

**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): December 15, 2023**

**SUPERIOR ENERGY SERVICES, INC.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-34037**  
(Commission File Number)

**87-4613576**  
(IRS Employer  
Identification No.)

**1001 Louisiana Street, Suite 2900**  
**Houston, Texas**  
(Address of Principal Executive Offices)

**77002**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (713) 654-2200**

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	N/A	N/A

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

Emerging growth company

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

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

On December 18, 2023, following the approval of the Board of Directors (the “**Board**”) of the Superior Energy Services, Inc. (the “**Company**”), and its stockholders, the Company filed the Second Amended and Restated Certificate of Incorporation of the Company (the “**Restated Certificate**”). Effective upon the filing of the Restated Certificate with the Secretary of State of the State of Delaware, each outstanding share of the Class B Common Stock, par value \$0.01 per share (the “**Class B Common Stock**”), of the Company was reclassified as and became one share of Class A Common Stock, par value \$0.01 per share (the “**Class A Common Stock**”), of the Company (the “**Reclassification**”). Prior to the Reclassification, holders of shares of Class B Common Stock were not entitled to vote on the election or removal of the Company’s directors. Following the Reclassification, former holders of Class B Common Stock will hold Class A Common Stock and will have one vote per share in matters subject to a stockholder vote, and will vote together with all other holders of the Class A Common Stock. The Reclassification had no impact on the economic equity interests of holders of the outstanding Class A Common Stock, including with regard to dividends or liquidation rights. Following the Reclassification, the Company will no longer be authorized to issue Class B Common Stock and all references to the Class B Common Stock have been eliminated from the Restated Certificate. In addition to making certain other ministerial or clarifying changes or updates for certain provisions no longer applicable to the Company, among other things, the Restated Certificate: (i) increases the number of authorized shares of Class A Common Stock from 50,000,000 to 52,000,000 in connection with the elimination of the Class B Common Stock, 2,000,000 shares of which were previously authorized; and (ii) provides that officers, in addition to directors, will not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty to the fullest extent permitted by Delaware law, as permitted by a 2022 amendment to the Delaware General Corporation Law.

The foregoing summary of the Restated Certificate does not purport to be complete and is subject to, and qualified in its entirety by, reference to the full text of the Restated Certificate, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and 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.

#### Retention Bonus Agreements

On December 15, 2023, the Board and the Compensation Committee of the Board approved retention bonus agreements for each of Brian K. Moore, the Company’s President and Chief Executive Officer, James W. Spexarth, the Company’s Executive Vice President, Chief Financial Officer and Treasurer, Michael J. Delahoussaye, President, Workstrings International, Bryan M. Ellis, President, Wild Well Control, International Snubbing Services, and International Production Services, and Deidre D. Toups, President, Stabil Drill, Superior Completion Services, and HB Rentals (the “**Retention Bonus Agreements**”) pursuant to which each of Messrs. Moore, Spexarth, Delahoussaye and Ellis and Ms. Toups (each, an “**Executive**”) is eligible to earn a cash retention bonus (a “**Retention Bonus**”) in the amounts set forth in the table below, payable in four equal semi-annual installments beginning on March 15, 2024, subject generally to the Executive’s continued employment on each payment date.

Executive	Retention Bonus
Brian K. Moore	\$6,750,000.00
James W. Spexarth	\$1,544,962.50
Michael J. Delahoussaye	\$1,312,500.00
Deidre D. Toups	\$1,200,000.00
Bryan M. Ellis	\$1,326,000.00

Pursuant to the Retention Bonus Agreement, as a condition to the grant of the Retention Bonus, each Executive agrees to forfeit all performance stock units (“**PSUs**”) granted pursuant to an award agreement effective as of March 28, 2022 in the case of Messrs. Moore, Spexarth and Delahoussaye and Ms. Toups, and effective as of July 18, 2022 in the case of Mr. Ellis (each, a “**PSU Award Agreement**”). Upon execution of the Retention Bonus Agreement, all rights and obligations under a PSU Award Agreement will be forfeited and terminated and the PSUs granted thereunder will be canceled and be of no further force or effect.

#### Amendment to 2021 Management Incentive Plan

On December 15, 2023, in connection with, and in order to incorporate the changes related to, the Reclassification, the Board and the Compensation Committee amended the Company’s 2021 Management Incentive Plan to define the term “Common Stock” to mean the Class A Common Stock (and any stock or other securities into which such common stock may be converted or into which they may be exchanged).

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

On December 18, 2023, holders holding an aggregate of 12,798,178 shares of Class A Common Stock and Class B Common Stock (out of 20,150,725 total shares of Class A Common Stock and Class B Common Stock outstanding in the aggregate), consisting of

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holders of 12,695,349 shares of Class A Common Stock (out of 19,998,695 shares of Class A Common Stock outstanding) and holders of 102,829 shares of Class B Common Stock (out of 152,030 shares of Class B Common Stock outstanding), as of December 15, 2023, the record date established by the Board, acting by written consent together and as separate classes, approved the Restated Certificate.

**Item 8.01 Other Events.**

On December 15, 2023, the Board adopted a Second and Restated Bylaws (the “*Bylaws*”) which implemented certain ministerial changes and updates. The foregoing summary of the Bylaws does not purport to be complete and is subject to, and qualified in its entirety by, reference to the full text of the Bylaws, a copy of which is filed as Exhibit 3.2 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

<b>Exhibit No.</b>	<b>Exhibit Description</b>
3.1	<a href="#">Second Amended and Restated Certificate of Incorporation of Superior Energy Services, Inc.</a>
3.2	<a href="#">Second Amended and Restated Bylaws of Superior Energy Services, Inc.</a>
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

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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 thereunto duly authorized.

Superior Energy Services, Inc

Date: December 20, 2023

By: /s/ James W. Spexarth

James W. Spexarth

Executive Vice President, Chief Financial Officer  
and Treasurer

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**SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**SUPERIOR ENERGY SERVICES, INC.**

Pursuant to the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (“**Delaware Law**”), Superior Energy Services, Inc., a corporation organized under the laws of the State of Delaware, as amended (the “**Corporation**”), does hereby certify that:

FIRST: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 29, 2021 under the name “Superior NewCo, Inc.”. The Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on February 2, 2021 under the name “Superior NewCo, Inc.”, and a further Certificate of Amendment to such Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on February 2, 2021 under the name “Superior NewCo, Inc.” to change the Corporation’s name to Superior Energy Services, Inc. (as so amended and amended and restated, the “**Original Certificate of Incorporation**”).

SECOND: This Second Amended and Restated Certificate of Incorporation of the Corporation (the “**Amended and Restated Certificate of Incorporation**”) has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of Delaware Law and hereby amends and restates the Original Certificate of Incorporation in its entirety. The Amended and Restated Certificate of Incorporation shall become effective upon filing with the Secretary of State of the State of Delaware.

THIRD: The Amended and Restated Certificate of Incorporation of the Corporation shall, at the effective time, read as follows:

**ARTICLE 1.  
NAME**

The name of the Corporation is Superior Energy Services, Inc.

**ARTICLE 2.  
REGISTERED OFFICE AND AGENT**

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

**ARTICLE 3.  
PURPOSE AND POWERS**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under Delaware Law.

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**ARTICLE 4.**  
**CAPITAL STOCK**

**(A) Authorized Shares**

(1) **Classes of Stock.** The total number of shares of all classes of stock that the Corporation is authorized to issue is 54,000,000 consisting of:

- (i) 52,000,000 shares of Class A Common Stock, par value \$0.01 per share (the “**Common Stock**”); and
- (ii) 2,000,000 shares of preferred stock, par value \$0.01 per share (the “**Preferred Stock**”).

(2) **Preferred Stock.** The Board of Directors of the Corporation (the “**Board of Directors**”) is hereby empowered, without any action or vote by the Corporation’s stockholders, to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series of Preferred Stock and the number of shares constituting each such class or series, and to increase or decrease the number of shares of any such class or series to the extent permitted by Delaware Law.

(3) **Reclassification.** Immediately upon the effectiveness (the “**Effective Time**”) of this Amended and Restated Certificate of Incorporation, each share of the Corporation’s Class B Common Stock, par value \$0.01 per share, issued and outstanding or held as treasury stock immediately prior to the Effective Time, shall automatically and without any action on the part of the holder thereof or the Corporation be reclassified as and become one share of Common Stock. Any stock certificate that immediately prior to the Effective Time represented shares of the Corporation’s Class B Common Stock shall from and after the Effective Time be deemed to represent shares of Common Stock, without the need for surrender or exchange thereof or, if such shares are registered in book-entry form immediately prior to the Effective Time, such shares shall from and after the Effective Time be deemed to be registered in book entry form as that number of shares of Common Stock into which such shares of the Corporation’s Class B Common Stock shall have been reclassified pursuant to this Amended and Restated Certificate of Incorporation.

**(B) Voting Rights**

(1) Each share of Common Stock shall entitle the record holder thereof to one vote on all matters on which stockholders generally are entitled to vote.

(2) Except as otherwise required in this Amended and Restated Certificate of Incorporation, the Stockholders Agreement or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with such holders of Preferred Stock). As used herein, “**Stockholders Agreement**” means that certain Stockholders Agreement, as may be amended, modified, supplemented or amended and restated from time to time, by and among the Corporation and the other parties thereto entered into as of February 2, 2021.

(3) Except as otherwise required by law or the Stockholders Agreement, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to the Preferred Stock) that relates solely to the terms of the Preferred Stock if the holders of the Preferred Stock are entitled to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to the Preferred Stock) or pursuant to Delaware Law as currently in effect or as the same may hereafter be amended; provided, that any such amendment that would be adverse to the holders of Common Stock shall also require the approval of holders of at least a majority of the outstanding shares of Common Stock.

#### **(C)Dividends**

Subject to applicable law and the rights of the holders of the Preferred Stock (if applicable), dividends may be declared and paid on the Common Stock out of the assets of the Corporation that are by law available therefor, at such times and in such amounts as the Board of Directors in its discretion shall determine. Any dividends declared by the Board of Directors to the holders of the then-outstanding Common Stock shall be paid to the holders thereof *pro rata* in accordance with the number of shares of Common Stock held by each such holder as of the record date of such dividend.

#### **(D)Dissolution, Distributions Upon Liquidation or Winding Up**

Subject to applicable law, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of the Preferred Stock shall be entitled, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares of Common Stock held by each such stockholder. A consolidation, reorganization or merger of the Corporation with any other Person or Persons, or a sale of all or substantially all of the assets of the Corporation, shall not be considered to be a dissolution, liquidation or winding up of the Corporation within the meaning of this Article 4(D). As used in this Amended and Restated Certificate of Incorporation, “**Person**” means an individual or entity, including any partnership, corporation, association, joint stock company, trust, joint venture, limited liability company, unincorporated organization or governmental authority (or any department, agency or political subdivision thereof).

### **ARTICLE 5. BYLAWS**

The Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation (the “**Bylaws**”).

The stockholders may, without the approval of the Board of Directors, adopt, amend or repeal the Bylaws with the affirmative vote of the holders of not less than a majority of the voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

**ARTICLE 6.**  
**BOARD OF DIRECTORS**

**(A)Power of the Board of Directors.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

**(B)Number of Directors.** Subject to the terms of the Stockholders Agreement, the number of directors which shall constitute the Board of Directors shall, as of the Effective Time, be seven and, thereafter, shall be fixed exclusively by one or more resolutions adopted from time to time solely by the Board of Directors. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors and, except as otherwise expressly required by law, by the Stockholders Agreement or by this Amended and Restated Certificate of Incorporation, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

**(C)Election of Directors.**

(1) Each director shall serve for a term ending on the date of the next annual meeting of stockholders. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, retirement, resignation, disqualification or removal. In no event will a decrease in the number of directors shorten the term of any incumbent director.

(2) There shall be no cumulative voting in the election of directors. Election of directors need not be by written ballot unless the Bylaws so provide.

**(D)Vacancies.** Subject to the terms of the Stockholders Agreement, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Subject to the terms of the Stockholders Agreement, when one or more directors shall resign from the Board of Directors effective as of a future date, a majority of the directors then in office shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies. Notwithstanding the foregoing, but subject to the terms of the Stockholders Agreement, vacancies on the Board of Directors resulting from removal of any director by the holders of Common Stock shall be filled by the holders of Common Stock, acting at the same special meeting at which such director is removed (or, in the event the removal occurs by written consent, acting by written consent at the same time such director is removed).

**(E)Chairman of the Board of Directors.** Subject to the terms of the Stockholders Agreement, the Board of Directors shall elect one of its members as chairman, as selected from time to time by a majority of the Board of Directors excluding the proposed chairman (the "**Chairman of the Board**").



**ARTICLE 7.  
MEETINGS OF STOCKHOLDERS**

**(A)Annual Meetings.** Unless directors are elected by written consent in lieu of an annual meeting as permitted by Delaware Law, an annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting.

**(B)Special Meetings.** Special meetings of stockholders may be called by the Board of Directors or the Chairman of the Board and shall be called by the Secretary at the request in writing of holders of record of at least 10% of the voting power of the outstanding capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting. Such request shall state the purpose or purposes of the proposed meeting.

**ARTICLE 8.  
STOCKHOLDER ACTION BY WRITTEN CONSENT**

Subject to the rights of the holders of any Preferred Stock then outstanding as may be provided in any certificate of designations relating to such Preferred Stock, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation 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, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with Section 228 of Delaware Law.

No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the first consent delivered in the manner required by this Article 8 and Delaware Law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders as of the record date for the action by consent who have not consented in writing and who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting were the record date for the action by consent.

**ARTICLE 9.  
LIMITATION OF LIABILITY; INDEMNIFICATION**

**(A)Limited Liability.** A director or officer of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, as applicable, to the fullest extent permitted by Delaware Law. Any repeal or amendment or modification of this Article 9(A), or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article 9(A), will, to the extent

permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide a broader limitation on a retroactive basis than permitted prior thereto), and will not adversely affect any limitation on the personal liability of any director or officer of the Corporation at the time of such repeal or amendment or modification or adoption of such inconsistent provision to the extent relating to prior acts or omissions.

**(B)Right to Indemnification.**

(1) Each Person (and the heirs, executors or administrators of such Person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such Person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, limited liability company, partnership, joint venture, trust or other enterprise (an “**Indemnitee**”), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this Article 9 shall also include the right to be paid by the Corporation the expenses and costs (including attorneys’ fees) actually and reasonably incurred by any Indemnitee in defending or otherwise participating in any such proceeding and any appeal therefrom to the fullest extent authorized by Delaware Law; provided, however, if required by Delaware Law, such payment of expenses and costs in advance of the final disposition of the proceeding shall be made only upon receipt by the Corporation of an undertaking by or on behalf of such Indemnitee to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal that such Indemnitee is not entitled to be indemnified for such expenses under this Article 9 or otherwise.

(2) The right to indemnification conferred in this Article 9 shall be a contract right between the Corporation and each Indemnitee and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent, or if the relevant provisions of Delaware Law or other applicable law cease to be in effect. Such contract right shall vest for each Indemnitee who is a director, officer, employee or agent at the time such Person is elected or appointed to such position, and no repeal or modification of this Article 9 or any such law shall affect any such vested rights or obligations then existing with respect to any state of facts or proceeding arising after such election or appointment and prior to such repeal or modification.

(3) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

**(C)Insurance.** The Corporation may purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any expense, liability or loss 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 to indemnify such Person against such liability under Delaware Law or this Article 9.

**(D)Nonexclusivity of Rights.** The rights and authority conferred in this Article 9 shall not be exclusive of any other right that any Person may otherwise have or hereafter acquire. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors or officers respecting indemnification and advances, to the fullest extent not prohibited by Delaware Law or by any other applicable law.

**(E)Preservation of Rights.** Neither the amendment nor repeal of this Article 9, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall adversely affect any right or protection of any Person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

**(F)Jointly Indemnifiable Claims.** Given that certain Jointly Indemnifiable Claims (as defined below) may arise due to the service of an Indemnitee as a director and/or officer of the Corporation at the request of an Indemnitee-Related Entity (as defined below), the Corporation shall be fully and primarily responsible for the payment to the Indemnitee in respect of indemnification or advancement of expenses in connection with any such Jointly Indemnifiable Claims, pursuant to and in accordance with the terms of this Article 9, irrespective of any right of recovery an Indemnitee may have from any Indemnitee-Related Entity. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by an Indemnitee-Related Entity and no right of advancement, indemnification or recovery an Indemnitee may have from any Indemnitee-Related Entity shall reduce or otherwise alter the rights of an Indemnitee or the obligations of the Corporation under this Article 9. In the event that an Indemnitee-Related Entity shall make any payment to the Indemnitee in respect of indemnification or advancement of expenses with respect to any Jointly Indemnifiable Claim, such Indemnitee-Related Entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee against the Corporation, and the Indemnitee shall execute all documents and instruments reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents and instruments as may be necessary to enable such Indemnitee-Related Entity effectively to bring suit to enforce such rights. Each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Article 9(F) and entitled to enforce this Article 9(F).

The term “**Indemnitee-Related Entity**” means any corporation, limited liability company, partnership, joint venture, trust or other enterprise (other than the Corporation or any other corporation, partnership, joint venture, trust or other enterprise for which the Indemnitee has agreed, on behalf of the Corporation or at the Corporation’s request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an Indemnitee may be entitled to indemnification or advancement of expenses in respect of a matter with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

The term “**Jointly Indemnifiable Claims**” shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both an Indemnitee-Related Entity and the

Corporation pursuant to applicable law or any agreement, certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or an Indemnitee-Related Entity, as applicable.

## **ARTICLE 10. CORPORATE OPPORTUNITIES**

**(A)General.** To the fullest extent permitted by law and except as expressly agreed to by a Dual Role Person (as defined below) in a separate instrument signed by a Dual Role Person with the Corporation or any of its Subsidiaries (as defined below) or any of their respective predecessors:

(1) To the extent provided in this Article 10, the Corporation and its Subsidiaries renounce any interest or expectancy of the Corporation or any of its Subsidiaries or the Corporation's stockholders in, or in being offered an opportunity to participate in, any Corporate Opportunity (as defined below) about which a Dual Role Person acquires knowledge. To the fullest extent permitted by Delaware Law and subject to Article 10(A)(3), no Dual Role Person or any of such Person's respective Representatives (as defined below) shall owe any fiduciary duty to, nor shall any Dual Role Person or any of such Person's respective Representatives be liable for breach of fiduciary duty to, the Corporation or any of its Subsidiaries or any of the Corporation's stockholders in connection with a Corporate Opportunity (as defined below), and no Dual Role Person or any of such Person's respective Representatives shall violate a duty or obligation to the Corporation or any of its Subsidiaries merely because such Person's conduct furthers such Person's own interest, except as specifically set forth in Article 10(A)(3). Any Dual Role Person or any of such Person's respective Representatives may lend money to, and transact other business with, the Corporation and its Subsidiaries. The rights and obligations of any such Person who lends money to, contracts with, borrows from or transacts business with the Corporation or any of its Subsidiaries are the same as those of a Person who is not involved with the Corporation or any of its Subsidiaries. No transaction between any Dual Role Person or any of such Person's respective Representatives, on the one hand, and the Corporation or any of its Subsidiaries, on the other hand, shall be voidable solely because any Dual Role Person or any of such Person's respective Representatives has a direct or indirect interest in the transaction. Except as specifically set forth in Article 10(A)(3), nothing herein contained shall prevent any Dual Role Person or any of such Person's respective Representatives from conducting or investing in, independently or with others, any other business, including serving as an officer, director, employee, stockholder, partner or equityholder of any corporation, partnership or limited liability company, a trustee of any trust, an executor or administrator of any estate, or an administrative official of any other business or not-for-profit entity, or from receiving any compensation in connection therewith.

(2) Except as specifically set forth in Article 10(A)(3), none of any Dual Role Person or any of such Person's respective Representatives shall owe any duty to refrain from (i) directly or indirectly engaging or investing in, independently or with others, any business activity of any type or description, including those that might be the same or similar activities or lines of business as the Corporation or any of its Subsidiaries or that may compete with the Corporation or any of its Subsidiaries or (ii) doing business with any of the Corporation's or any of its Subsidiaries' clients, customers, suppliers or others doing business with it or them. In the event

that any Dual Role Person or any of such Person's respective Representatives acquires knowledge of a potential transaction or matter that may be a Corporate Opportunity for any Dual Role Person or any of such Person's respective Representatives, on the one hand, and the Corporation or any of its Subsidiaries, on the other hand, such Dual Role Person or Representatives, as the case may be, shall have no duty to communicate or offer such Corporate Opportunity to the Corporation or any of its Subsidiaries, subject to Article 10(A)(3). Dual Role Persons shall have the right to hold any transaction or matter for their own account or to recommend such transaction or matter to Persons other than the Corporation or any of its Subsidiaries, subject to Article 10(A)(3). No Dual Role Person or any of such Person's respective Representatives shall be liable to the Corporation or any of its Subsidiaries or any of the Corporation's stockholders for breach of any fiduciary duty by reason of the fact that any Dual Role Person or any of such Person's respective Representatives pursues or acquires such Corporate Opportunity for itself, directs such Corporate Opportunity to another Person or does not present such Corporate Opportunity to the Corporation or any of its Subsidiaries, subject to Article 10(A)(3).

(3) If a third party presents an Included Corporate Opportunity (as defined below) to a Person who is both a director (or its equivalent) of the Corporation or a Subsidiary of the Corporation and a Dual Role Person, expressly and solely in such Person's capacity as a director (or its equivalent) of the Corporation or Subsidiary of the Corporation, and such Person acts in good faith in a manner consistent with the policy that such Included Corporate Opportunity belongs to the Corporation and its Subsidiaries, including disclosing such Included Corporate Opportunity to the Corporation, then such Person (i) shall be deemed to have fully satisfied and fulfilled any fiduciary duty that such Person has to the Corporation and/or Subsidiary as a director (or its equivalent) of the Corporation or Subsidiary of the Corporation with respect to such Included Corporate Opportunity, (ii) shall not be liable to the Corporation or any of its Subsidiaries or any of the Corporation's stockholders for breach of fiduciary duty by reason of such Person's action or inaction with respect to such Included Corporate Opportunity, (iii) shall be deemed to have acted in good faith and in a manner that such Person reasonably believed to be in, and not opposed to, the Corporation's or any of its Subsidiaries' best interests, and (iv) shall be deemed not to have breached such Person's duty of loyalty to the Corporation or any of its Subsidiaries and the Corporation's stockholders and not to have derived an improper personal benefit therefrom; provided that, in all events, a Dual Role Person may pursue such Included Corporate Opportunity to the extent the Corporation shall decide not to pursue or to cause a Subsidiary not to pursue, such Included Corporate Opportunity.

(4) For purposes of this Article 10:

(i) "**Corporate Opportunity**" means any business opportunities related to the business of the Corporation or its Subsidiaries or any business opportunities in which the Corporation or its Subsidiaries may otherwise have an interest.

(ii) "**Dual Role Person**" means any of the following, individually or collectively, other than any Person who is an employee of the Corporation or any of its Subsidiaries or any Person that is an affiliate of such employee: (A) any stockholder of the Corporation or (B) any Person elected, appointed or otherwise serving as a director (or its equivalent) of the Corporation or any of its Subsidiaries, and, in each case of clauses (A) and (B), any of such Person's affiliates (other than, if applicable, the Corporation and its Subsidiaries).

(iii)“**Included Corporate Opportunity**” means any business opportunity that the Corporation or any of its Subsidiaries is financially and legally able to undertake that is, from its nature, in the Corporation’s or any of its Subsidiaries’ lines of business, is of practical advantage to the Corporation or any of its Subsidiaries and is one in which the Corporation or any of its Subsidiaries has an interest or a reasonable expectancy, and in which, by embracing such opportunity, the self-interest of any Dual Role Person or their respective Representatives will be brought into conflict with the Corporation’s or any of its Subsidiaries’ self-interest.

(iv)“**Representatives**” means, with respect to any Person, the directors, officers, employees, affiliates, general partners and managing members of such Person.

(v)“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof; *provided* that in the case of this clause (b), if a Person has the right to serve as the “manager” (or comparable role) of a limited liability company, partnership, association or other business entity (other than a corporation), such limited liability company, partnership, association or other business entity (other than a corporation) and each of its Subsidiaries shall be deemed to be a Subsidiary of such Person.

**(B)Preservation of Rights.** Neither the amendment nor repeal of this Article 10, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall adversely affect any right or protection of any Person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

**(C)Notice of Article.** To the fullest extent permitted by law, any Person purchasing or otherwise acquiring or holding any interest in any shares of capital stock of the Corporation (including, without limitation, Common Stock) shall be deemed to have notice of and to have consented to the provisions of this Article 10.

## **ARTICLE 11. REDEMPTION IN CONNECTION WITH QUALIFIED IPO**

**(A)**In connection with a Qualified IPO, the Board of Directors is hereby authorized, by notice to all stockholders of the Corporation as provided in Article 11(B), to cause the redemption by the Corporation of up to 25% of the shares of Common Stock held by each stockholder of the Corporation (such percentage, as determined by the Board of Directors, the “**Redemption Percentage**”), at a price per share equal to the net proceeds per share of Common Stock to the Corporation, after payment of underwriting discounts and commissions, in the

Qualified IPO. The time of the consummation of such redemption shall be immediately prior to the closing time of the Qualified IPO (the “**Redemption Date**”). The Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware Law governing distributions to stockholders.

(B)The Corporation shall send written notice of such redemption (the “**Redemption Notice**”) to each stockholder of the Corporation not less than five (5) Business Days prior to the expected Redemption Date. The Redemption Notice shall state:

- (i) the Redemption Percentage; and
- (ii) the expected Redemption Date.

The term “**Qualified IPO**” means an IPO whereby the Corporation (or any successor) and/or the selling stockholders, as applicable, shall receive at least \$100.0 million in aggregate gross proceeds from the sale of Common Stock, before giving effect to any underwriting discounts and commissions and related offering expenses.

The term “**IPO**” means the consummation of the first public offering and sale of Common Stock by the Corporation (other than on Form S-4 or Form S-8 or any similar or successor form), pursuant to an effective registration statement under the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations (the “**Securities Act**”).

The term “**Business Day**” means any day other than a Saturday, Sunday or day on which commercial banks in the State of New York are authorized or required by applicable law, rule or regulation to close for business.

## **ARTICLE 12. STOCKHOLDERS AGREEMENT**

For so long as the Stockholders Agreement is in effect, any Person who hereafter acquires (whether pursuant to an issuance by the Corporation, a transfer by a stockholder or otherwise) shares of Common Stock or any other equity securities of the Corporation who is not already a party to the Stockholders Agreement shall be required to deliver a properly executed Joinder (as defined in the Stockholders Agreement) to the Corporation as a condition to the effectiveness of such acquisition, and any acquisition in which the acquirer of Common Stock or other equity securities of the Corporation does not deliver such a Joinder (if applicable) shall be void ab initio. For so long as the Stockholders Agreement is in effect, the provisions of the Stockholders Agreement shall be incorporated by reference into the relevant provisions hereof, and such provisions shall be interpreted and applied in a manner consistent with the terms of the Stockholders Agreement.

## **ARTICLE 13. AMENDMENTS**

Subject to such limitations as may be from time to time imposed by other provisions of this Amended and Restated Certificate of Incorporation, the Stockholders Agreement and subject to

the rights of any holders of Preferred Stock as may be provided in any certificate of designations relating to such Preferred Stock, the Corporation reserves the right to amend this Amended and Restated Certificate of Incorporation in any manner permitted by Delaware Law and except as otherwise specifically provided herein or by Delaware Law, all rights and powers conferred upon stockholders, directors and officers herein are granted subject to this reservation.

#### **ARTICLE 14. EXCLUSIVE FORUM**

**(A)**Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery does not have subject matter jurisdiction, another state court sitting in the State of Delaware or, if and only if neither the Court of Chancery nor any state court sitting in the State of Delaware has subject matter jurisdiction, then the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, or a claim of aiding and abetting any such breach of fiduciary duty, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of Delaware Law or this Amended and Restated Certificate of Incorporation or the Bylaws (in each case, as they may be amended from time to time), (iv) any action to interpret, apply, enforce or determine the validity of this Amended and Restated Certificate of Incorporation or the Bylaws, (v) any action asserting a claim governed by the internal affairs doctrine or (vi) any action asserting an "internal corporate claim" as that term is defined in Section 115 of Delaware Law. The choice of forum provision set forth in this Section (A) of this Article 14 does not apply to any actions arising under the Securities Act or the Securities Exchange Act of 1934, as amended.

**(B)**Unless the Corporation consents in writing to the selection of an alternative forum, the federal district court for the District of Delaware shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act against the Corporation or any director or officer of the Corporation.

**(C)**Any Person purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article 14.

#### **ARTICLE 15. MISCELLANEOUS AND SEVERABILITY**

The Corporation expressly elects not to be governed by Section 203 of Delaware Law.

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (A) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and



Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby and (B) to the fullest extent permitted by applicable law, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer on this 18th day of December, 2023.

**SUPERIOR ENERGY SERVICES, INC.**

By: /s/ Brian K. Moore

Name: Brian K. Moore

Title: Chief Executive Officer

*[Signature Page to Second Amended and Restated Certificate of Incorporation of Superior Energy Services, Inc.]*

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**SECOND AMENDED AND RESTATED BYLAWS**  
**(the “Bylaws”)**

**OF**

**SUPERIOR ENERGY SERVICES, INC.**  
**(the “Corporation”)**

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**ARTICLE 1.**  
**OFFICES**

Section 1.01 *Registered Office*. The registered office of the Corporation, and the registered agent of the Corporation at such address, shall be as fixed in the Corporation’s Second Amended and Restated Certificate of Incorporation (as it may be amended and/or restated from time to time, the “**Certificate of Incorporation**”). The registered office or registered agent of the Corporation may thereafter be changed from time to time by action of the board of directors of the Corporation (the “**Board of Directors**”).

Section 1.02 *Other Offices*. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 1.03 *Books and Records*. The books and records of the Corporation may be kept within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE 2.**  
**MEETINGS OF STOCKHOLDERS**

Section 2.01 *Time and Place of Meetings*. All meetings of stockholders shall be held at such place, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board of Directors (or the Chairman of the Board of Directors in the absence of a designation by the Board of Directors). The Board of Directors may, in its sole discretion, determine that a meeting of stockholders of the Corporation shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”).

Section 2.02 *Annual Meetings*. Unless directors are elected by written consent in lieu of an annual meeting as permitted by Delaware Law, an annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting.

Section 2.03 *Special Meetings*. Special meetings of stockholders may be called by the Board of Directors or the Chairman of the Board of Directors and shall be called by the Secretary at the request in writing of holders of record of at least 10% of the voting power of the outstanding

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capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting. Such request shall state the purpose or purposes of the proposed meeting. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

*Section 2.04 Notice of Meetings and Adjourned Meetings; Waivers of Notice.*

(a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by Delaware Law, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Unless these Bylaws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

*Section 2.05 Quorum.* Unless otherwise provided under the Certificate of Incorporation, the Stockholders Agreement dated February 2, 2021, by and among the Corporation and the other persons party thereto (as may be amended from time to time in accordance therewith, the “**Stockholders Agreement**”) or these Bylaws and subject to Delaware Law, the presence, in person or by proxy, of the holders of a majority of the total voting power of all outstanding capital stock of the Corporation generally entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting or a majority in voting interest of the stockholders present in person or represented by proxy may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted that might have been transacted at the meeting as originally notified.

*Section 2.06 Voting.*

(a) Unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement and subject to Delaware Law, each stockholder shall be entitled to one vote for each

outstanding share of capital stock of the Corporation held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Except as otherwise provided by law, the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, the affirmative vote of the holders of a majority of the votes cast at the meeting on the subject matter shall be the act of the stockholders. Abstentions shall not be counted as votes cast. Subject to the rights of the holders of any class or series of preferred stock to elect additional directors under specific circumstances, as may be set forth in the certificate of designations for such class or series of preferred stock and the Stockholders Agreement, directors shall be elected by a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting. No proxy shall be voted after three (3) years from its date, unless said proxy expressly provides for a longer period.

#### Section 2.07 *Action by Consent.*

(a) Subject to the rights of the holders of any class or series of preferred stock then outstanding as may be set forth in the certificate of designations for such class or series of preferred stock, and unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders as of the record date for the action by consent who have not consented in writing and who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting were the record date for the action by consent.

(b) No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the first consent delivered in the manner required by Section 2.07(a) and Delaware Law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation as provided herein.

Section 2.08 *Organization.* At each meeting of stockholders, the Chairman of the Board of Directors or, in the Chairman's absence, the director designated by the vote of the majority of the directors present at such meeting, shall act as chairman of the meeting. The Secretary (or in

the Secretary's absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 2.09 *Order of Business*. The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

Section 2.10 *Nomination of Directors and Proposal of Other Business*.

(a) *Annual Meetings of Stockholders*.

(i) Nominations of persons for election to the Board of Directors at an annual meeting of stockholders, or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders, may be made 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 any committee thereof, (C) as may be provided in the certificate of designations for any class or series of preferred stock, (D) as may be provided in the Stockholders Agreement or (E) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in paragraph (ii) of this Section 2.10(a) and at the time of the annual meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.10(a), and, except as otherwise required by law, any failure to comply with these procedures shall result in the nullification of such nomination or proposal.

(ii) For nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (E) of paragraph (i) of this Section 2.10(a), 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, except in respect of nominations of any of the Goldentree Directors or the Monarch Director (each as defined in the Stockholders Agreement) (the Goldentree Directors and the Monarch Director together, the "**Stockholders Agreement Directors**"), a stockholder's notice shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the first anniversary of the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 30 days after such anniversary date then to be timely such notice must be received by the Corporation no earlier than 60 days prior to such annual meeting and no later than the later of 30 days prior to the date of the meeting or the 10th day following the day on which public announcement of the date of the meeting was first made by the Corporation. In no event shall the adjournment or postponement of any meeting, or any announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iii) Except with respect to nominations of Stockholders Agreement Directors, a stockholder's notice to the Secretary shall set forth (A) as to each person whom the stockholder proposes to nominate for election or reelection as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934 (as amended (together with the rules and regulations promulgated thereunder), the "**Exchange Act**") (whether or not the Corporation is then subject to Regulation 14A under the Exchange Act); and (2) a reasonably detailed description of any compensatory, payment or other financial agreement, arrangement or understanding that such person has with any other person or entity other than the Corporation, including the amount of any payment or payments received or receivable thereunder, in each case in connection with candidacy or service as a director of the Corporation (a "**Third-Party Compensation Arrangement**"), (B) as to any other business 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 text of the proposed amendment), the reasons for conducting such business and any material interest in such business of such stockholder and (C) as to the stockholder giving the notice:

(1) the name and address of such stockholder (as they appear on the Corporation's books);

(2) for each class or series, the number of shares of capital stock of the Corporation that are held of record or are beneficially owned by such stockholder;

(3) 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 bring such nomination or other business before the meeting; and

(4) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

(b) *Special Meetings of Stockholders.* The proposal of business to be transacted by the stockholders at a special meeting of stockholders may be made only pursuant to the Corporation's notice of meeting (or any supplement thereto) (which notice of meeting shall, in the case of a meeting called at the request of stockholders in accordance with Section 2.03, include the proposal or proposals of the requesting stockholders). Unless otherwise provided under the Certificate of Incorporation or the Stockholders Agreement, if the election of directors is included as business to be brought before a special meeting in the Corporation's notice of meeting, then nominations of persons for election to the Board of Directors at a special meeting of stockholders may be made by any stockholder who is a stockholder of record at the time of giving of notice provided for in this Section 2.10(b) and at the time of the special meeting, who shall be entitled to vote at the

meeting and who complies with the procedures set forth in this Section 2.10(b). For nominations (other than nominations of any Stockholders Agreement Directors) to be properly brought by a stockholder before a special meeting of stockholders pursuant to this Section 2.10(b), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (A) not earlier than 60 days prior to the date of the special meeting nor (B) later than the later of 30 days prior to the date of the special meeting or the 10th day following the day on which public announcement of the date of the special meeting was first made. A stockholder's notice to the Secretary shall comply with the notice requirements of Section 2.10(a)(iii).

(c) *General.*

(i) No person, except any Stockholder Agreement Director, shall be eligible to be nominated by a stockholder to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.10 or as otherwise provided in the Stockholders Agreement. No business proposed by a stockholder shall be conducted at a stockholder meeting except in accordance with this Section 2.10.

(ii) The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws or that business was not properly brought before the meeting, and if he/she should so determine, he/she shall so declare to the meeting and the defective nomination shall be disregarded or such business shall not be transacted, as the case may be. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, 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 proposed business, such nomination shall be disregarded or such proposed business shall not be transacted, as the case may be. For purposes of this Section 2.10, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

ARTICLE 3.  
DIRECTORS

Section 3.01 *General Powers.* Except as otherwise provided in Delaware Law, the Certificate of Incorporation or the Stockholders Agreement, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.



Section 3.02*Number; Election and Term of Office.* The number of directors which shall constitute the Board of Directors shall, as of the date hereof, be seven, and thereafter, but subject to the Stockholders Agreement, be fixed by one or more resolutions adopted from time to time solely by the Board of Directors. Each director shall be elected annually at each annual meeting of stockholders (except as provided in Section 3.12) to hold office for a term expiring on the date of the annual meeting of stockholders next following the annual meeting at which such director was most recently elected, with each director to hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 3.03*Quorum and Manner of Acting.* Unless the Certificate of Incorporation, the Stockholders Agreement or these Bylaws require a greater number, a majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors and, except as otherwise expressly required by law, by the Certificate of Incorporation or by the Stockholders Agreement, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat shall adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.04*Time and Place of Meetings.* The Board of Directors shall hold its meetings at such place, either within or without the State of Delaware, and at such time as may be determined from time to time by the Board of Directors (or the Chairman of the Board of Directors in the absence of a determination by the Board of Directors).

Section 3.05*Annual Meeting.* The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such place either within or without the State of Delaware, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 3.07 or in a waiver of notice thereof signed by any director who chooses to waive the requirement of notice.

Section 3.06*Regular Meetings.* After the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given.

Section 3.07*Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or the President and shall be called by the Chairman of the Board of Directors, President or Secretary of the Corporation on the written request of two directors. Notice of special meetings of the Board of Directors shall be given to each director at

least one day before the date of the meeting in such manner as is determined by the Board of Directors.

Section 3.08 *Committees*. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute 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. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to any of the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter expressly required by Delaware Law to be submitted to the stockholders for approval or (b) adopting, amending or repealing the Bylaws of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.09 *Action by Consent*. Unless otherwise restricted by the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.10 *Telephonic Meetings*. Unless otherwise restricted by the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or such committee, as the case may be, 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 the meeting.

Section 3.11 *Resignation*. Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.12 *Vacancies*. Unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office until such director's successor shall have been duly elected and qualified or until

such director's earlier death, resignation or removal. Subject to the Stockholders Agreement, if there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement, when one or more directors shall resign from the Board of Directors effective as of a future date, a majority of the directors then in office shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies. Notwithstanding the foregoing, subject to the terms of the Certificate of Incorporation and the Stockholders Agreement, vacancies on the Board of Directors resulting from removal of any director by the stockholders shall be filled by the stockholders, acting at the same special meeting at which such director is removed (or, in the event the removal occurs by written consent, acting by written consent at the same time such director is removed).

Section 3.13*Removal*. Unless otherwise provided under the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any election of directors and the vacancies thus created may be filled in accordance with Section 3.12.

Section 3.14*Compensation*. Unless otherwise restricted by the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, the Board of Directors shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

Section 3.15*Chairman of the Board*. The Chairman of the Board shall, if present, preside at all meetings of the Board of Directors. In the absence of the Chairman of the Board, a director designated by a majority of the directors in accordance with the Stockholders Agreement may preside at a meeting of the Board of Directors as the chair of any such meeting where a quorum is present. The Chairman of the Board shall have such other powers and duties as may from time to time be prescribed by the Board of Directors, the Stockholders Agreement or these Bylaws. Subject to the terms of the Stockholders Agreement, the Board of Directors (acting by majority vote of all directors, excluding the director under consideration for Chairman of the Board) shall elect one of its members as the Chairman of the Board.

Section 3.16*Preferred Stock Directors*. Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of preferred stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of such class or series of preferred stock adopted by resolution or resolutions adopted by the Board of Directors pursuant to the Certificate of Incorporation, and such directors so elected shall not be subject to the provisions of this Article 3 unless otherwise provided therein.

#### ARTICLE 4. OFFICERS

Section 4.01*Elected Officers*. The Corporation may have elected officers and appointed officers. The elected officers of the Corporation shall be elected by the Board of Directors ("**Elected Officers**") and shall consist of: a Chief Executive Officer; a President; a Chief Financial

Officer; a Treasurer; a Secretary; or such other officers (including without limitation, a General Counsel and Executive Vice Presidents) as the Board of Directors from time to time may determine. Elected Officers shall each have such powers and duties as generally pertain to their respective offices. Such Elected Officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors. The Secretary shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose, or as otherwise determined by the Board of Directors. One person may hold the offices and perform the duties of any two or more of said offices, except that no one person shall hold the offices and perform the duties of President and Secretary.

Section 4.02 *Appointed Officers*. All other officers of the Corporation shall be appointed by the Chief Executive Officer of the Corporation (“**Appointed Officers**”) and shall serve at the pleasure of the Chief Executive Officer and shall hold such officer titles solely for purposes of identification and business convenience. Appointed Officers shall not be considered Elected Officers. Unless otherwise expressly provided by the Chief Executive Officer and except as required by law, Appointed Officers shall not be considered officers for any purpose, including, without limitation, for purposes of any indemnification to which officers may be entitled under the Certificate of Incorporation or otherwise and any federal securities laws and regulations. Appointed Officers shall have the authority to obligate and bind the Corporation only with respect to the ordinary course of their business activities on behalf of the Corporation within the parameters of their authority as specified from time to time by the Board of Directors or the Chief Executive Officer or his or her designee. The Corporation may have one or more Assistant Treasurers, Assistant Secretaries and Assistant Controllers and such other Appointed Officers, agents and employees as the Board of Directors may deem necessary, each of whom shall hold office for such period as the Board of Directors may from time to time determine.

Section 4.03 *Appointment, Term of Office and Remuneration*. The Elected Officers shall be appointed by the Board of Directors in the manner determined by the Board of Directors. The Appointed Officers shall be appointed by the Chief Executive Officer in the manner determined by the Chief Executive Officer. Each Elected Officer and Appointed Officer shall hold office until his or her successor is appointed, or until his or her earlier death, resignation or removal. The remuneration of all Elected Officers of the Corporation shall be fixed by the Board of Directors. Any vacancy in any office shall be filled in such manner as the Board of Directors shall determine.

Section 4.04 *Removal*. Any Elected Officer or Appointed Officer may be removed, with or without cause, at any time, by resolution adopted by the Board of Directors.

Section 4.05 *Resignations*. Any Elected Officer or Appointed Officer may resign at any time by giving written notice to the Board of Directors (or to an Elected Officer if the Board of Directors has delegated to such Elected Officer the power to appoint and to remove such officer). The resignation of any Elected Officer or Appointed Officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE 5.  
CAPITAL STOCK

Section 5.01 *Uncertificated Shares*. The shares of the Corporation shall be uncertificated and shall be represented by book entries on the Corporation's securities transfer books and records, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be represented by certificates. Except as otherwise required by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of shares represented by certificates of the same class and series shall be identical. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman or Vice Chairman of the Board of Directors, or the Chief Executive Officer, President or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Corporation shall not have power to issue a certificate in bearer form.

Section 5.02 *Transfer of Shares*. Subject to the transfer restrictions in the Certificate of Incorporation and the Stockholders Agreement, shares of the stock of the Corporation may be transferred on the record of stockholders of the Corporation by the holder thereof or by such holder's duly authorized attorney upon surrender of a certificate therefor properly endorsed or upon receipt of proper transfer instructions from the registered holder of uncertificated shares or by such holder's duly authorized attorney and upon compliance with appropriate procedures for transferring shares in uncertificated form, unless waived by the Corporation.

Section 5.03 *Authority for Additional Rules Regarding Transfer*. Subject to the Certificate of Incorporation and the Stockholders Agreement, the Board of Directors shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration of certificated or uncertificated shares of the stock of the Corporation, as well as for the issuance of new certificates in lieu of those which may be lost or destroyed, and may require of any stockholder requesting replacement of lost or destroyed certificates, to provide a bond in such amount and in such form as they may deem expedient to indemnify the Corporation, and/or the transfer agents, and/or the registrars of its stock against any claims arising in connection therewith.

ARTICLE 6.  
GENERAL PROVISIONS

Section 6.01 *Fixing the Record Date*. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing such record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders

entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day preceding the day on which notice is given, or, if notice is waived, at the close of business on the day 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 that the Board of Directors may in its discretion or as required by law fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting.

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, and which record date shall be not more than 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.

Section 6.02 *Dividends*. Subject to limitations contained in Delaware Law, the Certificate of Incorporation, the Stockholders Agreement, any certificate of designation for preferred stock and any agreement to which the Corporation is a party that limits or restricts the payment of dividends, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 6.03 *Year*. The fiscal year of the Corporation shall commence on January 1 and end on December 31 of each year.

Section 6.04 *Corporate Seal*. The corporate seal, if any, shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 6.05 *Voting of Stock Owned by the Corporation*. The Board of Directors may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

Section 6.06 *Amendments*. These Bylaws or any of them, may be altered, amended or repealed, or new bylaws may be made, only as set forth in Article 5 of the Certificate of Incorporation.

