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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): May 4, 2026**

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**Asbury Automotive Group, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or other jurisdiction of incorporation)

**001-31262**

(Commission File Number)

**6655 Peachtree Dunwoody Road**

**Atlanta, GA**

(Address of principal executive offices)

**01-0609375**

(IRS Employer Identification No.)

**30328**

(Zip Code)

**(770) 418-8200**

(Registrant's telephone number, including area code)

**None**

(Former name or former address, if changed since last report)

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

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

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, \$0.01 par value per share	ABG	New York Stock Exchange

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

Emerging growth company

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

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

As described in Item 5.07 below, on May 4, 2026 at the 2026 Annual Meeting of the Stockholders of Asbury Automotive Group, Inc. (the "Company"), the Company's stockholders approved an amendment to the Company's Amended and Restated Certificate of Incorporation (the "Charter") to remove all supermajority voting requirements. Contingent upon stockholder approval of this proposal, the Company's Board of Directors had previously adopted a resolution to remove the supermajority voting requirements within the Company's By-Laws. Specifically, (i) Section 6.04 of Article VI, Section 8.01 of Article VIII, and Section 9.01 of Article IX of the Company's Charter, and (ii) Section 8.01 of Article VIII of the Company's By-Laws were amended by replacing the 80% supermajority vote requirement with a majority vote requirement. The foregoing description of the Charter and By-Laws amendments are qualified in its entirety by reference to the full text of the Charter and By-Laws, copies of which are attached hereto as Exhibit 3.1 and 3.2, respectively, and incorporated herein by reference.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

On May 4, 2026, the Company held its 2026 Annual Meeting of the Stockholders. The Company's stockholders voted on the following five proposals as set forth below.

**Proposal 1**

The eleven director nominees named in the Company's proxy statement were elected, each to hold office until the 2026 annual meeting of stockholders and until their successors are duly elected and qualified, based upon the following votes:

<b><u>NOMINEE</u></b>	<b><u>FOR</u></b>	<b><u>WITHHELD</u></b>	<b><u>BROKER NON-VOTES</u></b>
Joel Alsfine	16,475,513	157,433	1,171,193
Daniel E. Clara	16,536,203	96,743	1,171,193
B. Christopher DiSantis	16,609,028	23,918	1,171,193
William D. Fay	16,485,908	147,038	1,171,193
David W. Hult	16,416,679	216,267	1,171,193
Juanita T. James	16,337,251	295,695	1,171,193
Maureen F. Morrison	16,204,750	428,196	1,171,193
Shamla Naidoo	16,578,706	54,240	1,171,193
Thomas J. Reddin	16,432,423	200,523	1,171,193
Bridget Ryan-Berman	16,577,675	55,271	1,171,193
Hilliard C. Terry, III	16,520,704	112,242	1,171,193

**Proposal 2**

The proposal to approve an advisory resolution on the compensation of the Company's named executive officers was approved based on the following votes:

<b><u>FOR</u></b>	<b><u>AGAINST</u></b>	<b><u>ABSTAIN</u></b>	<b><u>BROKER NON-VOTES</u></b>
16,161,591	467,488	3,867	1,171,193

**Proposal 3**

The proposal to ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the year ending December 31, 2026 was approved based on the following votes:

<b><u>FOR</u></b>	<b><u>AGAINST</u></b>	<b><u>ABSTAIN</u></b>
17,705,139	95,308	3,692

**Proposal 4**

The proposal to amend the Company's Amended and Restated Certificate of Incorporation to eliminate the supermajority voting requirements was approved based on the following votes:

<b><u>FOR</u></b>	<b><u>AGAINST</u></b>	<b><u>ABSTAIN</u></b>	<b><u>BROKER NON-VOTES</u></b>
16,612,986	18,028	1,932	1,171,193

**Proposal 5**

The stockholder proposal regarding special stockholder meetings was not approved based on the following votes:

<b><u>FOR</u></b>	<b><u>AGAINST</u></b>	<b><u>ABSTAIN</u></b>	<b><u>BROKER NON-VOTES</u></b>
3,957,359	12,668,959	6,628	1,171,193

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibits are furnished as part of this report.

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
<a href="#">3.1</a>	Amended and Restated Certificate of Incorporation of Asbury Automotive Group, Inc.
<a href="#">3.2</a>	By-Laws of Asbury Automotive Group, Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURE**

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

**ASBURY AUTOMOTIVE GROUP, INC.**

Date: May 6, 2026

By: /s/ Dean A. Calloway  
Name: Dean A. Calloway  
Title: Senior Vice President, General Counsel & Secretary

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ASBURY AUTOMOTIVE GROUP, INC.**

**ARTICLE I  
NAME**

SECTION 1.01. The name of the corporation is Asbury Automotive Group, Inc. (the "CORPORATION").

**ARTICLE II  
REGISTERED AGENT**

SECTION 2.01. The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

**ARTICLE III  
PURPOSE**

SECTION 3.01. 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").

**ARTICLE IV  
CAPITAL STOCK**

SECTION 4.01. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 100 million, of which 10 million shares shall be Preferred Stock, par value \$.01 per share (the "PREFERRED STOCK"), and 90 million shares shall be Common Stock, par value \$.01 per share (the "COMMON STOCK").

SECTION 4.02. **PREFERRED STOCK.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "BOARD OF DIRECTORS," each member thereof, a "DIRECTOR" and the total number of Directors which the Corporation would have if there were no vacancies or unfilled newly-created directorships, the "WHOLE BOARD") is hereby authorized to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate pursuant to the DGCL (a "PREFERRED STOCK DESIGNATION"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the

Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (a) the designation of the series, which may be by distinguishing number, letter or title;
- (b) the number of shares of the series, which number the Board of Directors may thereafter, except where otherwise provided in the applicable Preferred Stock Designation, increase or decrease, but not below the number of shares thereof then outstanding;
- (c) whether dividends, if any, shall be cumulative or noncumulative, and, in the case of shares of any series having cumulative dividend rights, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;
- (d) the rate of any dividends, or method of determining such dividends, payable to the holders of the shares of such series, any conditions upon which such dividends shall be paid and the date or dates or the method for determining the date or dates upon which such dividends shall be payable;
- (e) the price or prices, or method of determining such price or prices, at which, the form of payment of such price or prices (which may be cash, property or rights, including securities of the same or another corporation or other entity) for which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events, if any;
- (f) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the form of payment of such price or prices (which may be cash, property or rights, including securities of the same or another corporation or other entity) for which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (g) the amounts payable out of the assets of the Corporation on and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (h) provisions, if any, for the conversion or exchange of the shares of such series, at any time or times at the option of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or events, into shares of any other class or classes or any other series of the same or any other class or classes of stock, or any other security, of the Corporation, or any other corporation or other entity, and the price or prices or rate or rates of conversion or exchange and any adjustments applicable thereto, the date or dates as of when such shares will be converted or exchanged and all other terms and conditions upon which such conversion or exchange may be made;

- (i) restrictions on the issuance of shares of the same series or of any other class or series, if any; and
- (j) the voting rights, if any, of the holders of shares of the series.

SECTION 4.03. COMMON STOCK.

(a) The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. Each share of Common Stock shall be equal to every other share of Common Stock, except as otherwise provided herein or required by law.

(b) Shares of Common Stock authorized hereby shall not be subject to preemptive rights. The holders of shares of Common Stock now or hereafter outstanding shall have no preemptive right to purchase or have offered to them for purchase any of such authorized but unissued shares, or any shares of Preferred Stock, Common Stock or other equity securities issued or to be issued by the Corporation.

(c) The holders of shares of Common Stock shall be entitled to one vote for each such share upon all proposals presented to the stockholders on which the holders of Common Stock are entitled to vote. Except as otherwise provided by law or by the resolution or resolutions adopted by the Board of Directors designating the rights, powers and preferences of any series of Preferred Stock, the Common Stock shall have the exclusive right to vote for the election of Directors and for all other purposes, and holders of Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

(d) Subject to the rights of any class or series of stock having a preference over the Common Stock as to dividends, the holders of the shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Corporation as may be declared on the Common Stock by the Board of Directors at any time or from time to time out of any funds legally available therefor.

(e) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, subject to the rights of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, dissolution or winding up, the holders of shares of Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

(f) The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

**ARTICLE V**  
**ELECTION OF DIRECTORS**

SECTION 5.01. Unless and except to the extent that the By-laws of the Corporation (the “BY-LAWS”) shall so require, the election of Directors of the Corporation need not be by written ballot.

**ARTICLE VI**  
**BOARD OF DIRECTORS**

SECTION 6.01. NUMBER, ELECTION AND TERMS. Except as otherwise fixed by or pursuant to the provisions of Article IV hereof relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, dissolution or winding up to elect additional Directors under specified circumstances, the number of the Directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board (but shall not be less than three). Other than those Directors who may be elected by the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, dissolution or winding up, beginning at the 2017 annual meeting of stockholders, the Directors elected to succeed those Directors whose terms expire at that meeting and upon the due election and qualification of such person’s successor shall be elected to a term of office to expire at the 2019 annual meeting of stockholders (with each remaining Director whose term does not expire at such meeting being referred to for the remainder of such term as a “CONTINUING CLASSIFIED DIRECTOR”); at the 2018 annual meeting of stockholders, the Directors elected to succeed those Directors whose terms expire at that meeting and upon the due election and qualification of such person’s successor shall be elected to a term of office to expire at the 2019 annual meeting of stockholders; and at the 2019 annual meeting of stockholders, and each annual meeting of stockholders thereafter, all Directors shall be elected to a term of office to expire at the next annual meeting of stockholders and until such person’s successor shall have been duly elected and qualified.

SECTION 6.02. STOCKHOLDER NOMINATION OF DIRECTOR CANDIDATES; STOCKHOLDER PROPOSAL OF BUSINESS. Advance notice of stockholder nominations for the election of Directors and of the proposal of business by stockholders shall be given in the manner provided in the By-laws, as amended and in effect from time to time.

SECTION 6.03. NEWLY CREATED DIRECTORSHIPS AND VACANCIES. Except as otherwise provided for or fixed by or pursuant to the provisions of Article IV hereof relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, dissolution or winding up to elect Directors under

specified circumstances, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall only be filled by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any Director elected in accordance with the preceding sentence shall serve until the next annual meeting of stockholders or the next election of the class for which such Director has been appointed if such Director has been appointed to serve in one of the remaining classes of Directors and, in either case, until such Director's successor shall have been duly elected and qualified.

SECTION 6.04. REMOVAL. Subject to the rights of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, dissolution or winding up to elect Directors under specified circumstances, any Director may be removed from office, with or without cause (except that Continuing Classified Directors may be removed only for cause). Continuing Classified Directors may be removed from office only by the affirmative vote of the holders of a majority of the voting power of all Voting Stock then outstanding, voting together as a single class and other Directors may be removed from office by the affirmative vote of the holders of a majority of the voting power of all Voting Stock then outstanding, voting together as a single class.

SECTION 6.05. OTHER PROVISIONS. Notwithstanding any other provision of this Article VI, and except as otherwise required by law, whenever the holders of one or more series of Preferred Stock shall have the right, voting separately as a class, to elect one or more Directors of the Corporation, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any Preferred Stock Designation). During any period when the holders of any series of Preferred Stock have the right to elect additional Directors as provided for or fixed pursuant to the provisions of Article IV hereof, then 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 specified number of Directors, 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 such additional Director shall serve until such 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 earlier death, disqualification, resignation or removal. Except as otherwise provided by the Whole Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional Directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional Directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional Directors, shall forthwith terminate and the total authorized number of Directors of the Corporation shall be reduced accordingly.

**ARTICLE VII**  
**STOCKHOLDERS**

SECTION 7.01. MEETINGS. Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to provisions contained in the statutes of Delaware) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

SECTION 7.02. ACTION. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

**ARTICLE VIII**  
**BY-LAWS**

SECTION 8.01. The By-laws may be altered or repealed and new By-laws may be adopted (a) at any annual or special meeting of stockholders, by the affirmative vote of the holders of a majority of the voting power of the Voting Stock then outstanding, voting together as a single class; PROVIDED, HOWEVER, that any proposed alteration or repeal of, or the adoption of any By-law inconsistent with, Section 2.02, 2.07 or 8.01 of the By-laws, by the stockholders shall require the affirmative vote of the holders of a majority of the voting power of all Voting Stock then outstanding, voting together as a single class; PROVIDED, FURTHER, HOWEVER, that in the case of any such stockholder action at a special meeting of stockholders, notice of the proposed alteration, repeal or adoption of the new By-law or By-laws must be contained in the notice of such special meeting, or (b) by the affirmative vote of a majority of the Whole Board.

**ARTICLE IX**  
**AMENDMENT OF CERTIFICATE OF INCORPORATION**

SECTION 9.01. The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and, except as set forth in Article X, all rights, preferences and privileges of whatsoever nature conferred upon stockholders, Directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of a majority of the Voting Stock then outstanding, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal Article VI, VII, VIII or this Article IX. For purposes of this Certificate of Incorporation, "VOTING STOCK" shall mean the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of Directors.

**ARTICLE X**  
**LIMITED LIABILITY; INDEMNIFICATION**

SECTION 10.01. LIMITED LIABILITY OF DIRECTORS. A Director shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except, if required by the DGCL, as amended from time to time, for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the Director derived an improper personal benefit.

Neither the amendment nor repeal of this Section 10.01 shall eliminate or reduce the effect of this Section 10.01 in respect of any matter occurring, or any cause of action, suit or claim that, but for this Section 10.01 would accrue or arise, prior to such amendment or repeal.

SECTION 10.02. INDEMNIFICATION AND INSURANCE.

(a) RIGHT TO INDEMNIFICATION. Each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "PROCEEDING"), by reason of the fact that such person, or a person of whom such person 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 or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a Director, officer, employee or agent or in any other capacity while serving as a Director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974, as in effect from time to time) reasonably incurred or suffered by such person in connection therewith if such person acted in good faith and in a manner such person reasonably believed to be in compliance with the standard of conduct set forth in Section 145 (or any successor provision) of the DGCL and such indemnification shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of such person's heirs, executors and administrators; PROVIDED, HOWEVER, that, except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors. The Corporation shall pay the expenses incurred in defending any such proceeding in advance of its final disposition with any advance payments to be paid by the Corporation within 20 calendar days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time; PROVIDED, HOWEVER, that, if and to the extent the DGCL requires, the payment of such expenses incurred by a Director or officer in such person's capacity as a Director or officer

(and not in any other capacity in which service was or is rendered by such person while a Director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Director or officer, to repay all amounts so advanced if it shall ultimately be determined that such Director or officer is not entitled to be indemnified under this Section 10.02 or otherwise. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to have the Corporation pay the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of Directors and officers of the Corporation.

(b) **RIGHT OF CLAIMANT TO BRING SUIT.** If a claim under paragraph (a) of this Section 10.02 is not paid in full by the Corporation within 30 calendar days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the claimant has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) **NON-EXCLUSIVITY OF RIGHTS.** The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section 10.02 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, By-law, agreement, vote of stockholders or disinterested Directors or otherwise. No repeal or modification of this Article X shall in any way diminish or adversely affect the rights of any Director, officer, employee or agent of the Corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

(d) **INSURANCE.** The Corporation may maintain insurance, at its expense, to protect itself and any person who is or was a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any

such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

(e) SEVERABILITY. If any provision or provisions of this Article X shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article X (including, without limitation, each portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article X (including, without limitation, each such portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

**BY-LAWS  
OF  
ASBURY AUTOMOTIVE GROUP, INC.**

**ARTICLE I  
OFFICES**

SECTION 1.01. DELAWARE OFFICE. The principal office of Asbury Automotive Group, Inc. (the “CORPORATION”) in the State of Delaware shall be in the City of Wilmington, County of New Castle, and the resident agent in charge thereof shall be The Corporation Trust Company.

SECTION 1.02. OTHER OFFICES. The Corporation may have offices at such other place or places as from time to time the board of directors of the Corporation (the “BOARD OF DIRECTORS,” and each member thereof, a “DIRECTOR”) may determine or the business of the Corporation may require.

SECTION 1.03. BOOKS AND RECORDS. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

**ARTICLE II  
MEETING OF STOCKHOLDERS**

SECTION 2.01. ANNUAL MEETING. The annual meeting of the stockholders of the Corporation shall be held on such date and at such time as may be fixed by resolution of the Board of Directors.

SECTION 2.02. SPECIAL MEETING. Except as otherwise required by law and subject to the rights of the holders of any class or series of stock having a preference over the common stock, par value \$0.01 per share, of the Corporation (the “COMMON STOCK”) as to dividends or upon liquidation, dissolution or winding up, special meetings of stockholders of the Corporation for any purpose or purposes may be called only by (a) the Board of Directors pursuant to a resolution stating the purpose or purposes thereof approved by a majority of the total number of Directors which the Corporation would have if there were no vacancies or unfilled newly-created directorships (the “WHOLE BOARD”), or (b) by the Chairman of the Board of Directors (the “CHAIRMAN OF THE BOARD”), either upon his own initiative or the written request of the holders of at least 25% of the voting power of all Voting Stock then outstanding. No business other than that stated in the notice shall be transacted at any special meeting.

For a stockholder or stockholders to properly request a call of a special meeting of stockholders, the requesting stockholder(s) must (i) make the request in proper written form

delivered either in person or by registered mail to the Chairman of the Board or the Secretary of the Corporation, (ii) be a stockholder or stockholders at the time of giving the notice for the special meeting, (iii) remain a stockholder or stockholders on the record date for the determination of stockholders entitled to notice of and to vote at the special meeting and at the time of the special meeting, and (iv) be entitled to vote at such special meeting. To be in proper written form, the request by the requesting stockholder(s) must include the information set forth in Section 2.07(a)(ii) of this Article II and must meet the requirements set forth in Section 2(a)(ii)(A-C) of this Article II (except that for purposes of this section, any reference in Section 2.07(a)(ii) of this Article II to “annual meeting” will be deemed to be a reference to the “special meeting” contemplated by this section). Such provided information must be updated and supplemented in accordance with Section 2.07(a)(ii) of this Article II. For proposals of business to be properly requested by a stockholder or stockholders to be brought before a special meeting, such proposals of business must relate to an item of business that (i) is a proper subject for stockholder action under the Certificate of Incorporation (as defined below), these By-Laws, and applicable law, and (ii) is not expressly reserved for action by the Board of Directors under the Certificate of Incorporation, these By-Laws, or applicable law.

A request for a special meeting shall be invalid if: (i) it is not made in compliance with this Section 2.02 of this Article II; (ii) it includes the same or a substantially similar item that was presented at any stockholder meeting held within the twelve months preceding the request receipt date; (iii) a substantially similar item is included in the Corporation’s notice for a meeting called to occur within ninety calendar days of the request receipt date; or (iv) the request is received during the period commencing ninety calendar days prior to the anniversary of the most recent annual meeting and ending on the date of the next annual meeting.

**SECTION 2.03. PLACE OF MEETING.** The Board of Directors or the Chairman of the Board, as the case may be, may designate the place, if any, of meeting for any annual meeting or for any special meeting of the stockholders. If no designation is so made, the place of meeting shall be the principal office of the Corporation.

**SECTION 2.04. NOTICE OF MEETING.** Notice, stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered by the Corporation not less than 10 calendar days nor more than 60 calendar days before the date of the meeting, either personally, by mail or by other lawful means, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at such person’s address as it appears on the stock transfer books of the Corporation. Such further notice shall be given as may be required by law. 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. Meetings may be held without notice if all stockholders entitled to notice are present (except when stockholders entitled to notice attend the meeting for the express purpose of objecting, at the beginning of the meeting, because the meeting is not lawfully called or convened), or if notice is waived by those not present in accordance with Section 6.04. Any previously scheduled meeting of the stockholders may be postponed, and any

special meeting of the stockholders may be canceled, by resolution of the Board of Directors, upon public notice given prior to the date previously scheduled for such meeting of stockholders.

SECTION 2.05. QUORUM AND ADJOURNMENT; VOTING. Except as otherwise provided by law or by the Certificate of Incorporation of the Corporation (the “CERTIFICATE OF INCORPORATION”), the holders of a majority of the voting power of all outstanding shares of the Corporation entitled to vote generally in the election of Directors (the “VOTING STOCK”), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The chairman of the meeting may adjourn the meeting from time to time, whether or not there is such a quorum. No notice of the time and place of adjourned meetings need be given except as required by law. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 2.06. PROXIES. At all meetings of stockholders, a stockholder may vote by proxy in accordance with the General Corporation Law of the State of Delaware (the “DGCL”) or by such person’s duly authorized attorney in fact.

SECTION 2.07. NOTICE OF STOCKHOLDER BUSINESS AND NOMINATIONS.

(a) ANNUAL MEETINGS OF STOCKHOLDERS.

(i) Proposals of business to be considered by the stockholders at an annual meeting of stockholders (other than the nomination of a person for election to the Board of Directors) may be made (A) pursuant to the Corporation’s notice of meeting pursuant to Section 2.04, (B) by or at the direction of the Chairman of the Board or (C) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 2.07, who is a stockholder of record at the time of the annual meeting, who is entitled to vote at the annual meeting and who complies with all applicable requirements set forth in this Section 2.07.

Subject to the rights, if any, of the holders of any series of preferred stock of the Corporation (“PREFERRED STOCK”) to elect additional directors as may be provided in an applicable Preferred Stock Designation (as defined in the Certificate of Incorporation), nominations of persons for election to the Board of Directors at an annual meeting of stockholders may be made only (A) by or at the direction of the Board of Directors or (B) by a stockholder who (x) has complied with all applicable requirements of this Section 2.07 in relation to such nomination, (y) was a stockholder of record of the Corporation at the time of giving the notice required by this Section 2.07 and is a stockholder of record of the Corporation at the time of the annual meeting, and (z) is entitled to vote at the annual meeting.

For the avoidance of doubt, the foregoing will be the exclusive means for a stockholder to submit business before an annual meeting of stockholders (other than proposals properly made in accordance with Rule 14a-8 under the Exchange Act and included in the notice of meeting given by or at the direction of the Board of Directors).

(ii) For the nomination of a person for election to the Board of Directors, or for other business to be properly brought before an annual meeting by a stockholder pursuant to subsection (a)(i) of this Section 2.07, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the ninetieth calendar day nor earlier than the close of business on the one hundred twentieth calendar day prior to the first anniversary of the preceding year's annual meeting; PROVIDED, HOWEVER, that in the event that the date of the annual meeting is more than thirty calendar days before or more than sixty calendar days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth calendar day prior to such annual meeting and not later than the close of business on the later of the ninetieth calendar day prior to such annual meeting or the tenth calendar day following the calendar day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a Director:

(1) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 2.07 if such proposed nominee were a Proposing Person (as defined below);

(2) all information that would be required to be disclosed pursuant to Items 403 and 404 under Regulation S-K if the stockholder giving the notice or any other Proposing Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant;

(3) a written questionnaire with respect to the identity, background and qualification of the proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire will be provided by the Secretary upon written request);

(4) a written representation and agreement (in the form provided by the Secretary upon written request) that the proposed nominee (i) is not and will not become a party to (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a “VOTING COMMITMENT”) that has not been disclosed to the Corporation or (y) any Voting Commitment that could limit or interfere with the proposed nominee’s ability to comply, if elected as a director of the Corporation, with the 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 that has not been disclosed therein, and (iii) if elected as a director of the Corporation, the proposed nominee would be in compliance, and will comply, with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation; and

(5) all other information relating to such person that is required to be disclosed in solicitations of proxies for the election of Directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person’s written consent to being named in the proxy statement as a nominee and to serving as a Director if elected);

(B) as to any business other than the nomination of a person for election to the Board of Directors, that a stockholder proposes to bring before the meeting, a description in reasonable detail of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend either the Certificate of Incorporation or these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of any Proposing Person on whose behalf the proposal is made and a description in reasonable detail of all agreements, arrangements and understandings among the Proposing Persons or between any Proposing Person and any other person or entity in connection with the proposal; and

(C) as to the stockholder giving the notice, the beneficial owner or owners, if different, on whose behalf the nomination or proposal, as the case may be, is made and any “affiliate” or “associate” (each within the meaning of Rule 12b-2 under the Exchange Act) of any of the foregoing (each, a “PROPOSING PERSON”), (i) the name and address of such Proposing Person, as they appear on

the Corporation's books, (ii) the class and number of shares of stock of the Corporation which are owned beneficially and of record by each such Proposing Person (including any shares of any class of stock of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership, whether such right is exercisable immediately or after the passage of time), (iii) a representation that the stockholder giving the notice 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, (iv) a representation whether any Proposing Person intends or is part of a group which intends (x) 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, as the case may be and/or (y) otherwise to solicit proxies from stockholders in support of such proposal or nomination, (v) a description of (x) any option, warrant, convertible security, stock appreciation right or similar right (including any derivative securities, as defined under Rule 16a-1 under the Exchange Act), whether or not presently exercisable, with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class of securities of the Corporation or with a value derived in whole or in part from the value of any class of securities of the Corporation, whether or not such instrument or right is subject to settlement in whole or in part in the underlying class of securities of the Corporation or otherwise, directly or indirectly held of record or owned beneficially by such Proposing Person and (y) each other direct or indirect opportunity of such Proposing Person to profit or share in any profit derived from, or to manage the risk or benefit from, any increase or decrease in the value of the Corporation's securities, in each case regardless of whether (A) such interest conveys any voting rights in such security to such Proposing Person, (B) such interest is required to be, or is capable of being, settled through delivery of such security, or (C) such Proposing Person may have entered into other transactions that hedge the economic effect of any such interest (any such interest referred to in this clause (v), being a "DERIVATIVE INTEREST"); (vi) any proxy, contract, arrangement, understanding or relationship pursuant to which the Proposing Person has a right to vote any shares of the Corporation or which has the effect of increasing or decreasing the voting power of such Proposing Person; (vii) any rights directly or indirectly held of record or beneficially by the Proposing Person to dividends on the shares of the Corporation that are separated or separable from the underlying shares of the Corporation; (viii) any performance-related fees (other than an asset-based fee) to which the Proposing Person may be entitled as a result of any increase or decrease in the value of shares of the Corporation or Derivative Interests; and (ix) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required pursuant to Section 14(a) of the Exchange Act to be made in connection with a general solicitation of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting.

(iii) Notwithstanding anything in the second sentence of paragraph (a)(ii) of this Section 2.07 to the contrary, in the event that the number of Directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for Director or specifying the size of the increased Board of Directors at least one hundred calendar days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this By-Law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth calendar day following the day on which such public announcement is first made by the Corporation.

(iv) A stockholder nominating a person for election to the Board of Directors providing notice of other business proposed to be brought before an annual meeting must further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice, is true and correct at all times up to and including the date of such meeting and any adjournment or postponement thereof. Such update and supplement shall be delivered or mailed to the Secretary at the principal executive offices of the Corporation, (A) in the case of the update and supplement required to be made as of the record date, not later than the later of five business days after the record date for the meeting and five business days after the first public disclosure of the record date for the meeting, and (B) in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof, not later than eight business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to any adjournment or postponement thereof).

(b) SPECIAL MEETINGS OF STOCKHOLDERS. Only such business shall be conducted at a special meeting of stockholders as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting under Section 2.04. Nominations of persons for election to the Board of Directors at a special meeting of stockholders at which Directors are to be elected may only be made (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Chairman of the Board or (iii) provided that the Board of Directors has determined that Directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this By-Law, who shall be entitled to vote at the meeting and who otherwise complies with all applicable procedures and obligations set forth in this By-Law for the nomination of a person for election to the Board of Directors (notwithstanding the fact that a nomination pursuant to this subsection is not in connection with an annual meeting). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more Directors to the Board of Directors, any stockholder entitled to vote in such election of Directors may nominate pursuant to clause (iii) of the immediately preceding sentence of this Section 2.07(b) a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(ii) of this Section 2.07 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the

close of business on the one hundred twentieth calendar day prior to such special meeting and not later than the close of business on the later of the ninetieth calendar day prior to such special meeting or the tenth calendar day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) GENERAL.

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 2.07 shall be eligible to serve 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 the procedures set forth in this By-Law. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.07 (including whether any Proposing Person on whose behalf a nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by this Section 2.07) and, if any proposed nomination or business is not in compliance with this By-Law, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 2.07, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(ii) For purposes of this By-Law, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(iii) Notwithstanding the foregoing provisions of this Section 2.07, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.07. Nothing in this Section 2.07 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect Directors under an applicable Preferred Stock Designation.

SECTION 2.08. PROCEDURE FOR ELECTION OF DIRECTORS; REQUIRED VOTE. Election of Directors at all meetings of the stockholders at which Directors are to be elected shall be by ballot, and, subject to the rights of the holders of any series of Preferred Stock to elect Directors under an applicable Preferred Stock Designation, a plurality of the votes cast thereat shall elect Directors. Except as otherwise provided by law, the Certificate of Incorporation, a Preferred Stock Designation, applicable stock exchange rules or other rules and regulations applicable to the Corporation or these By-Laws, in all matters other than the election of Directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders.

(a) The Board of Directors by resolution shall appoint, or shall authorize an officer of the Corporation to appoint, one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspector(s) to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging such person's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such person's ability. The inspectors shall have the duties prescribed by law.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding officer at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding officer should so determine, such person shall so declare to the meeting that any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or

the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

### **ARTICLE III** **BOARD OF DIRECTORS**

SECTION 3.01. GENERAL POWERS. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities by these By-Laws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

SECTION 3.02. REGULAR MEETINGS. A regular meeting of the Board of Directors shall be held without other notice than this By-Law in conjunction with the annual meeting of stockholders. The Board of Directors may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution.

SECTION 3.03. SPECIAL MEETINGS. Special meetings of the Board of Directors shall be called at the request of the Chairman of the Board, the President and Chief Executive Officer or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of the meetings.

SECTION 3.04. NOTICE. Notice of any special meeting of Directors shall be given to each Director at such person's business or residence in writing by hand delivery, first-class or overnight mail or courier service, telegram or facsimile transmission, orally by telephone or any other lawful means. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mail so addressed, with postage thereon prepaid, at least 5 calendar days before such meeting. If by telegram, overnight mail or courier service, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company or the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 12 hours before such meeting. If by telephone, by hand delivery or by other lawful means, the notice shall be given at least 12 hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these By-Laws, as provided under Section 8.01. A meeting may be held at any time without notice if all the Directors are present (except when Directors attend for the express purpose of objecting, at the beginning of the meeting, because it is not lawfully called or conveyed) or if those not present waive notice of the meeting either before or after such meeting.

SECTION 3.05. ACTION BY CONSENT OF BOARD OF DIRECTORS. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in accordance with applicable law.

SECTION 3.06. CONFERENCE TELEPHONE MEETINGS. Members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 3.07. QUORUM. Subject to Article VI of the Certificate of Incorporation, a whole number of Directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of the Directors present may adjourn the meeting from time to time without further notice. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 3.08. COMMITTEES OF THE BOARD OF DIRECTORS.

(a) The Board of Directors may from time to time designate committees, which shall consist of one or more Directors. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee may, to the extent permitted by law, exercise such powers and shall have such responsibilities as shall be specified in the designating resolution. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(b) A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. Notice of such meetings shall be given to each member of the committee in the manner provided for in Section 3.04. The Board of Directors shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee. Nothing herein shall be deemed to prevent the Board of Directors from appointing one or more committees consisting in whole or in part of persons who are not Directors; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

SECTION 3.09. RECORDS. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board of Directors and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

SECTION 3.10. CHAIRMAN OF THE BOARD. A Chairman of the Board shall be chosen from among the Directors. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board shall have such other powers and duties as may from time to time be conferred by the Board of Directors. The Board of Directors also may elect a Vice-Chairman to act in the place of the Chairman of the Board upon his or her absence or inability to act.

## **ARTICLE IV**

### **OFFICERS**

SECTION 4.01. ELECTED OFFICERS. The elected officers of the Corporation shall be a President and Chief Executive Officer, a Secretary, a Treasurer, and such other officers (including, without limitation, Senior Vice Presidents and Executive Vice Presidents and Vice Presidents) as the Board of Directors from time to time may deem proper. All officers elected by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof. The Board of Directors or any committee thereof may from time to time elect, or the Chairman of the Board or President and Chief Executive Officer may appoint, such other officers (including one or more Vice Presidents, Controllers, Assistant Secretaries and Assistant Treasurers), as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these By-Laws or as may be prescribed by the Board of Directors or such committee or by the Chairman of the Board or President and Chief Executive Officer, as the case may be.

SECTION 4.02. ELECTION AND TERM OF OFFICE. The elected officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held in conjunction with the annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Each officer shall hold office until such person's successor shall have been duly elected and shall have qualified or until such person's death or until he shall resign or be removed pursuant to Section 4.08.

SECTION 4.03. PRESIDENT; CHIEF EXECUTIVE OFFICER. The President shall be the Chief Executive Officer of the Corporation, shall act in a general executive capacity and shall be responsible for the administration and operation of the Corporation's business and general supervision of its policies and affairs. The President and Chief Executive Officer, if he or she is also a Director, shall, in the absence of or because of the inability to act of the Chairman or Vice Chairman of the Board, perform all duties of the Chairman of the Board and preside at all meetings of stockholders and of the Board of Directors.

SECTION 4.04. VICE PRESIDENTS. Each Senior Vice President and Executive Vice President and any Vice President shall have such powers and shall perform such duties as shall be assigned to such person by the Board of Directors or by the President and Chief Executive Officer.

SECTION 4.05. TREASURER.

(a) The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall cause the funds of the Corporation to be deposited in such banks as may be authorized by the Board of Directors, or in such banks as may be designated as depositories in the manner provided by resolution of the Board of Directors

The Treasurer shall have such further powers and duties and shall be subject to such directions as may be granted or imposed from time to time by the Board of Directors, the Chairman of the Board or the President and Chief Executive Officer.

(b) The Board of Directors, the Chairman of the Board or the President and Chief Executive Officer may designate one or more Assistant Treasurers who shall have such of the authority and perform such of the duties of the Treasurer as may be assigned to them by the Board of Directors, the Chairman of the Board or the President and Chief Executive Officer. During the Treasurer's absence or inability, the Treasurer's authority and duties shall be possessed by such Assistant Treasurer's as the Board of Directors, the Chairman of the Board or the President and Chief Executive Officer may designate.

#### SECTION 4.06. SECRETARY.

(a) The Secretary shall keep or cause to be kept in one or more books provided for that purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders; shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law; shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal and shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board of Directors, the Chairman of the Board or the President and Chief Executive Officer.

(b) The Board of Directors, the Chairman of the Board or the President and Chief Executive Officer may designate one or more Assistant Secretaries who shall have such of the authority and perform such of the duties of the Secretary as may be provided in these By-Laws or assigned to them by the Board of Directors, the Chairman of the Board or the President and Chief Executive Officer. During the Secretary's absence or inability, the Secretary's authority and duties shall be possessed by such Assistant Secretary or Assistant Secretaries as the Board of Directors, the Chairman of the Board or the President and Chief Executive Officer may designate.

SECTION 4.07. REMOVAL. Any officer or agent of the Corporation may be removed by the affirmative vote of a majority of the Board of Directors whenever, in their judgment, the best interests of the Corporation would be served thereby. Any officer or agent appointed by the Chairman of the Board or the President and Chief Executive Officer may be removed by him or her whenever, in such person's judgment, the best interests of the Corporation would be served thereby. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of such person's successor, such person's death, such person's resignation or such person's removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee benefit plan.

SECTION 4.08. VACANCIES. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors. Any vacancy in an office appointed by the Chairman of the Board or the President and Chief Executive Officer because of death, resignation, or removal may be filled by the Chairman of the Board or the President and Chief Executive Officer.

## **ARTICLE V**

### **STOCK CERTIFICATES AND TRANSFERS**

SECTION 5.01. STOCK CERTIFICATES AND TRANSFERS. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the Corporation may from time to time prescribe. The shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by such person's attorney, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require. The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe or as may otherwise be permitted by applicable law, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has 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 he were such officer, transfer agent or registrar at the date of issue. Notwithstanding the foregoing provisions regarding share certificates, the Corporation may provide that, subject to the rights of stockholders under applicable law, some or all of any or all classes or series of the Corporation's common or any preferred shares may be uncertificated shares.

SECTION 5.02. LOST, STOLEN OR DESTROYED CERTIFICATES. No certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond or indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors or any financial officer may in its or such person's discretion require.

## **ARTICLE VI**

### **MISCELLANEOUS PROVISIONS**

SECTION 6.01. FISCAL YEAR. The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December of each year.

SECTION 6.02. DIVIDENDS. The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and the Certificate of Incorporation.

SECTION 6.03. SEAL. The corporate seal shall have inscribed thereon the words “Corporate Seal,” the year of incorporation and the word “Delaware.”

SECTION 6.04. WAIVER OF NOTICE. Whenever any notice is required to be given to any stockholder or Director under the provisions of the DGCL or these By-Laws, a waiver thereof given in accordance with applicable law shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board of Directors or committee thereof need be specified in any waiver of notice of such meeting.

SECTION 6.05. AUDITS. The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, and it shall be the duty of the Board of Directors to cause such audit to be done annually.

SECTION 6.06. RESIGNATIONS. Any Director or any officer, whether elected or appointed, may resign at any time by giving written notice of such resignation to the Chairman of the Board, the President and Chief Executive Officer, or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the President and Chief Executive Officer, or the Secretary, or at such later time as is specified therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

## **ARTICLE VII**

### **CONTRACTS, PROXIES, EXCLUSIVE FORUM, ETC.**

SECTION 7.01. CONTRACTS. Except as otherwise required by law, the Certificate of Incorporation, a Preferred Stock Designation, or these By-Laws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board of Directors may determine. The Chairman of the Board, the President and Chief Executive Officer or any Senior Vice President, Executive Vice President or Vice President may execute bonds, contracts, deeds, leases and other instruments to be made or executed or for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors or the Chairman of the Board, the President and Chief Executive Officer or any Senior Vice President, Executive Vice President or Vice President of the Corporation may delegate contractual powers to others under such person’s jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

SECTION 7.02. PROXIES. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the President and Chief Executive Officer or any Senior Vice President, Executive Vice President or Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holders of

stock or other securities in any other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other entity, or to consent in accordance with applicable law, in the name of the Corporation as such holder, to any action by such other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such proxies, consents or other instruments as such person may deem necessary or proper in the premises.

**SECTION 7.03. FORUM FOR ADJUDICATION OF DISPUTES.**

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (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 Director, officer or other employee 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, or (iv) any action asserting a claim governed by the internal affairs doctrine, shall be a state or federal court located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

(b) If any action the subject matter of which is within the scope of paragraph (a) above is filed in a court other than a court located within the state of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the state of Delaware in connection with any action brought in any such court to enforce paragraph (a) above (an "FSC ENFORCEMENT ACTION") and (ii) having service of process made upon such stockholder in any FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder."

**ARTICLE VIII**  
**AMENDMENTS**

**SECTION 8.01. AMENDMENTS.** The By-Laws may be altered or repealed and new By-Laws may be adopted (a) at any annual or special meeting of stockholders by the affirmative vote of the holders of a majority of the voting power of the Voting Stock then outstanding, voting as a single class, provided, however, that any proposed alteration or repeal of, or the adoption of any By-Law inconsistent with, Section 2.02, Section 2.07 or this Section 8.01, by the stockholders shall require the affirmative vote of the holders of a majority of the voting power of all Voting Stock then outstanding, voting together as a single class, and provided, further, however, that, in the case of any such stockholder action at a special meeting of stockholders, notice of the proposed alteration, repeal or adoption of the new By-Law or By-Laws must be contained in the notice of such special meeting, or (b) by the affirmative vote of a majority of the Whole Board.