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**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): March 1, 2019**

**ELLINGTON FINANCIAL INC.**

(Exact name of registrant as specified in its charter)

**Commission File Number: 001-34569**

**Delaware**  
(State or other jurisdiction of  
incorporation)

**26-0489289**  
(IRS Employer  
Identification No.)

**53 Forest Avenue**  
**Old Greenwich, CT 06870**  
(Address of principal executive offices, including zip code)

**(203) 698-1200**  
(Registrant's telephone number, including area code)  
**ELLINGTON FINANCIAL LLC**

(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))

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

Emerging growth company

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

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## Introductory Note

On February 22, 2019, Ellington Financial LLC (the “LLC”) announced its plan to convert (the “Conversion”) from a Delaware limited liability company to a Delaware corporation named Ellington Financial Inc. (the “Corporation”).

The Corporation is providing the disclosure contained in this Current Report on Form 8-K in order to reflect the completion of its Conversion effective at 11:59 p.m. (Eastern Time) on March 1, 2019 (the “Effective Time”). References to “Ellington” in this Current Report on Form 8-K mean (i) prior to the Effective Time, Ellington Financial LLC and (ii) following the Effective Time, Ellington Financial Inc.

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

On March 1, 2019, Ellington notified the New York Stock Exchange (the “NYSE”) that the LLC had filed a certificate of conversion (the “Certificate of Conversion”) with the Secretary of State of the State of Delaware. At the Effective Time, (i) each common share representing a limited liability company interest, no par value (collectively, the “Common Shares”), outstanding immediately prior to the Effective Time was converted into one issued and outstanding, fully paid and nonassessable share of common stock, \$0.001 par value per share, of the Corporation (collectively, the “Common Stock”).

As of the open of business on Monday, March 4, 2019, the NYSE ceased trading of the Common Shares on the NYSE and commenced trading of the Common Stock (CUSIP: 28852N 109) on the NYSE under the existing ticker symbol “EFC”, and we expect the NYSE to file with the Securities and Exchange Commission an application on Form 25 to report that the Common Shares are discontinued for trading on the NYSE.

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

Concurrent with the filing of the Certificate of Conversion, Ellington filed the Corporation’s certificate of incorporation, filed with this Current Report on Form 8-K pursuant to Item 5.03 below (the “Certificate of Incorporation”) with the Secretary of State of the State of Delaware that became effective at the Effective Time. The Corporation’s Bylaws, filed with this Current Report on Form 8-K pursuant to Item 5.03 below (the “Bylaws”) also became effective at the Effective Time. The Certificate of Incorporation and Bylaws provide the Corporation’s stockholders following the Conversion with substantially the same rights and obligations that holders of Common Shares had under the limited liability company agreement of the LLC (the “LLC Agreement”) prior to the Conversion. Following the Conversion, except as otherwise expressly provided in the Certificate of Incorporation, the holders of Common Stock are entitled to vote on all matters on which stockholders of a corporation are generally entitled to vote under the Delaware General Corporation Law, including the election of the board of directors of the Corporation. Holders of Common Stock are entitled to one vote per share of Common Stock.

To the extent applicable, the disclosures set forth in (i) Item 3.01 above, (ii) Item 5.03 below and (iii) Item 8.01 below are incorporated herein by reference.

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

At the Effective Time and as a result of the Conversion, the directors and executive officers of the LLC immediately prior to the Effective Time became the directors and executive officers of the Corporation. In addition, the committees of the board of directors, and the membership thereof, immediately prior to the Effective Time, were replicated at the Corporation at the Effective Time.

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

On February 28, 2019, to implement the Conversion, the LLC filed with the Secretary of State of the State of Delaware the Certificate of Conversion and the Certificate of Incorporation. The Conversion became effective at the Effective Time.

At the Effective Time, the LLC converted to the Corporation pursuant to a plan of conversion (the “Plan of Conversion”), and the Certificate of Incorporation and the Bylaws of the Corporation became effective. The full texts of the Plan of Conversion, Certificate of Conversion, Certificate of Incorporation and Bylaws are filed as Exhibits 3.1, 3.2, 3.3 and 3.4, respectively.

### **Item 8.01 Other Events.**

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The board of directors of the LLC unanimously approved the Conversion on February 7, 2019. Under the LLC Agreement, no vote of the shareholders of the LLC was required for the Conversion.

In accordance with Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Corporation is a successor registrant to the LLC and thereby subject to the informational requirements of the Exchange Act and the rules and regulations promulgated thereunder. The shares of Common Stock of the Corporation, as the successor registrant to the LLC, are deemed to be registered under Section 12(b) of the Exchange Act.

Holders of uncertificated Common Shares immediately prior to the Conversion continued as holders of uncertificated stock of the Corporation upon effectiveness of the Conversion.

#### *Description of Capital Stock*

The disclosure entitled "Description of Common Stock," "Description of Preferred Stock" and "Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws" set forth in Exhibit 99.1 is being filed for the purpose of providing a summary of the material terms of the capital stock of the Corporation and its Certificate of Incorporation and Bylaws as of the date hereof. This summary is not a complete description of the terms of the Corporation's capital stock, Certificate of Incorporation and Bylaws, and is qualified in its entirety by reference to the Corporation's Certificate of Incorporation and Bylaws, each filed herewith, as well as applicable provisions of Delaware law.

The disclosure set forth in Exhibit 99.1 is incorporated into this Item 8.01 by reference. The disclosure contained in this Current Report on Form 8-K modifies and supersedes any corresponding disclosure included in any registration statement or report previously filed with the SEC pursuant to the Securities Act of 1933, as amended, the Exchange Act, and the rules and regulations promulgated thereunder to the extent they are inconsistent with such information.

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

(d) Exhibits. The following exhibits are being filed herewith this Current Report on Form 8-K.

<b>Exhibit Number</b>	<b>Description</b>
3.1	<a href="#">Plan of Conversion</a>
3.2	<a href="#">Certificate of Conversion of Ellington Financial LLC</a>
3.3	<a href="#">Certificate of Incorporation of Ellington Financial Inc.</a>
3.4	<a href="#">Bylaws of Ellington Financial Inc.</a>
99.1	<a href="#">Description of Common Stock, Description of Preferred Stock and Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws</a>

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**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.

**ELLINGTON FINANCIAL INC.**

Dated: March 4, 2019

By: /s/ **JR Herlihy**

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JR Herlihy  
*Chief Financial Officer*

## PLAN OF CONVERSION

This PLAN OF CONVERSION ("Plan of Conversion") sets forth certain terms of the conversion of Ellington Financial LLC, a Delaware limited liability company (the "LLC"), to a Delaware corporation to be named "Ellington Financial Inc." (the "Corporation"), pursuant to the provisions of the Delaware Limited Liability Company Act (the "LLC Act") and the General Corporation Law of the State of Delaware (the "DGCL").

### WITNESSETH

**WHEREAS**, the LLC was formed as a limited liability company in accordance with the LLC Act and is currently governed by the Second Amended and Restated Operating Agreement of the LLC, dated as of July 1, 2009, as amended (the "LLC Agreement");

**WHEREAS**, upon the terms and subject to the conditions of this Plan of Conversion and in accordance with the LLC Act and the DGCL, the LLC will be converted to a Delaware corporation pursuant to and in accordance with Section 18-216 of the LLC Act and Section 265 of the DGCL (the "Conversion");

**WHEREAS**, capitalized terms used and not otherwise defined in this Plan of Conversion shall have the meanings given to them in the LLC Agreement.

**NOW, THEREFORE**, upon the terms and subject to the conditions of this Plan of Conversion and in accordance with the LLC Act and the DGCL, upon the filing and effectiveness of the Certificate of Conversion and the Certificate of Incorporation (each as defined below), the LLC shall be converted into the Corporation.

### ARTICLE I THE CONVERSION

**SECTION 1.01 The Conversion.** At the Effective Time (as defined below), the LLC shall be converted to the Corporation and, for all purposes of the laws of the State of Delaware and otherwise, the Conversion shall be deemed a continuation of the existence of the LLC in the form of a Delaware corporation. The Conversion shall not require the LLC to wind up its affairs under Section 18-803 of the LLC Act or to pay its liabilities and distribute its assets under Section 8-804 of the LLC Act, and the Conversion shall not constitute a dissolution of the LLC. At the Effective Time, for all purposes of the laws of the State of Delaware and otherwise, all of the rights, privileges and powers of the LLC, and all property, real, personal and mixed, and all debts due to the LLC, as well as all other things and causes of action belonging to the LLC, shall remain vested in the Corporation and shall be the property of the Corporation, and the title to any real property vested by deed or otherwise in the LLC shall not revert or be in any way impaired by reason of any provision of the LLC Act, the DGCL or otherwise; but all rights of creditors and all liens upon any property of the LLC shall be preserved unimpaired, and all debts, liabilities and duties of the LLC shall remain attached to the Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a corporation. The rights, privileges, powers and interests in property of the LLC, as well as the debts, liabilities and duties of the LLC, shall not be deemed, as a consequence of the Conversion, to have been transferred to the Corporation for any purpose of the laws of the State of Delaware or otherwise.

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**SECTION 1.02 Effective Time.** On March 1, 2019, the Chief Executive Officer shall file the Certificate of Conversion in the form attached hereto as Exhibit A (the “Certificate of Conversion”) and the Certificate of Incorporation of the Corporation in the form attached hereto as Exhibit B (the “Certificate of Incorporation”) with the Secretary of State of the State of Delaware pursuant to Section 265 of the DGCL. The Conversion shall become effective at 11:59 p.m. (Eastern Time) on March 1, 2019 (such time of effectiveness, the “Effective Time”).

**SECTION 1.03 Certificate of Incorporation and Bylaws of the Corporation.** At and after the Effective Time, the Certificate of Incorporation and Bylaws of the Corporation (the “Bylaws”) shall be in the forms attached hereto as Exhibit B and Exhibit C, respectively, until amended in accordance with their terms and the DGCL.

**SECTION 1.04 Directors and Officers.**

(a) At the Effective Time, the initial directors of the Corporation shall be Lisa Mumford, Laurence Penn, Thomas F. Robards, Ronald I. Simon, Ph.D. and Edward Resendez, each of whom shall be named to the initial board of directors of the Corporation. Mr. Robards shall be the Chairman of the board of directors of the Corporation. Each director, including each director appointed to fill a vacancy or newly created directorship, shall hold office until the next annual meeting of stockholders for the election of directors or action by written consent of stockholders in lieu of an annual meeting for the purpose of electing directors and until such director’s successor is elected and qualified or until such director’s earlier death, resignation, retirement, disqualification or removal.

(b) At the Effective Time, unless the board of directors of the Corporation provides otherwise, each of the following individuals shall be appointed to the office(s) set forth opposite his or her name:

<u>Name</u>	<u>Office</u>
Laurence Penn	Chief Executive Officer, President & Director
Michael W. Vranos	Co-Chief Investment Officer
Mark Tecotzky	Co-Chief Investment Officer
JR Herlihy	Chief Financial Officer
Christopher Smernoff	Chief Accounting Officer
Vincent Ambrico	Controller
Daniel Margolis	General Counsel
Jason Frank	Secretary and Corporate Counsel

Each officer so elected shall hold such office until such officer’s successor is elected and qualified, or until such officer’s earlier death, resignation, retirement, disqualification or removal.

**ARTICLE II**

**CONVERSION OF MEMBERSHIP INTERESTS; REGISTRATION OF SHARES; GLOBAL STOCK CERTIFICATES**

**SECTION 2.01 Conversion and Cancellation of Membership Interests.** At the Effective Time, each Common Share outstanding immediately prior to the Effective Time shall be converted into one issued and outstanding, fully paid and nonassessable share of common stock, \$0.001 par value per share, of the Corporation (“Common Stock”) without any action required on the part of the LLC, the Corporation or the former holder of such Common Share. At the Effective Time, each LTIP Unit outstanding immediately prior to the Effective Time shall be cancelled, retired and will cease to exist and each holder of an LTIP Unit

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will cease to have any rights with respect thereto, without any action required on the part of the LLC, the Corporation or the former holder of such LTIP Unit.

**SECTION 2.02 Registration in Book-Entry.** Shares of Common Stock shall not be represented by certificates but shall instead be uncertificated shares, unless the board of directors of the Corporation shall provide by resolution or resolutions otherwise. Promptly after the Effective Time, the Corporation shall register, or cause to be registered, in book-entry form the shares of Common Stock into which the outstanding membership interests represented by Common Shares shall have been converted as a result of the Conversion.

**SECTION 2.03 No Further Rights in Units.** The shares of Common Stock into which the outstanding membership interests represented by Common Shares shall have been converted as a result of the Conversion in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such membership interests.

**SECTION 2.04 Tax Treatment.** For U.S. federal income tax purposes, the Conversion shall be treated as a reorganization that is a “mere change in identify, form, or place of organization of one corporation” within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code.

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EXHIBIT A

Certificate of Conversion

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EXHIBIT B

Certificate of Incorporation

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EXHIBIT C

Bylaws

**CERTIFICATE OF CONVERSION**  
**PURSUANT TO SECTION 265 OF**  
**THE DELAWARE GENERAL CORPORATION LAW**

This Certificate of Conversion is being duly executed and filed by Ellington Financial LLC, a Delaware limited liability company (the “LLC”), to convert the LLC to Ellington Financial Inc., a Delaware corporation (the “Corporation”), under the Delaware Limited Liability Company Act (6 *Del. C.* § 18-101, et seq.) and the Delaware General Corporation Law (8 *Del. C.* § 101, et seq.).

1. The LLC was first formed on July 9, 2007 as a Delaware limited liability company.
2. The name and type of entity of the LLC immediately prior to filing this Certificate of Conversion is Ellington Financial LLC, a Delaware limited liability company.
3. The name of the Corporation as set forth in the Certificate of Incorporation filed in accordance with Section 265(b) of the Delaware General Corporation Law is Ellington Financial Inc.
4. The conversion of the LLC to the Corporation shall be effective at 11:59 p.m. (Eastern Time) on March 1, 2019.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion on the 28th day of February, 2019.

**ELLINGTON FINANCIAL LLC**

By: /s/ Laurence Penn

Name: Laurence Penn

Title: Chief Executive Officer and President

**CERTIFICATE OF INCORPORATION**

**OF**

**ELLINGTON FINANCIAL INC.**

**ARTICLE I**

**NAME**

The name of the corporation is Ellington Financial Inc. (the "Corporation").

**ARTICLE II**

**REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the State of Delaware is 850 New Burton Road, Suite 201, in the City of Dover, County of Kent, zip code 19904. The name of the registered agent at such address is Cogency Global Inc.

**ARTICLE III**

**PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity (including, without limitation or obligation, engaging in business as a REIT (as hereinafter defined) under the Internal Revenue Code of 1986, as amended, or any successor statute (the "Code")) for which corporations may be organized under the Delaware General Corporations Law (the "DGCL") as now or hereafter in force. For purposes of this Certificate of Incorporation of the Corporation (the "Charter"), "REIT" means a real estate investment trust under Sections 856 through 860 of the Code.

The Corporation is being incorporated in connection with the conversion of Ellington Financial LLC, a Delaware limited liability company (the "LLC"), into the Corporation (the "Conversion"), and this Certificate of Incorporation is being filed simultaneously with the filing of the Certificate of Conversion relating to such conversion.

**ARTICLE IV**

**DEFINITIONS**

"Bylaws" means the Bylaws of the Corporation, as amended from time to time in accordance with the terms of this Charter and the Bylaws.

"Capital Stock" means all classes or series of stock of the Corporation, including, without limitation, Common Stock and Preferred Stock.

"Charter" has the meaning set forth in Article III.

"Code" has the meaning set forth in Article III. Any reference herein to a specific section of the Code shall be deemed to include a reference to any corresponding provision of law in effect in the future.

"Common Stock" has the meaning set forth in Section 5.1.

"Conversion" has the meaning set forth in Article III.

“Corporation” has the meaning set forth in Article I.

“Disinterested Director” means a director of the Corporation who is not and was not a party to the proceeding or matter in respect of which indemnification is sought by the claimant.

“DGCL” means the Delaware General Corporations Law, 8 Del. C. §§ 101 *et seq.*, as amended from time to time (or any corresponding provisions of succeeding law).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“LLC” has the meaning set forth in Article III.

“National Securities Exchange” means an exchange registered with the Securities Exchange Commission under Section 6(a) of the Exchange Act.

“Outstanding” means, as of any date, with respect to any security theretofore issued by the Company, except:

(i) such securities as represented by certificates or electronic positions evidencing such securities that have been canceled or delivered for cancellation; and

(ii) such security as represented by certificates or electronic positions that have been exchanged for or in lieu of which other securities have been executed and delivered pursuant to Section 12.4.

“Partnership Representative” means a “partnership representative” within the meaning of Section 6223(a) of the Code.

“Person” means an individual, corporation, partnership, limited liability company, 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, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Rule 13(d)-5(b) or Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

“Preferred Stock” has the meaning set forth in Section 5.1.

“Preferred Stock Designation” has the meaning set forth in Section 5.3.

“Record Holder” means (a) with respect to any Shares of Common Stock, the Person in whose name such Shares are registered on the books of the Transfer Agent as of the opening of business on a particular Business Day, and (b) with respect to any Shares of any other class, the Person in whose name such Shares are registered on the books that the Company has caused to be kept as of the opening of business on such Business Day.

“REIT” has the meaning set forth in Article III.

“Repurchase Date” has the meaning set forth in Section 12.2.

“Transfer Agent” means with respect to the Shares, American Stock Transfer & Trust Company, or any successor thereto.

“Voting Stock” has the meaning set forth in Section 5.2.2(c).

**ARTICLE V**  
**STOCK**

Section 5.1 Classes and Number of Shares. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 200,000,000 shares, consisting of 100,000,000 shares of common stock, par value \$0.001 per share (the “Common Stock”), and 100,000,000 shares of preferred stock, par value \$0.001 per share (the “Preferred Stock”).

Section 5.2 Common Stock. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

Section 5.2.1 Dividend Rights. Subject to applicable law and the rights, if any, of the holders of any Outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends, dividends may be declared and paid ratably on the Common Stock out of the assets of the Corporation that are legally available for this purpose at such times and in such amounts as the Board of Directors in its discretion shall determine.

Section 5.2.2 Voting Rights.

(a) Common Stock. Except as expressly provided herein, each holder of shares of Common Stock will be entitled to one vote for each share thereof held at the record date for the determination of stockholders entitled to vote on any matter.

(b) Authorized Shares. The aggregate number of shares of Common Stock that are authorized (or the authorized number of any class of Shares) may be increased from time to time by an amendment to this Charter upon the adoption of a resolution by the Board of Directors declaring such amendment to be advisable and the approval of such amendment by the affirmative vote of the holders of at least a majority of the shares of Common Stock then Outstanding present in person or represented by proxy at a meeting of the stockholders.

(c) Election of Directors. Subject to any rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the holders of the outstanding shares of Common Stock, (the “Voting Stock”), voting together as a single class, shall be entitled to elect all directors of the Corporation.

Section 5.2.3 Liquidation. Upon a Dissolution Event, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the rights, if any, of the holders of any Outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the distribution of assets of the Corporation upon such Dissolution Event, the holders of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

(a) No Maturity, Sinking Fund or Mandatory Redemption. The Common Stock does not have a maturity date and the Corporation shall not be required to redeem the Common Stock at any time. The Common Stock shall not be subject to any sinking fund.

(b) No Preemptive Rights. No holders of the Common Stock have any preemptive rights to purchase or subscribe for Common Stock or any other security of the Corporation.

Section 5.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate of designations pursuant to the applicable law of the State of Delaware (hereinafter referred to as a “Preferred Stock Designation”), to establish from time to time for each such series the number of shares to be included in each such series and to fix the designations, powers, rights and preferences 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 of Preferred Stock 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 Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).
- (c) Whether dividends, if any, shall be paid, and, if paid, the date or dates upon which, or other times at which, such dividends shall be payable, whether such dividends shall be cumulative or noncumulative, the rate of such dividends (which may be variable) and the relative preference in payment of dividends of such series.
- (d) The redemption provisions and price or prices, if any, for shares of the series. The terms and amounts of any sinking fund or similar fund provided for the purchase or redemption of shares of the series.
- (e) The amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.
- (f) Whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series of such other security, the conversion price or prices, or rate or rates, any adjustments thereto, the date or dates on which such shares shall be convertible and all other terms and conditions upon which such conversion may be made.
- (g) Restrictions on the issuance of shares of the same series or of any other class or series.
- (h) The voting rights, if any, of the holders of shares of the series.

Section 5.4 Issuance of Rights to Purchase Securities and Other Property. Subject to the express rights of the holders of any series of Preferred Stock, if any outstanding, but only to the extent expressly set forth in the Preferred Stock Designation with respect thereto, the Board of Directors is hereby authorized to create and to authorize and direct the issuance (on either a pro rata or a non-pro rata basis) by the Corporation of rights, options and warrants for the purchase of shares of Capital Stock of the Corporation or other securities of the Corporation, at such times, in such amounts, to such persons, for such consideration, with such form and content (including without limitation the consideration for which any shares of Capital Stock of the Corporation or other securities of the Corporation are to be issued) and upon such terms and conditions as



it may, from time to time, determine upon, subject only to the restrictions, limitations, conditions and requirements imposed by the DGCL, other applicable laws and this Certificate of Incorporation.

Section 5.5 Tax on Disqualified Organizations. To the extent that the Corporation incurs any tax pursuant to Section 860E(e) (6) of the Code as the result of any “excess inclusion” income (within the meaning of Section 860E of the Code) of the Corporation being allocated to a “disqualified organization” (as defined in Section 860E(e)(5) of the Code) that holds Common Stock or Preferred Stock in record name, the Corporation shall reduce the distributions payable to any such “disqualified organization” whose ownership of Common Stock or Preferred Stock caused such tax to be incurred by an amount equal to such tax, in the manner described in Treasury Regulations Section 1.860E-2(b)(4).

## **ARTICLE VI BYLAWS**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws. The Bylaws may also be amended or repealed by the affirmative vote of the holders of a majority of the voting power of the outstanding Voting Stock, voting together as a single class.

## **ARTICLE VII BOARD OF DIRECTORS**

Section 7.1 Subject to the rights of the holders of any series of Preferred Stock, if any outstanding, as set forth in a Preferred Stock Designation to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed by the Bylaws and may be increased or decreased from time to time in such a manner as may be prescribed by the Bylaws and the DGCL.

Section 7.2 Unless and except to the extent that the Bylaws shall so require, the election of directors of the Corporation need not be by written ballot.

Section 7.3 Subject to the rights of the holders of any series of Preferred Stock, if any outstanding, with respect to the election of directors under specified circumstances, any director may be removed from office, with or without cause, by the affirmative vote of the holders of at least 66 2/3% of the voting power of the then outstanding Voting Stock, voting together as a single class.

Section 7.4 Notwithstanding the foregoing provisions of this Article VII and any limitations contained in any Preferred Stock Designation, each director shall serve until such director’s successor is duly elected and qualified or until such director’s death, resignation or removal. No change in the number of directors constituting the Board of Directors shall shorten or increase the term of any incumbent director.

Section 7.5 REIT Election. If the Board of Directors determines that it is no longer in the best interests of the Corporation to continue to be qualified as a REIT, the Board of Directors may revoke or otherwise terminate the Corporation’s REIT election pursuant to Section 856(g) of the Code.

## **ARTICLE VIII INDEMNIFICATION**

Section 8.1 Subject to other applicable provisions of this Article VIII, each Person that is or was a director, officer, employee, or agent of the Corporation shall not be liable to the Corporation, any Subsidiary of the Corporation, any director of the Corporation, or any holder of any equity interest in the Corporation

or any Subsidiary of the Corporation for any acts or omissions by any such Person arising from the performance of their duties and obligations in connection with the Corporation or this Charter, including with respect to any acts or omissions made while serving at the request of the Corporation as an officer, director, member, partner, Partnership Representative, fiduciary or trustee of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, 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. The Corporation may indemnify, to the fullest extent permitted by law, each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that the Person 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, Partnership Representative, or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which the Person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the Person's conduct was unlawful.

Section 8.2 The Corporation may indemnify, to the fullest extent permitted by law, any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the Person 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, Partnership Representative, or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection with the defense or settlement of such action or suit if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 8.3 To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article VIII, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith.

Section 8.4 Each of the Persons entitled to be indemnified for expenses and liabilities as contemplated above may, in the performance of his, her or its duties, consult with legal counsel and accountants, and any act or omission by such Person on behalf of the Corporation in furtherance of the interests of the Corporation in good faith in reliance upon, and in accordance with, the advice of such legal counsel or accountants will be full justification for any such act or omission, and such Person will be fully

protected for such acts and omissions; provided, that such legal counsel or accountants were selected with reasonable care by or on behalf of the Corporation.

Section 8.5 Any indemnification of a present or former director, officer, employee, or agent of the Corporation under Section 8.1 or Section 8.3 shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee, or agent of the Corporation is proper in the circumstances because the Person has met the applicable standard of conduct set forth in Section 8.1 or Section 8.2, as the case may be. Such determination shall be made, with respect to a Person who is a director, officer, employee, or agent of the Corporation at the time of such determination, (1) by a majority vote of the directors who are not parties to any such action, suit or proceeding, even though less than a quorum, (2) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (3) if there are no such directors, or if a majority, even though less than a quorum, of such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders. The indemnification, and the advancement of expenses incurred in defending an action, suit or proceeding prior to its final disposition, provided by or granted pursuant to this Charter shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, other provision of this Charter, vote of stockholders or Disinterested Directors or otherwise. No repeal, modification or amendment of, or adoption of any provision inconsistent with, this Section 8.5, nor, to the fullest extent permitted by applicable law, any modification of law, shall adversely affect any right or protection of any Person granted pursuant hereto existing at, or with respect to any events that occurred prior to, the time of such repeal, amendment, adoption or modification. The indemnification and advancement of expenses provided by, or granted pursuant to, this Charter shall, unless otherwise provided when authorized or ratified, continue as to a Person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a Person.

Section 8.6 The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any such action, suit or proceeding in advance of its final disposition, to any Person who is or was an employee or agent of the Corporation or any Subsidiary of the Corporation and to any Person who is or was serving at the request of the Corporation or a Subsidiary of the Corporation as a director, officer, employee, Partnership Representative or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Corporation or a Subsidiary of the Corporation, to the fullest extent of the provisions of this Charter with respect to the indemnification and advancement of expenses of directors, officers, employees, and agents of the Corporation. The payment of any amount to any Person pursuant to this Section 8.6 shall subrogate the Corporation to any right such Person may have against any other Person.

Section 8.7 To the fullest extent permitted by law, expenses (including attorneys' fees) incurred by a director, officer, employee, or agent of the Corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 8.8 With respect to any Person who is a present or former director, officer, employee, or agent of the Corporation, any undertaking required by this Article VIII shall be an unlimited general obligation but need not be secured and shall be accepted without reference to financial ability to make repayment; provided, however, that such present or former director, officer, employee, or agent of the Corporation does not transfer assets with the intent of avoiding such repayment.

Section 8.9 Any notice, request or other communications required or permitted to be given to the Corporation under this Article VIII shall be in writing and either delivered in person or sent by facsimile, telex, telegram, other electronic transmission, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary and shall be effective only upon receipt by the Secretary, as the case may be.

Section 8.10 No director shall be personally liable either to the Corporation or to any of its stockholders for monetary damages for breach of fiduciary duty as a director, 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 any provision of this Charter inconsistent with the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

**ARTICLE IX**  
**INSURANCE**

The Corporation may purchase and maintain insurance, at its expense, on behalf of any person or entity, as applicable, who is or was a director, an officer, an employee or an agent of the Corporation, is serving as an external manager of the Corporation, or is or was a director, officer, employee or agent of the Corporation, or an external manager of the Corporation, serving at the request of the Corporation as a director, officer, employee, agent or external manager of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability, expense or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability, expense or loss under the provisions of the Bylaws or the DGCL. To the extent that the Corporation maintains any policy or policies providing such insurance, each such person shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such person.

**ARTICLE X**  
**AMENDMENT**

The Corporation reserves the right at any time and from time to time to amend, modify or repeal any provision contained in this Charter or a Preferred Stock Designation, and any other provisions authorized by the laws of the State of Delaware in force at such time may be added or inserted in the manner now or hereafter prescribed herein or by applicable law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Charter in its present form or as hereafter amended are granted subject to the rights reserved in this Article X; provided, however, that any amendment, modification or repeal of Article VIII of this Charter shall not adversely affect any right or protection existing hereunder immediately prior to such amendment, modification or repeal.

**ARTICLE XI**  
**EXCLUSIVE JURISDICTION**

Unless otherwise consented to in writing by the Corporation, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of fiduciary duty owed by any current or former director, officer or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c)

any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or this Charter or the Bylaws or (d) any action asserting a claim against the Corporation governed by the internal affairs doctrine.

## **ARTICLE XII**

### **CERTIFICATES; RECORD HOLDERS**

Section 12.1 Certificates. Notwithstanding anything otherwise to the contrary herein, unless the Board of Directors shall provide by resolution or resolutions otherwise in respect of some or all of any or all classes or series of stock of the Corporation, the stock of the Corporation shall not be evidenced by certificates. Certificates that may be issued shall be executed on behalf of the Corporation by the Chairman of the Board, or the President, or the Secretary, or any Vice President, or any Assistant Secretary or the Treasurer or any Assistant Treasurer of the Corporation. No Certificate evidencing shares of Common Stock or Preferred Stock shall be valid for any purpose until it has been countersigned by the Transfer Agent; provided, however, that if the Board of Directors resolves to issue certificates evidencing shares of Common Stock or Preferred Stock in global form, the certificates evidencing such shares of Common Stock or Preferred Stock shall be valid upon receipt of a certificate from the Transfer Agent certifying that the certificates evidencing such shares of Common Stock or Preferred Stock have been duly registered in accordance with the directions of the Corporation. The use of facsimile signatures affixed in the name and on behalf of the Transfer Agent on certificates, if any, representing shares of stock of the Corporation is expressly permitted by this Certificate of Incorporation.

Section 12.2 Repurchase of Shares by the Corporation. The Board of Directors shall have authority to cause the Corporation to conduct a capital reduction, including the repurchase of any number of issued and Outstanding Shares; provided, however, that the Corporation shall not purchase or redeem any Shares for cash or other property if any such purchase or redemption would be inconsistent with the requirements of the DGCL. Any Shares tendered and repurchased by the Corporation, in accordance with this Section 12.2, shall be deemed to be authorized and issued, but not Outstanding and, subject to Section 2.1, may subsequently be Sold for due consideration.

Section 12.3 Record Holders. The Corporation shall be entitled to recognize the Record Holder as the owner of a Share and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Share on the part of any other Person, regardless of whether the Corporation shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Shares are listed for trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Shares, as between the Corporation on the one hand, and such other Persons on the other, such representative Person shall be the Record Holder of such Shares.

Section 12.4 Mutilated, Lost, Destroyed or Stolen Certificates. Each Record Holder of Shares shall promptly notify the Corporation of any mutilation, loss or destruction of any Certificate of which such holder is the record holder. The Corporation may, in its discretion, cause the Transfer Agent to issue a new Certificate in place of any Certificate theretofore issued by it and alleged to have been mutilated, lost, stolen or destroyed, upon surrender of the mutilated Certificate or, in the case of loss, theft or destruction of the Certificate, upon satisfactory proof of such loss, theft or destruction, and the Board of Directors may, in its discretion, require the Record Holder of the Shares evidenced by the lost, stolen or destroyed Certificate, or its, his or her legal representative, to give the Transfer Agent a bond sufficient to indemnify the Transfer Agent against any claim

made against it on account of the alleged loss, theft or destruction of any such Certificate or the issuance of such new Certificate.

**ARTICLE XIII**  
**RESTRICTION ON TRANSFER AND OWNERSHIP OF SHARES**

Section 13.1 Definitions. For the purpose of this Article XIII, the following terms shall have the following meanings:

Beneficial Ownership. The term “Beneficial Ownership” shall mean ownership of Capital Stock by a Person, whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) and Section 856(h)(3) of the Code. The terms “Beneficial Owner,” “Beneficially Owns” and “Beneficially Owned” shall have the correlative meanings.

Business Day. The term “Business Day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

Charitable Beneficiary. The term “Charitable Beneficiary” shall mean one or more beneficiaries of the Trust as determined pursuant to Section 13.3.6, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

Closing Price. The term “Closing Price” shall mean, on any date, the last sale price for such Capital Stock, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Capital Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if such Capital Stock is not listed or admitted to trading on the NYSE, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Capital Stock is listed or admitted to trading or, if such Capital Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such Capital Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Capital Stock selected by the Board of Directors or, in the event that no trading price is available for such Capital Stock, the fair market value of the Capital Stock, as determined by the Board of Directors.

Constructive Ownership. The term “Constructive Ownership” shall mean ownership of Capital Stock by a Person, whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms “Constructive Owner,” “Constructively Owns” and “Constructively Owned” shall have the correlative meanings.

Excepted Holder. The term “Excepted Holder” shall mean a stockholder of the Corporation for whom an Excepted Holder Limit is created by the Charter or by the Board of Directors pursuant to Section 13.2.7.

Excepted Holder Limit. The term “Excepted Holder Limit” shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Directors pursuant to Section 13.2.7 and subject to adjustment pursuant to Section 13.2.8, the percentage limit established by the Board of Directors pursuant to Section 13.2.7.

Initial Date. The term “Initial Date” shall mean January 1, 2019.

Investment Company Act. The term “Investment Company Act” shall mean the Investment Company Act of 1940, as amended.

Market Price. The term “Market Price” on any date shall mean, with respect to any class or series of outstanding shares of Capital Stock, the Closing Price for such Capital Stock on such date.

NYSE. The term “NYSE” shall mean the New York Stock Exchange.

One Hundred Shareholders Date. The term “One Hundred Shareholders Date” shall mean the first date on which Equity Shares are beneficially owned by 100 or more Persons within the meaning of Section 856(a)(5) of the Code without regard to Section 856(h)(2) of the Code.

Ownership Limit. The term “Ownership Limit” shall mean 9.8%, in value or in number of shares, whichever is more restrictive, of the outstanding shares of any class or series of Capital Stock, excluding any outstanding shares of Capital Stock not treated as outstanding for federal income tax purposes, or such other percentage determined by the Board of Directors in accordance with Section 13.2.8 of the Charter.

Prohibited Owner. The term “Prohibited Owner” shall mean, with respect to any purported Transfer, any Person who, but for the provisions of Section 13.2.1 hereof, would Beneficially Own or Constructively Own shares of Capital Stock in violation of Section 13.2.1(a) hereof, and if appropriate in the context, shall also mean any Person who would have been the record owner of the Capital Stock that the Prohibited Owner would have so owned.

Restriction Termination Date. The term “Restriction Termination Date” shall mean the first day after the Initial Date on which the Board of Directors determines that it is no longer in the best interests of the Corporation to continue to qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of shares of Capital Stock set forth herein is no longer required in order for the Corporation to qualify as a REIT.

Transfer. The term “Transfer” shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such action or cause any such event, of Capital Stock or the right to vote or receive dividends on Capital Stock, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any securities or rights convertible into or exchangeable for Capital Stock or any interest in Capital Stock or any exercise of any such conversion or exchange right and (c) Transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Capital Stock; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms “Transferring” and “Transferred” shall have the correlative meanings.

Trust. The term “Trust” shall mean any trust provided for in Section 13.3.1.

Trustee. The term “Trustee” shall mean the Person unaffiliated with the Corporation and a Prohibited Owner that is appointed by the Corporation to serve as trustee of the Trust.

Section 13.2 Capital Stock.

Section 13.2.1 Ownership Limitations.

(d) Basic Restrictions.

(i) During the period commencing on the Initial Date and prior to the Restriction Termination Date, but subject to Section 13.4 and except as provided in Section 13.2.7 hereof, no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own shares of any class or series of Capital Stock in excess of the Ownership Limit and no Excepted Holder shall Beneficially Own or Constructively Own shares of Capital Stock in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) During the period commencing on the Initial Date and prior to the Restriction Termination Date, but subject to Section 13.4 and except as provided in Section 13.2.7 hereof, no Person shall Beneficially Own or Constructively Own shares of Capital Stock to the extent that such Beneficial Ownership or Constructive Ownership of Capital Stock would result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership to the extent that such Beneficial or Constructive Ownership would result in the Corporation owning (actually or Constructively) a 9.9% interest (or more) in a tenant that is described in Section 856(d)(2)(B) of the Code). (For this purpose, a tenant from whom the Corporation (or an entity owned or controlled by the Corporation) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board of Directors, rent from such tenant would not adversely affect the Corporation’s ability to qualify as a REIT, shall not be treated as a tenant of the Corporation).

(iii) During the period commencing on the One Hundred Shareholders Date and prior to the Restriction Termination Date, but subject to Section 13.4 and except as provided in Section 13.2.7 hereof, any Transfer of shares of Capital Stock that, if effective, would result in the Capital Stock being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(e) Transfer in Trust; Transfer Void Ab Initio . If any Transfer of shares of Capital Stock occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning shares of Capital Stock in violation of Section 13.2.1(a)(i) or (ii),

(i) then that number of shares of the Capital Stock the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate Section 13.2.1(a)(i) or (ii) (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the exclusive benefit of a Charitable Beneficiary, as described in Section 13.3, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such shares of Capital Stock; or

(ii) if the transfer to the Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 13.2.1(a)(i) or (ii), then the Transfer



of that number of shares of Capital Stock that otherwise would cause any Person to violate Section 13.2.1(a)(i) or (ii) shall be void ab initio, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(iii) To the extent that, upon a transfer of shares of Capital Stock pursuant to this Section 13.2.1(b), a violation of Section 13.2.1(a) would nonetheless be continuing (for example where the ownership of shares of Capital Stock by a single Trust would violate the 100 stockholder requirement applicable to REITs), then shares of Capital Stock shall be transferred to that number of Trusts, each having a distinct Trustee and a Charitable Beneficiary or Charitable Beneficiaries that are distinct from those of each other Trust, such that there is no violation of any provision of Section 13.2.1.

Section 13.2.2 Remedies for Breach. If the Board of Directors shall at any time determine that a Transfer or other event has taken place that results in a violation of Section 13.2.1 or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any shares of Capital Stock in violation of Section 13.2.1 (whether or not such violation is intended), the Board of Directors shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Corporation to redeem shares, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 13.2.1 shall automatically result in the transfer to the Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Directors.

Section 13.2.3 Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of shares of Capital Stock that will or may violate Section 13.2.1(a) or any Person who would have owned shares of Capital Stock that resulted in a transfer to the Trust pursuant to the provisions of Section 13.2.1(b) shall immediately give written notice to the Corporation of such event or, in the case of such a proposed or attempted transaction, give at least fifteen (15) days prior written notice, and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer on the Corporation's status as a REIT.

Section 13.2.4 Owners Required To Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(a) every owner of five percent (5%) or more (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) in value or number of the outstanding shares of Capital Stock, within 30 days after the end of each taxable year, shall give written notice to the Corporation stating the name and address of such owner, the number of shares of Capital Stock Beneficially Owned and a description of the manner in which such shares are held. Each such owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT and to ensure compliance with Section 13.2.1(a) hereof; and

(b) each Person who is a Beneficial Owner or Constructive Owner of Capital Stock and each Person (including the stockholder of record) who is holding Capital Stock for a Beneficial Owner or Constructive Owner shall, on demand, provide to the Corporation such information as the Corporation may request, in order to determine the Corporation's status as a REIT and to comply with

the requirements of any taxing authority or governmental authority or to determine such compliance and to ensure compliance with the Ownership Limit.

Section 13.2.5 Remedies Not Limited. Nothing contained in this Section 13.2 shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation in preserving the Corporation's qualification as a REIT or in preventing participation in the Corporation by Benefit Plan Investors from being "significant" (within the meaning of the Plan Asset Regulations).

Section 13.2.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article XIII, the Board of Directors may determine the application of the provisions of this Article XIII with respect to any situation based on the facts known to it. In the event Section 13.2 or Section 13.3 requires an action by the Board of Directors and the Charter fails to provide specific guidance with respect to such action, the Board of Directors may determine the action to be taken so long as such action is not contrary to the provisions of Section 13.1, 13.2 or 13.3. Absent a decision to the contrary by the Board of Directors, if a Person would have (but for the remedies set forth in Section 13.2.2) acquired Beneficial Ownership or Constructive Ownership of Capital Stock in violation of Section 13.2.1, such remedies (as applicable) shall apply first to the shares of Capital Stock that, but for such remedies, would have been actually owned by such Person, and second to the shares of Capital Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Capital Stock based upon the relative number of the shares of Capital Stock held by each such Person.

Section 13.2.7 Exceptions.

(a) The Board of Directors, in its sole discretion, may exempt (prospectively or retroactively) a Person from the restrictions contained in Section 13.2.1(a)(i), (ii) or (iii), as the case may be, and may establish or increase an Excepted Holder Limit for such Person if the Board of Directors obtains such representations, covenants and undertakings as the Board of Directors may deem appropriate in order to conclude that granting the exemption and/or establishing or increasing the Excepted Holder Limit, as the case may be, will not cause the Corporation to fail to continue to qualify as a REIT.

(b) Prior to granting any exception pursuant to Section 13.2.7(a), the Board of Directors may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Directors may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(c) Subject to Section 13.2.1(a)(ii), an underwriter, placement agent or initial purchaser which participates in a public offering, a private placement or other private offering of Capital Stock (or securities convertible into or exchangeable for Capital Stock) may Beneficially Own or Constructively Own shares of Capital Stock (or securities convertible into or exchangeable for Capital Stock) in excess of the Ownership Limit, but only to the extent necessary to facilitate such public offering or private placement and provided that the restrictions contained in Section 13.2.1(a) hereof will not be violated following the distribution by such underwriter, placement agent or initial purchaser of such shares of Capital Stock.

Section 13.2.8 Increase or Decrease in the Ownership Limit.

(a) The Board of Directors may from time to time increase or decrease the Ownership Limit with regard to any class or series of Capital Stock for one or more Persons and increase or decrease the Ownership Limit with regard to any class or series of Capital Stock for all other Persons. No decreased Ownership Limit will be effective for any Person whose percentage of ownership of Capital Stock is in excess of such decreased Ownership Limit until such time as such Person's percentage of ownership of Capital Stock equals or falls below the decreased Ownership Limit; provided, however, any further acquisition of Capital Stock by any such Person (other than a Person for whom an exemption has been granted pursuant to Section 13.2.7(a) or an Excepted Holder) in excess of the Capital Stock owned by such Person on the date the Ownership Limit became effective will be in violation of the Ownership Limit. No increase to the Ownership Limit may be approved if the new Ownership Limit would allow five or fewer individuals (as defined in Section 542(a)(2) of the Code and taking into account all Excepted Holders) to Beneficially Own, in the aggregate more than 49.9% in value of the outstanding Capital Stock or would otherwise cause the Corporation to fail to qualify as a REIT.

(b) The Board of Directors may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the then-current Ownership Limit.

Section 13.2.9 Legend. Each certificate, if any, for shares of Capital Stock shall bear a legend summarizing the restrictions on transfer and ownership contained herein. Instead of a legend, the certificate, if any, or any notice in lieu of a certificate may state that the Corporation will furnish a full statement about certain restrictions on ownership and transfer of the shares to a stockholder on request and without charge.

### Section 13.3 Transfer of Capital Stock in Trust.

Section 13.3.1 Ownership in Trust. Upon any purported Transfer or other event described in Section 13.2.1(b) that would result in a transfer of shares of Capital Stock to a Trust, such shares of Capital Stock shall be deemed to have been transferred to the Trustee as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Trust pursuant to Section 13.2.1(b). The Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Corporation as provided in Section 13.3.6.

Section 13.3.2 Status of Shares Held by the Trustee. Shares of Capital Stock held by the Trustee shall continue to be issued and outstanding shares of Capital Stock of the Corporation. The Prohibited Owner shall have no rights in the shares held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Trust. The Prohibited Owner shall have no claim, cause of action, or any other recourse whatsoever against the purported transferor of such Capital Stock.

Section 13.3.3 Dividend and Voting Rights. The Trustee shall have all voting rights and rights to dividends or other distributions with respect to shares of Capital Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other

distribution paid to a Prohibited Owner prior to the discovery by the Corporation that the shares of Capital Stock have been transferred to the Trustee shall be paid with respect to such shares of Capital Stock by the Prohibited Owner to the Trust upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Trustee. Any dividend or other distributions so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to shares of Capital Stock held in the Trust and, subject to Delaware law, effective as of the date that the shares of Capital Stock have been transferred to the Trust, the Trustee shall have the authority (at the Trustee's sole and absolute discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Corporation that the shares of Capital Stock have been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article XIII, until the Corporation has received notification that shares of Capital Stock have been transferred into a Trust, the Corporation shall be entitled to rely on its stock transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes and determining the other rights of stockholders.

Section 13.3.4 Sale of Shares by Trustee. Within twenty (20) days of receiving notice from the Corporation that shares of Capital Stock have been transferred to the Trust, the Trustee of the Trust shall sell the shares held in the Trust to a Person, designated by the Trustee, whose ownership of the shares will not violate the ownership limitations set forth in Section 13.2.1(a). Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 13.3.4. The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Trust (*e.g.*, in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Trust and (2) the sales proceeds received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares held in the Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to Section 13.3.3 of this Article XIII. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary together with any other amounts held by the Trustee with respect to such shares. If, prior to the discovery by the Corporation that shares of Capital Stock have been transferred to the Trustee, such shares are sold by a Prohibited Owner, then (i) such shares shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 13.3.4, such excess shall be paid to the Trustee upon demand.

Section 13.3.5 Purchase Right in Stock Transferred to the Trustee. Shares of Capital Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to Section 13.3.3. The Corporation shall have the right to accept such offer until the Trustee has sold the shares held in the Trust pursuant to Section 13.3.4. Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to

the Prohibited Owner and any dividends or other distributions with respect to the shares sold held by the Trustee shall be paid to the Charitable Beneficiary.

Section 13.3.6 Designation of Charitable Beneficiaries. By written notice to the Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary or Charitable Beneficiaries of the interest in the Trust such that (i) the shares of Capital Stock held in the Trust would not violate the restrictions set forth in Section 13.2.1(a) in the hands of such Charitable Beneficiary or Charitable Beneficiaries and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. Neither the failure of the Corporation to make such designation nor the failure of the Corporation to appoint the Trustee before the automatic transfer provided in Section 13.2.1(b) shall make such transfer ineffective, provided that the Corporation thereafter makes such designation and appointment.

Section 13.4 NYSE Transactions. Nothing in this Article XIII shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article XIII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article XIII.

Section 13.5 Enforcement. The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article XIII.

Section 13.6 Non-Waiver. No delay or failure on the part of the Corporation or the Board of Directors in exercising any right hereunder shall operate as a waiver of any right of the Corporation or the Board of Directors, as the case may be, except to the extent specifically waived in writing.

Section 13.7 Severability. If any provision of this Article XIII or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provisions shall be affected only to the extent necessary to comply with the determination of such court.

#### **ARTICLE XIV** **STOCKHOLDER ACTION WITHOUT A MEETING**

On any matter that is to be voted on, consented to or approved by stockholders, the stockholders may take such action without a meeting, without prior notice and without a vote if a unanimous written consent, setting forth the action so taken, shall be signed by all of the stockholders.

#### **ARTICLE XV** **AGREEMENTS**

When the terms of this Charter refer to a specific agreement or other document or a decision by any body, person or entity to determine the meaning or operation of a provision hereof, the Secretary of the Corporation shall maintain a copy of such agreement, document or decision at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any stockholder who makes a request therefor. Unless otherwise provided in this Charter, a reference to any specific agreement or other document shall be deemed a reference to such agreement or document as amended, restated or supplemented from time to time in accordance with the terms of such agreement or document.

**ARTICLE XVI**  
**INCORPORATOR AND EFFECTIVENESS**

The name and mailing address of the sole incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Laurence Penn	53 Forest Avenue Old Greenwich, CT 06870

This Charter shall be effective at 11:59 p.m., Eastern time, on March 1, 2019.

IN WITNESS WHEREOF, the Corporation has caused this Charter to be signed by its incorporator this 28th day of February, 2019.

**ELLINGTON FINANCIAL INC.**

/s/ Laurence Penn  
Name: Laurence Penn  
Title: Incorporator

**BYLAWS  
OF  
ELLINGTON FINANCIAL INC.**

**(Effective March 1, 2019)**

**ARTICLE I**

**STOCKHOLDERS**

**SECTION 1. Stockholder Meetings.**

(a) The annual meeting of stockholders of Ellington Financial Inc. (the "Corporation") for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date, time and place, if any, within or without the State of Delaware, as the Board of Directors of the Corporation (the "Board of Directors") shall determine.

(b) A special meeting of the stockholders for any purpose or purposes may be called by the Chairman of the Board of Directors, the President, the Chief Executive Officer or the Board of Directors. Subject to subsection (c) of this Section 1 of these Bylaws (the "Bylaws"), a special meeting of the stockholders may also be called by the Secretary of the Corporation upon the written request of the stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

(c) Any record holder of stock (a "Record Holder") seeking to have the stockholders request a special meeting of stockholders shall, by sending written notice to the Secretary of the Corporation (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting of stockholders (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more Record Holders as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder, in each case, as amended (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which the Record Date Request Notice is received by the Secretary.

(1) In order for any stockholder to request a special meeting of stockholders (a "Special Meeting"), one or more written requests for a special meeting of stockholders signed by Record Holders (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than a majority (the "Special Meeting Percentage") of all of the votes entitled

to be cast at such meeting (the "Special Meeting Request") shall be delivered to the Secretary. In addition, the Special Meeting Request (A) shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the secretary), (B) shall bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (C) shall set forth the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of common stock or preferred stock of the Corporation ("Shares") which are owned by each such stockholder, and the nominee holder for, and number of, Shares owned by such stockholder beneficially but not of record, (D) shall be sent to the Secretary by registered mail, return receipt requested, and (E) shall be received by the Secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation or Special Meeting Request) may revoke his, her or its request for a special meeting of stockholders at any time by written revocation delivered to the Secretary.

(2) The Secretary shall inform the requesting stockholder of the reasonably estimated cost of preparing and mailing the notice of meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting of stockholders upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 1(c), the Secretary on behalf of the Corporation receives payment of such reasonably estimated cost prior to the preparation and mailing of any notice of the meeting.

(3) Except as provided in the next sentence, any special meeting of stockholders shall be held at such place, date and time as may be designated by the Chairman of the Board of Directors, President, Chief Executive Officer or Board of Directors, whoever has called the meeting. In the case of any special meeting of stockholders called by the Secretary upon the request of stockholders (a "stockholder Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any stockholder Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date and time for a stockholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a stockholder Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any special meeting of stockholders, the Chairman of the Board of Directors, President, Chief Executive Officer or Board of Directors may consider such factors as he, she or it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting of stockholders or a special meeting of stockholders. In the case of any stockholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. The Board of Directors may revoke the notice for any stockholder Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 1(c).

(4) If written revocations of requests for the special meeting of stockholders have been delivered to the Secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting of stockholders to the Secretary, the Secretary



shall: (A) if the notice of meeting has not already been mailed, refrain from mailing the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for the special meeting, or (B) if the notice of meeting has been mailed and if the Secretary first sends to all requesting stockholders who have not revoked requests for a special meeting of stockholders written notice of any revocation of a request for the special meeting and written notice of the Secretary's intention to revoke the notice of the meeting revoke the notice of the meeting at any time before ten days before the commencement of the meeting. Any request for a special meeting of stockholders received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting of stockholders.

(5) The Chairman of the Board of Directors, a Chief Executive Officer, President or Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported request shall be deemed to have been delivered to the Secretary until the earlier of (A) ten Business Days after receipt by the Secretary of such purported request and (B) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent at least a majority of the Outstanding Shares that would be entitled to vote at such meeting. Nothing contained in this paragraph (5) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such ten Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

SECTION 2. **Notice of Meetings.** Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, and any other information required by law to be included in the notice. Unless otherwise provided by law, the Corporation's Certificate of Incorporation, as it may be amended, restated or amended and restated from time to time (the "Certificate of Incorporation"), or these Bylaws, the notice of any meeting shall be given (including pursuant to electronic transmission in the manner provided in Section 232 of the General Corporation Law of the State of Delaware (as amended, the "DGCL") not less than ten (10) nor more than sixty (60) days prior to the date of the meeting to each stockholder of record entitled to vote at such meeting and shall otherwise comply with applicable law. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any previously scheduled meeting of the stockholders may be postponed or rescheduled, and (unless the Certificate of Incorporation otherwise provides) any special meeting of the stockholders may be cancelled, by resolution of the Board of Directors.

SECTION 3. **Quorum and Adjournment.** Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the voting power of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), present in person or by proxy, 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 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 from time to time adjourn any meeting,

whether or not there is such a quorum. Notice of any such adjourned meeting need not be given if the time and place of the adjourned meeting is announced at the meeting such adjournment is taken; provided, however, that notice shall be provided in accordance with applicable law if the meeting is adjourned for more than 30 days or as otherwise required by law. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. 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 4. **Organization.** Meetings of stockholders shall be presided over by the Chairman of the Board of Directors (the "Chairman"), or if none or in the Chairman's absence, the Vice Chairman, or if none or in the Vice Chairman's absence, the Chief Executive Officer, or in the Chief Executive Officer's absence, the President, the Vice Presidents in their order of rank and seniority, or, if none of the foregoing is present, by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman to be chosen by the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary's absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the Board of Directors shall appoint an individual or, in the absence of such appointment, the chairman of the meeting shall appoint any person present and capable of acting as secretary of such a meeting to act as secretary of the meeting.

SECTION 5. **Voting; Proxies; Required Vote.**

(a) At each meeting of stockholders, every stockholder entitled to vote at such meeting shall be entitled to vote in person or by proxy appointed in accordance with applicable law (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period). In all matters presented to the stockholders at a meeting at which a quorum is present, other than the election of directors which shall be governed by Section 8 of this Article I, 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, the affirmative vote of the holders of a majority in voting power of the shares of stock present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders. Voting at meetings of stockholders need not be by written ballot.

Notwithstanding anything to the contrary set forth in these Bylaws, the non-binding advisory vote, pursuant to Section 14A(a) (2) of the Exchange Act, and the rules and regulations promulgated thereunder, in each case, as amended, with respect to the determination as to whether the advisory vote on executive compensation shall occur every one (1), two (2) or three (3) years, to the extent required, shall be decided by a plurality of the votes cast among three alternatives; provided that for purposes of any vote required pursuant to this sentence, neither abstentions nor broker non-votes shall count as votes cast.

(b) When specified business is to be voted on by a class or series of stock voting as a class, the affirmative vote of the holders of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class, unless otherwise provided in the Certificate of Incorporation or these Bylaws.

SECTION 6. **Inspectors.** The Board of Directors, in advance of any meeting, may, but need not unless required by law, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need

not unless required by law, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of such inspector's ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

SECTION 7. **Notice of Stockholder Nominations and Other Business.**

(a) **Annual Meetings of Stockholders.**

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (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 (C) by any stockholder of the Corporation who (i) was a Record Holder at the time the notice provided for in this Section 7 is delivered to the Secretary of the Corporation and at the time of the annual meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in this Section 7 as to such business or nomination. Except as provided by clause (a)(4) of this Section 7, clause (C) of the preceding sentence shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement) at an annual meeting of stockholders.

(2) Without qualification or limitation of any other requirement, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(1) of this Section 7, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice 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 (120th) day nor later than the close of business on the ninetieth (90th) 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 (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, not later than the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall 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.

(3) To be in proper form, a stockholder's notice delivered pursuant to this Section 7 must set forth: (A) as to each person, if any, whom the stockholder proposes to nominate for election or

reelection as a director (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in contested election, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected and (iii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and, if applicable, the beneficial owner of the shares held of record by such stockholder (the "Beneficial Owner"), if any, and their respective affiliates, or others acting in concert therewith, on the one hand, and each proposed nominee, and such persons' respective affiliates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if the stockholder making the nomination and any Beneficial Owner, if any, or any affiliate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; (B) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, a brief description 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 these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the Beneficial Owner, if any, on whose behalf the proposal is made, and a description of all agreements, arrangements and understandings between such stockholder and Beneficial Owner, if any, (including their names) in connection with the proposal of such business by such stockholder; and (C) as to the stockholder giving the notice and the Beneficial Owner, if any, (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such Beneficial Owner, if any, (ii) (a) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such Beneficial Owner, (b) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (c) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed have a short interest of such stockholders and Beneficial Owner, if any, in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (d) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder and Beneficial Owner, if any, that are separated or separable from the underlying shares of the Corporation and (e) any proportionate interest in shares of the Corporation held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and such Beneficial Owner, if any, any of their respective affiliates, and any others acting in concert with any of the foregoing with respect to such nomination or proposal, (iv) 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, (v) a representation whether the stockholder or the Beneficial Owner, if any, intends to be or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding Voting Stock required to approve or adopt the proposal or elect the nominee or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination, and (vi) any other information relating to such stockholder and Beneficial Owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act. In addition, the stockholder's notice with respect to the election of directors must include, with respect to each nominee for election or reelection to the Board

of Directors, the completed and signed questionnaire, representation and agreement required by Section 9 of this Article I. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an Independent Director (as defined below) of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. Notwithstanding the foregoing, the information required by clauses (a)(3)(C)(ii) and (a)(3)(C)(iii) of this Section 7 shall be updated by such stockholder and Beneficial Owner, if any, not later than ten (10) days after the record date for the meeting to disclose such information as of the record date.

(4) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 7 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (a)(2) of this Section 7 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 (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 7 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 (10th) day following the day on which such public announcement is first made by the Corporation.

(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 persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or a committee thereof, or (2) provided, that the Board of Directors or such committee have determined that a purpose of the meeting is to elect directors, by any stockholder of the Corporation who (A) is a Record Holder at the time the notice provided for in this Section 7 is delivered to the Secretary of the Corporation and at the time of the special meeting, (B) is entitled to vote at the meeting and upon such election, and (C) complies with the notice procedures set forth in this Section 7 as to such nomination. 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 such stockholder may nominate 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)(3) hereof with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by these Bylaws) 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 (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or, if the first public announcement of the date of such special meeting is less than one hundred (100) days prior to the date of such special meeting, the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed to be elected at such meeting. In no event shall 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) Conduct of Meetings. 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 (for any or no reason) to recess the meeting,

to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, 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 person of the meeting, may include, without limitation, the following: (1) the establishment of an agenda or order of business for the meeting; (2) rules and procedures for maintaining order at the meeting and the safety of those present; (3) 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 presiding person of the meeting shall determine; (4) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (5) limitations on the time allotted to questions or comments by participants. The presiding person 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 person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board 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.

(d) General.

(1) Except as otherwise expressly provided under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 7 and the Certificate of Incorporation shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such other 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 Section 7. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the person presiding at the meeting of stockholders shall have the power and duty (A) 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 the procedures set forth in this Section 7 (including whether the stockholder or Beneficial Owner, if any, 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 clause (a)(3)(C)(v) of this Section 7) and (B) if the presiding person determines that any proposed nomination or other business was not made or proposed in compliance with this Section 7, to declare that such nomination shall be disregarded or that such proposed other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 7, 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 other business, such nomination shall be disregarded and such proposed other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 7, 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.

(2) For purposes of this Section 7, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission (the "SEC") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 7; provided, however, that any references in these Bylaws to the Exchange Act are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 7 (including clause (a)(1)(C) and paragraph (b) hereof), and compliance with clause (a)(1)(C) and paragraph (b) of this Section 7 shall be the exclusive means for a stockholder to make nominations or submit other business, as applicable (other than matters or nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act). Nothing in this Section 7 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 of the Exchange Act or (B) of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation ("Preferred Stock") to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

**SECTION 8. Required Vote for Election of Directors.**

(a) Except as otherwise provided pursuant to the Certificate of Incorporation or these Bylaws and except as provided by Section 11 of Article II with respect to the filling of vacancies, directors shall be elected at the annual meeting of stockholders. At any stockholder meeting duly called and held for the election of directors at which a quorum is present, directors shall be elected by a plurality of votes cast. For purposes hereof, the number of nominees shall be determined as of the tenth (10th) day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation. Each director, including a director elected to fill a vacancy, shall hold office until the next annual meeting of stockholders and until such director's successor is duly elected and qualified or until such director's earlier death, resignation, retirement, or removal from office.

(b) If a nominee for director who is an incumbent director does not receive the requisite number of the votes cast for his or her election in an election, the director shall promptly tender such director's resignation to the Board of Directors contingent on acceptance of that resignation by the Board of Directors in accordance with the policies and procedures adopted by the Board of Directors for such purpose. Upon receipt of such resignation, the Nominating and Corporate Governance Committee shall make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors shall act on the tendered resignation, taking into account the Nominating and Corporate Governance Committee's recommendation, and publicly disclose (by a press release, a filing with the SEC or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The Nominating and Corporate Governance Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it considers appropriate and relevant. The director who tenders a resignation shall not participate in the recommendation of the Nominating and Corporate Governance Committee or the decision of the Board of Directors with respect to such resignation. If such incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until such director's successor is duly elected, or such director's earlier resignation or removal. If a director's resignation is accepted by the Board of Directors pursuant to these Bylaws, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Article II, Section 11 of these Bylaws or may decrease the size of the Board of Directors pursuant to the provisions of Article II, Section 2 of these Bylaws.

SECTION 9. **Submission of Questionnaire, Representation and Agreement.** To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Article I, Section 7 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) will abide by the requirements of Article I, Section 8 of these Bylaws, (b) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, 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 (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law as it presently exists or may hereafter be amended, (c) 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 to the Corporation, and (d) would be in compliance, if elected as a director of the Corporation, 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.

## ARTICLE II

### **BOARD OF DIRECTORS**

SECTION 1. **General Powers.** The business, property 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 Bylaws 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 Bylaws required to be exercised or done by the stockholders.

SECTION 2. **Qualification; Number; Term; Remuneration.**

(a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The Board shall be comprised of five directors and shall consist of at least a majority of Independent Directors. An "Independent Director" shall be a director who (i)(A) is not an officer or employee of the Corporation, or an officer, director or employee of any subsidiary of the Corporation, (B) was not appointed as a director pursuant to the terms of the Amended and Restated Management Agreement (the "Management Agreement") dated July 1, 2009, as amended, by and among the Corporation and Ellington Financial Management LLC (the "Manager"), and (C) for so long as the Management Agreement is in effect, is not affiliated with the Manager or any of its affiliates, and (ii) and who satisfies the independence requirements under the New York Stock Exchange (the "NYSE") (or the principal stock exchange on which the Corporation's stock is listed). The total number of directors that the Corporation would have if there were no vacancies (the "Whole Board") shall be fixed from time to time exclusively by action of the Board of Directors, but shall consist of not less than three nor more than thirteen directors. However, no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(b) Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual



meeting of stockholders and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, or removal.

(c) Directors shall not receive any stated salary for their services as directors but, by resolution of the Board of Directors, may receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned, leased or to be acquired by the Corporation and for any service or activity they performed or engaged in as directors. Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for committee service.

SECTION 3. **Quorum and Manner of Voting.** Except as otherwise provided by law or in these Bylaws, a majority of the Whole Board shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

SECTION 4. **Places of Meetings.** Meetings of the Board of Directors may be held at any place within or without the State of Delaware as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. **Regular Meetings.** Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 6. **Special Meetings.** Special meetings of the Board of Directors shall be held whenever called by the Chairman, President, Chief Executive Officer or by a majority of the directors then in office.

SECTION 7. **Notice of Meetings.** A notice of the place, date and time and the purpose or purposes of each special meeting of the Board of Directors shall be given to each director by mail, personal delivery, electronic transmission or telephone at least twenty-four (24) hours before the meeting; provided, however, if notice is sent by United States Mail, it shall be deposited in the United States Mail at least three (3) days before the meeting. Notice shall be deemed to be given at the time of mailing. Notice need not be given to any director who waives such notice, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him.

SECTION 8. **Chairman of the Board of Directors.** Except as otherwise provided by law, the Certificate of Incorporation, or in Section 9 of this Article II, the Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 9. **Organization.** At each meeting of the Board of Directors, the Chairman of the Board of Directors or, in the absence of the Chairman, the Vice Chairman of the Board of Directors, if any, shall act as chairman of the meeting. In the absence of both the Chairman and Vice Chairman of the Board of Directors, the Chief Executive Officer or in the absence of the Chief Executive Officer, the President or in the absence of the President, a director chosen by a majority of the directors present, shall act as chairman of the meeting. The Secretary or, in his or her absence, an Assistant Secretary of the Company, or in the

absence of the Secretary and all Assistant Secretaries, a person appointed by the chairman of the meeting, shall act as secretary of the meeting.

SECTION 10. **Resignation.** Any director may resign at any time upon notice to the Corporation and, except for a resignation tendered pursuant to Section 8(b) of Article I, such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation. An Independent Director who ceases to be independent shall promptly resign to the extent required for the Corporation to comply with applicable laws, rules and regulations.

SECTION 11. **Vacancies.** Subject to applicable law and except as may be provided by the Board of Directors in setting the terms of any class or series of Shares, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may only be filled by the majority vote of the remaining directors in office, even if the remaining directors do not constitute a quorum.

SECTION 12. **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 13. **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing (which may be provided by electronic transmission), and such writing or writings are filed with the minutes of proceedings of the Board of Directors.

SECTION 14. **Reliance on Books and Records.** A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

### ARTICLE III

#### COMMITTEES

SECTION 1. **Appointment.** From time to time the Board of Directors may designate any committee or committees, each committee to consist of one (or such other minimum number, if any, mandated by law and the applicable listing requirements of the NYSE (or the principal stock exchange on which the Corporation's stock is listed), as in effect from time to time) or more directors of the Corporation for any purpose or purposes, to the extent lawful, which shall have powers as shall be permitted by law and determined and specified by the Board of Directors by resolution, including the following committees:

(a) an Executive Committee, which shall have such authority as has been or shall be as permitted by law and delegated by the Board of Directors and shall advise the Board of Directors from time to time with respect to such matters as the Board of Directors shall direct; and

(b) an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, each of which shall have such authority as permitted by law and (1) as has been or shall be set forth in the charter for such committee (as in effect from time to time and approved by the Board of Directors), which authority shall at all times be not less than that mandated by law and the applicable listing requirements of the NYSE (or the principal stock exchange on which the Corporation's stock is listed), and (2) as shall otherwise be delegated by the Board of Directors.

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, provided, that each committee shall consist of at least such minimum number of directors, if any, mandated by law and the applicable listing requirements of the NYSE (or the principal stock exchange on which the Corporation's stock is listed), as in effect from time to time. 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 of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

SECTION 2. **Procedures, Quorum and Manner of Acting.** Each committee shall fix its own rules of procedure and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. 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. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors. Unless otherwise provided in the resolutions of the Board of Directors creating a committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to the subcommittee any or all of the powers of the committee. The provisions of these Sections 2, 3 and 4 of this Article III shall apply to subcommittees.

SECTION 3. **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing (which may be provided by electronic transmission), and such writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. **Term; Termination.** In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

## ARTICLE IV

### **OFFICERS**

SECTION 1. **Election and Qualifications.** The Board of Directors shall elect the officers of the Corporation, which shall consist of a President, a Secretary and a Chief Financial Officer and may include a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, a Chief Executive Officer, one or more Vice Presidents, a Chief Operating Officer, a Chief Accounting Officer, a Chief Investment Officer or Co-Chief Investment Officers, a Treasurer, a Controller, a General Counsel, a Corporate Counsel, one or more Assistant Secretaries and one or more Assistant Treasurers. In addition, the Board of Directors

may from time to time elect such other officers with such powers and duties as it shall deem necessary or desirable. The officers of the Corporation shall be elected annually by the Board of Directors, except that the Chief Executive Officer or President may from time to time appoint one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers or other officers. Each officer shall hold office until his or her successor is elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices may be held by the same person. The officers of the Corporation need not be stockholders or directors of the Corporation.

SECTION 2. **Term of Office and Remuneration.** The term of office of all officers shall be one year or until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by a vote of the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. **Resignation; Removal.** Any officer may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board of Directors, the President or the Secretary. Any resignation shall take effect upon its receipt or at such later time specified in the notice of resignation. Any officer shall be subject to removal, with or without cause, at any time by a vote of the Board of Directors.

SECTION 4. **Chief Executive Officer.** The Board of Directors may designate a Chief Executive Officer. In the absence of such designation, the Chairman of the Board of Directors shall be the Chief Executive Officer of the Company. The Chief Executive Officer shall have general responsibility for implementation of the policies of the Company, as determined by the Board of Directors, and for the management of the business and affairs of the Company. 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 the Certificate of Incorporation or these Bylaws to some other officer or agent of the Company or shall be required by the DGCL to be otherwise executed; and in general 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 Operating Officer.** The Board of Directors may designate a Chief Operating Officer. The Chief Operating Officer shall have the responsibilities and duties as set forth by the Board of Directors or the Chief Executive Officer.

SECTION 6. **Chief Accounting Officer.** The Board of Directors may designate a Chief Accounting Officer. The Chief Accounting Officer shall have the responsibilities and duties as set forth by the Board of Directors or the Chief Executive Officer.

SECTION 7. **Chief Investment Officer.** The Board of Directors may designate a Chief Investment Officer or Co-Chief Investment Officers. The Chief Investment Officer or Co-Chief Investment Officers shall have the responsibilities and duties as set forth by the Board of Directors or the Chief Executive Officer.

SECTION 8. **Chief Financial Officer.** The Chief Financial Officer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company 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.

The Chief Financial Officer 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 Chief Financial Officer and of the financial condition of the Company.

If required by the Board of Directors, the Chief Financial Officer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Company, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, moneys and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

SECTION 9. **Chairman of the Board.** The Board of Directors shall designate a Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside over the meetings of the Board of Directors and of the stockholders at which he or she shall be present. The Chairman of the Board of Directors shall perform such other duties as may be assigned to him or her by the Board of Directors.

SECTION 10. **President.** 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 Operating Officer by the Board of Directors, the President shall be the Chief Operating Officer. 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 Company or shall be required by the DGCL to be otherwise executed; and in general 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 11. **Vice Presidents.** In the absence of the President or in the event of a vacancy in such office, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the President and when so acting shall have all the powers of and be subject to all the restrictions upon the President; and shall perform such other duties as from time to time may be assigned to such Vice President by the President or by the Board of Directors. The Board of Directors may designate one or more Vice Presidents as Executive Vice President, Senior Vice President or as Vice President for particular areas of responsibility.

SECTION 12. **Secretary.** 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 the DGCL; (c) be custodian of the corporate records and of the seal of the corporation, if any; (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 responsibility for oversight of the Share transfer books and other records; and (f) in general perform such other duties as from time to time may be assigned to him or her by the Chief Executive Officer, the President or by the Board of Directors.

SECTION 13. **Treasurer.** In the absence of the Chief Financial Officer or in the event of a vacancy in such office, the Treasurer shall perform the duties of the Chief Financial Officer and when so acting shall have all the powers of and be subject to all the restrictions upon the Chief Financial Officer; and shall perform such other duties as from time to time may be assigned to such Treasurer by the President or by the Board of Directors.

SECTION 14. **Controller.** The Controller shall report directly to the Chief Financial Officer and shall assist with the compilation of financial statements for external reporting in accordance with applicable financial reporting guidelines and the requirements of the Sarbanes-Oxley Act. The Controller shall review general ledger account reconciliations monthly to ensure that financial statements are properly stated in accordance with GAAP and in general shall perform such other duties as from time to time may be assigned to the Controller by the Chief Financial Officer.

SECTION 15. **General Counsel.** The General Counsel shall oversee all legal matters for the Corporation. The General Counsel shall report to the General Counsel of Ellington Management Group, L.L.C., other than with respect to matters involving a conflict of interest between the Company and the Manager, in which case the General Counsel shall report directly to the Board of Directors.

SECTION 16. **Corporate Counsel.** The Corporate Counsel shall oversee all corporate legal matters for the Corporation. The Corporate Counsel shall report to the General Counsel of Ellington Management Group, L.L.C., other than with respect to matters involving a conflict of interest between the Company and the Manager, in which case the Corporate Counsel shall report directly to the Board of Directors.

SECTION 17. **Assistant Secretaries and Assistant Treasurers.** 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 President or the Board of Directors. The Assistant Treasurers shall, if required by the Board of Directors, give bonds for the faithful performance of their duties in such sums and with such surety or sureties as shall be satisfactory to the Board of Directors.

SECTION 18. **Other Officers.** The Board of Directors may elect other officers from time to time, and vest such officers with such powers and duties, as the Board of Directors may deem proper.

## ARTICLE V

### **BOOKS AND RECORDS**

SECTION 1. **Location.** The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class or series of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary or by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. **Addresses of Stockholders.** Notices of meetings and all other corporate notices may be delivered (a) personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation, or (b) any other method permitted by applicable law and rules and regulations of the SEC as they presently exist or may hereafter be amended.

SECTION 3. **Fixing Date for Determination of Stockholders of Record.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, 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 sixty (60) nor less than ten (10) days before the date of such meeting. 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 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 the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no 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 VI

### STOCK

SECTION 1. **Stock; Signatures.** Unless the Board of Directors shall provide by resolution or resolutions otherwise in respect of some or all of any or all classes or series of stock of the Corporation, the stock of the Corporation shall not be evidenced by certificates. Certificates that may be issued shall be executed on behalf of the Corporation by the Chairman of the Board, or the President, or the Secretary, or any Vice President, or any Assistant Secretary or the Treasurer or any Assistant Treasurer of the Corporation. Any such resolution or the issuance of shares in certificated form shall not affect any uncertificated shares already issued. Every holder of shares of stock in the Corporation that is represented by certificates shall be entitled to have a certificate certifying the number of shares owned by the holder in the Corporation and registered in certificated form. Any and all signatures on any such certificate may be facsimiles. 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 he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented by certificated or uncertificated shares, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. **Transfers of Stock.** Transfers of shares of stock of the Corporation shall be made on the books of the Corporation after receipt of a request with proper evidence of succession, assignation, or authority to transfer by the record holder of such stock, or by an attorney lawfully constituted in writing, and in the case of stock represented by a certificate, upon surrender of the certificate. Subject to the foregoing and the requirements of applicable law, the Board of Directors may make such rules and regulations as it shall deem necessary or appropriate concerning the issue, transfer and registration of shares of stock of the Corporation, and to appoint and remove transfer agents and registrars of transfers.

SECTION 3. **Fractional Shares.** The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip or warrants in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, and such scrip or warrant shall not entitle the holder to any rights of a stockholder except as therein provided.

SECTION 4. **Lost, Stolen or Destroyed Certificates.** The Corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or the legal representative thereof, to give the Corporation a bond sufficient to indemnify the Corporation 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 any such new certificated or uncertificated shares.

SECTION 5. **Special Designation on Certificates.** If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of any certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 5 or otherwise required by law or with respect to this Section 5 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

## ARTICLE VII

### DIVIDENDS

Except as otherwise provided by law or the Certificate of Incorporation (including the terms of any Preferred Stock provided for therein), the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.



## **ARTICLE VIII**

### **RATIFICATION**

Except as otherwise provided by law, any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, nondisclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Except as otherwise provided by law, such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

## **ARTICLE IX**

### **CORPORATE SEAL**

The Corporation may have a corporate seal that has the name of the Corporation and the year of its incorporation inscribed thereon, and that shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal. Affixing the corporate seal shall not be required for the validity of any contract or agreement, deed, promissory note or other document executed and delivered by the Corporation, except as otherwise required by law.

## **ARTICLE X**

### **FISCAL YEAR**

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

## **ARTICLE XI**

### **WAIVER OF NOTICE**

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, the person or persons entitled to said notice may waive such notice, whether before or after the time stated therein. Notice shall also be deemed waived by any person who attends a meeting without protesting prior thereto or at its commencement, the lack of notice to him.

## **ARTICLE XII**

### **BANK ACCOUNTS, DRAFTS, CONTRACTS, ETC.**

SECTION 1. **Bank Accounts and Drafts.** In addition to such bank accounts as may be authorized by the Board of Directors, the Chief Financial Officer, the Treasurer or any person designated by said Chief Financial Officer or Treasurer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as such person may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check

of the Corporation in accordance with the written instructions of said Treasurer, or other person so designated by the Treasurer.

SECTION 2. **Contracts.** The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. Except as otherwise provided by the Board of Directors, any officer of the Corporation may execute and deliver any deed, bond, mortgage, contract or other obligation or instrument on behalf of the Corporation.

SECTION 3. **Proxies; Powers of Attorney; Other Instruments.** The Chief Executive Officer, the Treasurer or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock or other securities by the Corporation. The Chief Executive Officer, the Treasurer or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders or other equity holders of any company in which the Corporation may hold stock or other securities, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock or other securities at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. **Financial Reports.** The Board of Directors may appoint the Chief Financial Officer, the Treasurer or other fiscal officer or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

### **ARTICLE XIII**

#### **AMENDMENTS**

The Board of Directors shall have power to amend, modify or repeal these Bylaws or adopt any new provision authorized by the laws of the State of Delaware in force at such time. The stockholders of the Corporation shall have the power to amend, modify or repeal these Bylaws, or adopt any new provision authorized by the laws of the State of Delaware in force at such time, at a duly called meeting of the stockholders; provided, that notice of the proposed adoption, amendment, modification or repeal was given in the notice of the meeting. These Bylaws may be amended or repealed by the affirmative vote of the holders of a majority of the voting power of the outstanding Voting Stock, voting together as a single class.

## DESCRIPTION OF COMMON STOCK

Our certificate of incorporation provides for the issuance of our shares of common stock, as well as certain terms of our common stock. The following is a summary of some of the terms of our common stock, our certificate of incorporation and the Delaware General Corporation Law (the “DGCL”), and is not complete and is subject to, and qualified in its entirety by reference to, all of the provisions of our certificate of incorporation and the DGCL. As used herein, the “company,” “our company,” “we,” “us” and “our” mean Ellington Financial Inc., a Delaware corporation.

### **Authorized Shares**

We are authorized to issue, pursuant to action by our Board of Directors and subject to limitations prescribed by the DGCL, up to 100,000,000 shares of common stock, par value \$0.001 per share. Following our conversion on March 1 from a Delaware limited liability company named Ellington Financial LLC into a Delaware corporation named Ellington Financial Inc. (the “Conversion”), we had outstanding as of the open of business on March 4, 2019, 29,745,776 shares of common stock.

### **Conversion**

At 11:59 P.M. Eastern Time on March 1, 2019 (the “Effective Time”) and pursuant to a plan of conversion, each common share representing a limited liability company interest in Ellington Financial LLC outstanding immediately prior to the Effective Time converted into one issued and outstanding, fully paid and nonassessable share of common stock.

Our certificate of incorporation and our bylaws provide our stockholders following the Conversion with substantially the same rights and obligations of limited liability company members pursuant to the operating agreement of Ellington Financial LLC immediately prior to the Conversion.

### ***Voting Rights***

The holders of common stock are entitled to one vote per share held of record on all matters submitted to a vote of our stockholders. Generally, all matters to be voted on by our stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all holders of common stock present in person or represented by proxy, voting together as a group.

### ***Economic Rights***

***Dividends.*** In general, holders of common stock will share ratably (based on the number of shares of common stock held) in any dividend declared by our Board of Directors out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of distributions and to any restrictions on the payment of distributions imposed by the terms of any outstanding preferred stock.

***Liquidation.*** Upon our dissolution, liquidation or winding up, after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, the holders of our common stock will be entitled to receive our remaining assets available for distribution.

### **Restrictions on Transfer**

See “Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws” for a description of restrictions on transfers of our shares including our common stock and for a description of other provisions of the certificate of incorporation and bylaws.

### **Transfer Agent and Registrar**

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The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent and registrar's address is 6201 15th Avenue, Brooklyn, New York 11219, and its telephone number is (718) 921-8300.

## **Listing**

Our common stock is listed on the NYSE under the ticker symbol "EFC."

## **DESCRIPTION OF PREFERRED STOCK**

We are authorized to issue, pursuant to action by our Board of Directors and subject to limitations prescribed by the DGCL, up to 100,000,000 shares of preferred stock. The following is a summary of some of the terms of our preferred stock, our certificate of incorporation and the DGCL, and is not complete and is subject to, and qualified in its entirety by reference to, all of the provisions of our certificate of incorporation and the DGCL.

Following the Conversion, we had no shares of preferred stock outstanding as of the open of business on March 4, 2019. Unless required by law or by any stock exchange, the authorized preferred stock will be available for issuance without further action by common stockholders.

Our Board of Directors is able to determine, with respect to any series of preferred stock, the terms and rights of that series, including:

- the designation of the series;
- the amount of shares of preferred stock of the series, which our Board of Directors may, except where otherwise provided in the preferred stock designation, increase or decrease, but not below the number of shares of preferred stock of the series then outstanding;
- whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;
- the dates at which dividends, if any, will be payable;
- the redemption rights and price or prices, if any, for shares of preferred stock of the series;
- the terms and amounts of any sinking fund provided for the purchase or redemption of the shares of preferred stock of the series;
- the amounts payable on shares of preferred stock of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of our company;
- whether the shares of preferred stock of the series will be convertible into or exchangeable for interests of any other class or series, or any other security, of our company or any other entity, and, if so, the specification of the other class or series or other security, the conversion or exchange price or prices or rate or rates, any rate adjustments, the date or dates on which, the period or periods during which, the shares of preferred stock will be convertible or exchangeable and all other terms and conditions upon which the conversion or exchange may be made;
- restrictions on the issuance of shares of preferred stock of the series or of any shares of any other class or series; and
- the voting rights, if any, of the holders of the shares of preferred stock of the series.

The designations, preferences, rights, powers and duties of each series of preferred stock will be set forth in a designating amendment to our certificate of incorporation that is approved by our Board of Directors and annexed to our certificate of incorporation.

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**Restrictions on Transfer**

See “Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws” for a description of restrictions on transfers of our shares including our preferred stock and for a description of other provisions of our certificate of incorporation and bylaws.

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## **CERTAIN PROVISIONS OF DELAWARE LAW AND OUR CERTIFICATE OF INCORPORATION AND BYLAWS**

### **Conversion and Incorporation**

Our predecessor, Ellington Financial LLC, was formed as a limited liability company in Delaware in 2007, and was converted to a corporation as a result of the Conversion effective as of 11:59 P.M. Eastern Time on March 1, 2019.

### **Purpose**

Under our certificate of incorporation, we are permitted to engage in any lawful act or activity (including, without limitation or obligation, engaging in business as a REIT (as hereinafter defined) under the Internal Revenue Code of 1986, as amended, or any successor statute (the “Code”)) for which corporations may be organized under the DGCL as now or hereafter in force. “REIT” means a real estate investment trust under Sections 856 through 860 of the Code.

### **Election of Members of Our Board of Directors**

Members of our Board of Directors are elected by stockholders based on a plurality of the votes cast.

### **Removal of Members of Our Board of Directors**

Any director or the entire Board of Directors may be removed with or without cause by a vote of at least 66 2/3% of the votes entitled to be cast in the election of directors. The vacancy in the Board of Directors caused by any such removal will be filled by a vote of the majority of directors then in office even if the remaining directors do not constitute a quorum.

### **Stockholder Meetings**

Under our bylaws, we are required to hold an annual meeting of stockholders for the election of directors and other business on a date and time to be set by the Board of Directors. In addition, our certificate of incorporation provides that a special meeting of stockholders may be called by our Board of Directors and certain of our officers. Our certificate of incorporation further provides that, subject to the satisfaction of certain procedural and information requirements, a special meeting of stockholders shall be called by the Secretary of the company upon written request of stockholders entitled to cast not less than a majority of all of the votes entitled to be cast at such meeting.

### **Advance Notice of Nominations and Stockholder Business**

Our certificate of incorporation establishes advance notice procedures with respect to stockholder proposals and the nomination of persons for election as directors at the annual meeting of our stockholders.

### **Stockholder Action by Written Consent**

Pursuant to Section 228 of the DGCL, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted, unless the certificate of incorporation provides otherwise or it conflicts with the rules of the New York Stock Exchange. Our certificate of incorporation permits stockholder action by unanimous written consent by stockholders.

### **Limitations on Liability and Indemnification of Our Directors and Officers**

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Pursuant to our certificate of incorporation and the DGCL, our directors and officers will not be liable to us, or any subsidiary of ours, or any holder of shares, for monetary damages for any acts or omissions arising from the performance of any of such person's obligations or duties in connection with us, including breach of fiduciary duty, except as follows: (1) for any breach of the director's duty of loyalty to us or the holders of the shares; (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (3) for any transaction from which the director derived an improper personal benefit. The certificate of incorporation provides that, to the fullest extent permitted by law, we will indemnify our directors and officers or any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of us) by reason of the fact that the person is or was our director, officer, employee, tax matters member or agent, or is or was serving at our request as a director, officer, employee or agent of another company, to the fullest extent permitted by law against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to our best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Each of the persons entitled to be indemnified for expenses and liabilities as contemplated above may, in the performance of his, her or its duties, consult with legal counsel and accountants, and any act or omission by such person on our behalf in furtherance of our interests in good faith in reliance upon, and in accordance with, the advice of such legal counsel or accountants will be full justification for any such act or omission, and such person will be fully protected for such acts and omissions; provided that such legal counsel or accountants were selected with reasonable care by or on our behalf.

#### **Amendment of Our Certificate of Incorporation and Bylaws**

Under the DGCL, amendments to our certificate of incorporation, with limited exceptions, must be approved by holders of a majority of the total voting power of our outstanding common stock and, to the extent that such amendment would have a material adverse effect on the holders of any class or series of shares, by the holders of a majority of the holders of such class or series. Our Board of Directors may amend, modify or repeal our bylaws without stockholder approval.

#### **Business Combinations**

Section 203 of the DGCL, provides that an "interested stockholder" (a person other than the corporation or any direct or indirect majority-owned subsidiary who, together with affiliates and associates, owns, or, if such person is an affiliate or associate of the corporation, within three years did own, 15% or more of the outstanding voting stock of a corporation) may not engage in "business combinations" (which is broadly defined to include a number of transactions, such as mergers, consolidations, asset sales and other transactions in which an interested stockholder receives or could receive a financial benefit on other than a pro rata basis with other stockholders) with the corporation for a period of three years after the date on which the person became an interested stockholder without certain statutorily mandated approvals.

#### **Provisions in the Certificate of Incorporation and Bylaws that may have an Anti-Takeover Effect**

Some of the provisions in the certificate of incorporation and bylaws described above could make it more difficult for a third party to acquire, or may discourage a third party from acquiring, control of us. These provisions include, among others:

- allowing only our Board of Directors to fill newly created directorships,
  - requiring advance notice for our stockholders to nominate candidates for election to our Board of Directors or to propose business to be considered by our stockholders at a meeting of our stockholders;
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- requiring that (subject to certain exceptions) no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% of the aggregate value or number (whichever is more restrictive) of our outstanding shares (See “- Restrictions on Ownership and Transfer;”); and
- limitations on the ability of our stockholders to call special meetings of our stockholders.

Certain provisions of the management agreement between us and our Manager also could make it more difficult for third parties to acquire control of us by various means, including limitations on our right to terminate the management agreement and a requirement that, under certain circumstances, we make a substantial payment to our Manager in the event of a termination.

### **Restrictions on Ownership and Transfer**

Our certificate of incorporation, subject to certain exceptions, contains restrictions on the amount of our shares that a person may own and may prohibit certain entities from owning our shares. Our certificate of incorporation provides that (subject to certain exceptions described below) no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% of the aggregate value or number (whichever is more restrictive) of our outstanding shares.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of our shares that will or may violate any of the foregoing restrictions on transferability and ownership, or who is the intended transferee of our common stock which are transferred to the trust (as described below), will be required to give notice immediately to us, or in the case of proposed or attempted transactions will be required to give at least 15 days written notice to us, and provide us with such other information as we may request in order to determine the effect of such transfer, including, without limitation, the effect on our status as a REIT.

Our Board of Directors, in its sole discretion, may exempt a person from the foregoing restrictions. The person seeking an exemption must provide to our Board of Directors such representations, covenants and undertakings as our Board of Directors may deem appropriate. Our Board of Directors may also condition any such exemption on the receipt of a ruling from the IRS or an opinion of counsel as it deems appropriate.

Any attempted transfer of our securities which, if effective, would result in a violation of the foregoing restrictions (other than those described in the preceding paragraph) will cause the number of securities causing the violation (rounded to the nearest whole share) to be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the proposed transferee will not acquire any rights in such securities. The automatic transfer will be deemed to be effective as of the close of business on the business day (as defined in our certificate of incorporation) prior to the date of the transfer. If, for any reason, the transfer to the trust does not occur, our certificate of incorporation provides that the purported transfer in violation of the restrictions will be void ab initio. Shares held in the trust will be issued and outstanding shares. The proposed transferee will not benefit economically from ownership of any securities held in the trust, will have no rights to dividends or other distributions and no rights to vote or other rights attributable to the shares held in the trust. The trustee of the trust will have all voting rights and rights to distributions with respect to common stock held in the trust. These rights will be exercised for the exclusive benefit of the charitable beneficiary. Any distribution paid prior to our discovery that shares of stock have been transferred to the trust will be paid by the recipient to the trustee upon demand. Any distribution authorized but unpaid will be paid when due to the trustee. Any distribution paid to the trustee will be held in trust for the charitable beneficiary. Subject to Delaware law and pursuant to our certificate of incorporation, the trustee will have the authority (1) to rescind as void any vote cast by the proposed transferee prior to our discovery that the shares have been transferred to the trust and (2) to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that the shares have been transferred to the trust, the trustee will sell the shares to a person designated by the trustee, whose ownership of the shares will not violate the above ownership limitations. Upon such sale, the interest of the charitable beneficiary in the shares sold will terminate and

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the trustee will distribute the net proceeds of the sale to the proposed transferee and to the charitable beneficiary as follows. The proposed transferee will receive the lesser of (1) the price paid by the proposed transferee for the shares or, if the proposed transferee did not give value for the shares in connection with the event causing the shares to be held in the trust (e.g., a gift, devise or other similar transaction), the market price (as defined in our certificate of incorporation) of the shares on the day of the event causing the shares to be held in the trust and (2) the price received by the trustee from the sale or other disposition of the shares. Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary. If, prior to our discovery that the shares have been transferred to the trust, the shares are sold by the proposed transferee, then (1) the securities shall be deemed to have been sold on behalf of the trust and (2) to the extent that the proposed transferee received an amount for the shares that exceeds the amount the proposed transferee was entitled to receive, the excess shall be paid to the trustee upon demand.

In addition, the securities held in the trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift) and (2) the market price on the date we, or our designee, accept the offer. We will have the right to accept the offer until the trustee has sold the shares. Upon a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee.

All certificates representing the shares bear a legend referring to the restrictions described above.

These ownership limitations could delay, defer or prevent a transaction or a change in control that might involve a premium price for the shares or might otherwise be in the best interests of our stockholders.