversary date of the annual meeting for the preceding year. Our Bylaws specify the requirements as to form and content of all stockholders’ notices. These provisions may defer, delay or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to influence or obtain control of the Company.

Anti-Takeover Effects Under Section 203 of Delaware General Corporation Law. We are subject to Section 203 of the DGCL (“**Section 203**”). In general, Section 203 prohibits a publicly held Delaware corporation from engaging in various “business combination” transactions with any interested stockholder for a period of three years following the date of the transactions in which the person became an interested stockholder, unless:

- the transaction is approved by the board of directors prior to the date the interested stockholder obtained such status;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or
- on or subsequent to such date the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

A “business combination” is defined to include mergers, asset sales, and other transactions resulting in financial benefit to a stockholder. In general, an “interested stockholder” is a person who, together with affiliates and associates, owns (or within three years, did own) 15% or more of a corporation’s voting stock. The statute could prohibit or delay mergers or other takeover or change in control attempts with respect to the Company and, accordingly, may discourage attempts to acquire us even though such a transaction may offer our stockholders the opportunity to sell their stock at a price above the prevailing market price.

Tax Benefits Preservation Provisions of our Certificate of Incorporation

As part of our Certificate of Incorporation, we have included provisions (the “**Charter Tax Benefit Provisions**”) that are intended to reduce the risk of an “ownership change” under Section 382 (“**Section 382**”) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and that our ability to use our net operating losses (“**NOLs**”) and certain other tax benefits will become substantially limited as the result of an “ownership change” within the meaning of Section 382, the Code and the Treasury regulations promulgated thereunder. Our board of directors believes that the Charter Tax Benefit Provisions are necessary and appropriate due to (1) the large number of existing NOLs that can be carried forward indefinitely, (2) the likelihood of generating additional NOLs in future periods due to the nature of our business activities, and (3) the importance of offsetting our future tax liability.

The Charter Tax Benefit Provisions generally restrict any person or entity from attempting to transfer (which includes, among other things, sales, transfers, assignments and dispositions) any of our capital stock (or options, warrants or other rights to acquire our stock, or securities convertible or exchangeable into our capital stock, with certain exceptions), to the extent that transfer would, if effected, (i) result in an individual, entity, firm, corporation, estate, trust or other person or group of persons described in the Charter Tax Benefit Provisions as a “**Person**” (other than an Exempt Person or any Initial Substantial Shareholder, each within the meaning provided in our Certificate of

Incorporation) owning 4.8% or more of our Common Stock (which the Charter Tax Benefit Provisions refer to as a “**Prohibited Ownership Percentage**”) or (ii) increase the ownership percentage of any Person that has a Prohibited Ownership Percentage, subject to certain exceptions. For this purpose, ownership generally includes constructive ownership determined under Section 382 and beneficial ownership under the Exchange Act. The Charter Tax Benefit Provisions do not restrict transfers that are sales by a Person that has a Prohibited Ownership Percentage, although they would generally restrict any transfers to the extent such transfer would cause the purported acquiror to have, or result in any Person or Public Group (within the meaning of our Certificate of Incorporation) having, a Prohibited Ownership Percentage.

Some persons who are beneficial owners (as defined under the Exchange Act) of 4.8% or more of our Common Stock are not “**4.8-percent stockholders**” (defined by reference to the definition of “5-percent shareholder” under Section 382) and hence would not affect our ownership shift for purposes of Section 382. These persons are subject to the ownership limits described above because most investors report ownership positions based on the Exchange Act definition and subjecting these investors to these ownership limits allows us to identify that investor, verify whether they are a 4.8% stockholder and make a determination as to how to proceed. We expect our board of directors to generally grant waivers, if requested, to allow purchases by persons that are subject to the ownership limits but are not treated as 4.8-percent stockholders by reference to Section 382.

The Charter Tax Benefit Provisions provide that any Transfer that violates the Charter Tax Benefit Provisions shall be null and void ab initio and shall not be effective to transfer any record, legal, beneficial or any other ownership of the number of shares which result in the violation of the Charter Tax Benefit Provisions (which are referred to as “**Excess Shares**”). The purported acquiror shall not be entitled to any rights as our stockholder with respect to the Excess Shares. Instead, the Excess Shares will be automatically transferred to an agent designated by us for the limited purpose of consummating an orderly arms-length sale of such shares. The net proceeds of the sale will be distributed to the purported transferee to the extent of the price it paid, and any additional amount will go to charity. The Charter Tax Benefit Provisions also provide us with various remedies to prevent or respond to a purported transfer which violates its provisions. In particular, the Charter Tax Benefit Provisions provide that any person who knowingly violates the Charter Tax Benefit Provisions, together with any persons in the same control group with such person, are jointly and severally liable to us for such amounts as will put us in the same financial position as we would have been if such violation had not occurred.

Waiver of the Charter Tax Benefit Provisions. Our board of directors would have the discretion to approve a transfer of stock that would otherwise violate the Charter Tax Benefit Provisions. In deciding whether to grant a waiver, our board of directors may seek the advice of counsel and tax experts with respect to the preservation of our federal and state tax attributes pursuant to Section 382. In addition, our board of directors may request relevant information from the purported acquiror in order to determine compliance with the Charter Tax Benefit Provisions or the status of our federal and state income tax benefits. In considering a waiver, we expect our board of directors to consider such factors as:

- whether the purported acquiror is or would become a “5-percent shareholder” under Section 382 of the Internal Revenue Code as a result of the proposed transfer;
- the impact of the proposed transfer on our Section 382 shift in ownership percentage;
- the then existing level of our Section 382 shift in ownership percentage;
- the timing of the expected “roll-off” of our existing ownership shift;
- the economic impact of any Section 382 limitation that might result, taking into account factors such as our market capitalization and cash position;
- the impact on possible future issuances or purchases of our Common Stock by us; and
- any changes or expected changes in applicable tax law.

If our board of directors decides to grant a waiver, it may impose conditions on the acquirer or selling party. We expect that proposed waivers could be submitted in writing to us, and we will submit the matter to our board of directors.

The Charter Tax Benefit Provisions expire upon the third anniversary of the effectiveness of our Certificate of Incorporation (if not earlier terminated pursuant to the terms of our Certificate of Incorporation).

Transfer Agent

Our transfer agent is Equiniti Trust Company, LLC.

<p>NUMBER</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p>THIS CERTIFICATE IS TRANSFERABLE IN SOUTH SAINT PAUL, MN.</p>	<div style="background-color: #003366; color: white; padding: 5px; font-weight: bold; font-size: 24px; margin-bottom: 10px;">HASI</div> <p>INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE</p>	<p>SHARES</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p>SEE REVERSE SIDE FOR IMPORTANT NOTICE ON TRANSFER RESTRICTIONS AND OTHER INFORMATION.</p>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">CUSIP</div>		
<p><i>THIS CERTIFIES THAT</i></p> <div style="background-color: #cccccc; height: 100px; width: 100%;"></div> <p><i>is the owner of</i></p> <p style="text-align: center;">FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK, \$0.01 PAR VALUE PER SHARE, OF</p> <p style="text-align: center;">HA Sustainable Infrastructure Capital, Inc.</p> <p><i>(the "Corporation") transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. This certificate and the shares represented hereby are issued and shall be held subject to all of the provisions of the Certificate of Incorporation and the Bylaws of the Corporation and any amendments thereto (copies of which are on file with the Corporation and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.</i></p> <p><i>IN WITNESS WHEREOF, the said Corporation has caused this certificate to be signed by facsimile signatures of its duly authorized officers.</i></p> <p><i>Dated:</i></p>		
<p>CHIEF EXECUTIVE OFFICER (Seal)</p>	<p>CHIEF FINANCIAL OFFICER</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);"> <small>COUNTERSIGNED AND REGISTERED American Stock Transfer & Trust Company, LLC</small> </p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);"> <small>TRANSFER AGENT AND REGISTRAR</small> </p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);"> <small>AUTHORIZED SIGNATURE</small> </p>

IMPORTANT NOTICE

The Corporation will furnish to any stockholder, on request and without charge, a summary of the powers, designations, preferences, and relative, participating, optional or other special rights of the stock of each class which the Corporation has authority to issue and the qualifications, limitations or restrictions of such preferences and rights, and the variations in rights, preferences and limitations determined for each series which are fixed by the Certificate of Incorporation of the Corporation, as may be amended from time to time (the "Charter"), and the resolutions of the Board of Directors, and the authority of the Board of Directors to set such rights and preferences of subsequent series. The foregoing summary does not purport to be complete and is subject to and qualified in its entirety by reference to the Charter, a copy of which will be sent without charge to each stockholder who so requests. Such request must be made to the Secretary of the Corporation at its principal office or to the Transfer Agent.

The Board of Directors may require the owner of a lost or destroyed certificate, or his or her legal representatives, to give the Corporation a bond to indemnify it and its Transfer Agents and Registrars against any claim that may be made against them on account of the alleged loss or destruction of any such certificate.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM – as tenants in common
TEN ENT – as tenants by entireties
JT TEN – as joint tenants with right of survivorship and not as tenants in common

UTMA – _____ Custodian _____
(Cust) (Minor)
under Uniform Transfers to Minors Act _____
(State)

Additional abbreviations may also be used though not in above list.

For value received hereby sell, assign, and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING ZIP CODE OF ASSIGNEE)

_____ *Shares*
of stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ *Attorney*

to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated _____ X
X

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE GUARANTEED

ALL GUARANTEES MUST BE MADE BY A FINANCIAL INSTITUTION (SUCH AS A BANK OR BROKER) WHICH IS A PARTICIPANT IN THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM ("STAMP"), THE NEW YORK STOCK EXCHANGE, INC. MEDALLION SIGNATURE PROGRAM ("MSP"), OR THE STOCK EXCHANGES MEDALLION PROGRAM ("SEMP") AND MUST NOT BE DATED, GUARANTEES BY A NOTARY PUBLIC ARE NOT ACCEPTABLE.