

As filed with the Securities and Exchange Commission on January 2, 2008

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-A

**For Registration of Certain Classes of Securities
Pursuant to Section 12(b) or 12(g) of the
Securities Exchange Act of 1934**

Fifth Street Finance Corp.

(Exact name of registrant as specified in its charter)

Delaware

(State of incorporation or organization)

26-1219283

(I.R.S. Employer Identification No.)

White Plains Plaza

445 Hamilton Avenue, Suite 1206

White Plains, NY

(Address of principal executive offices)

10601

(Zip Code)

If this Form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A. (c), check the following box.

If this Form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A. (d), check the following box.

Securities Act registration statement file number to which this form relates: 333-146743

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

**Title of each class
to be so registered**

**Name of each exchange on
which each class is to be registered**

Common Stock, par value \$0.01 per share

The New York Stock Exchange

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

None
(Title of class)

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. Description of the Registrant's Securities to be Registered

The securities to be registered hereby are shares of common stock, par value \$0.01 per share, of Fifth Street Finance Corp. (the "Company"). The description of the shares of common stock contained in the section entitled "Description of Our Securities" in the Prospectus included in the Company's Registration Statement on Form N-2 (File No. 333-146743), filed with the Securities and Exchange Commission on October 16, 2007, (as amended from time to time, the "Registration Statement"), is hereby incorporated by reference herein. Any form of prospectus or prospectus supplement to the Registration Statement that includes such descriptions and that are subsequently filed are hereby also incorporated by reference herein.

Item 2. Exhibits

- 3.1 Restated Certificate of Incorporation of Fifth Street Finance Corp.
 - 3.2 Amended and Restated By-Laws of Fifth Street Finance Corp.
 - 4.1 Specimen Common Stock Certificate.
-

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereto duly authorized.

Date: January 2, 2008

FIFTH STREET FINANCE CORP.

By: /s/ William H. Craig
Name: William H. Craig
Title: Chief Financial Officer

**RESTATED CERTIFICATE OF INCORPORATION
OF
FIFTH STREET FINANCE CORP.**

Fifth Street Finance Corp., a Delaware corporation, the original Certificate of Incorporation of which was filed with the Secretary of State of the State of Delaware on October 9, 2007 hereby certifies that this Restated Certificate of Incorporation, restating, integrating and amending its Certificate of Incorporation, was duly adopted by its Board of Directors and its stockholders in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL"). The Certificate of Incorporation of Fifth Street Finance Corp. is hereby amended, integrated and restated in its entirety to read as follows:

**ARTICLE I
NAME**

The name of the corporation is Fifth Street Finance Corp. (the "Corporation").

**ARTICLE II
REGISTERED OFFICE AND AGENT**

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

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

**ARTICLE IV
CAPITAL STOCK**

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is 50,000,000 shares, par value \$0.01 per share of common stock (the "Common Stock").

(A) **Common Stock.** Except as (1) otherwise required by laws of the State of Delaware or (2) expressly provided in this Certificate of Incorporation (as amended from time to time), each share of Common Stock shall have the same powers, rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters. The shares of Common Stock shall not have any preemptive rights whatsoever.

(1) **Dividends.** Subject to the provisions of the laws of the State of Delaware, and to the other provisions of this Certificate of Incorporation (as amended from time to time), holders of shares of Common Stock shall be entitled to receive equally, on a per share basis, such dividends and other distributions in cash, securities or other property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(2) **Voting Rights.** At every annual or special meeting of stockholders of the Corporation, each record holder of Common Stock shall be entitled to cast one (1) vote for each share of Common Stock standing in such holder's name on the stock transfer records of the Corporation for the election of directors and on matters submitted to a vote of stockholders of the Corporation. Except as provided with respect to any other class or series of capital stock of the Corporation hereafter classified or reclassified, the exclusive voting power for all purposes shall solely be vested with the holders of Common Stock. There shall be no cumulative voting.

(3) **Liquidation Rights.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the Corporation's debts and other liabilities, upon such dissolution, liquidation or winding up, the remaining net assets of the Corporation shall be distributed among holders of shares of Common Stock equally on a per share basis. A merger or consolidation of the Corporation with or into any other corporation or other entity, or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders) shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this Paragraph (A)(3).

ARTICLE V BOARD OF DIRECTORS

(A) **Management.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by laws of the State of Delaware or this Certificate of Incorporation directed or required to be exercised or done by the stockholders.

(B) **Number of Directors.** The number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws. A majority of the directors shall be "independent" under applicable law and the rules of the relevant stock exchange on which the Common Stock is listed.

(C) **Classified Board.** The Board of Directors shall be divided into three classes, designated Class I, Class II and Class III, as nearly equal in number as possible and no

class shall include less than one director. The term of office of directors of one class shall expire at each annual meeting of stockholders, and in all cases as to each director when such director's successor shall be elected and shall qualify or upon such director's earlier resignation, removal from office, death or incapacity. Additional directorships resulting from an increase in number of directors shall be apportioned among the classes as equally as possible. In the event of any decrease in the number of directors, all classes of directors shall be decreased equally as nearly as possible. The initial term of office of directors of Class I shall expire at the annual meeting of stockholders in 2008; that of Class II shall expire at the annual meeting in 2009; and that of Class III shall expire at the annual meeting in 2010; and in all cases as to each director when such director's successor shall be elected and shall qualify or upon such director's earlier resignation, removal from office, death or incapacity. At each annual meeting of stockholders, beginning with the annual meeting of stockholders in 2008, the number of directors equal to the number of directors of the class whose term expires at the time of such meeting (or, if less, the number of directors properly nominated and qualified for election) shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of election.

(D) **Newly-Created Directorships and Vacancies.** The Board of Directors is expressly authorized to change the number of directors in any or all of the classes without the consent of the stockholders. Newly created directorships resulting from any increase in the number of directors or any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or any other cause may only be filled by the Board of Directors, provided that a quorum is then in office and present, or by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director. Directors elected to fill a newly created directorship or other vacancies shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor has been elected and has qualified.

(E) **Removal of Directors.** Upon and following the closing of the initial public offering of the Corporation's Common Stock (the "IPO"), any director may be removed from office at any time, but only for cause, at a meeting called for that purpose, and only by the affirmative vote of the holders of at least 66-2/3% of the shares of the Corporation's capital stock then outstanding and entitled to vote in the election of directors, voting together as a single class.

(F) **Written Ballot Not Required.** Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall otherwise provide.

(G) **Bylaws.** The Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation. Any Bylaws made by the directors under the powers conferred hereby may be amended or repealed by the directors or by the stockholders. Notwithstanding the foregoing and anything contained in this Certificate of Incorporation to the contrary, upon the closing of the IPO, the Bylaws of the Corporation shall not be amended or repealed by the stockholders, and no provision inconsistent therewith shall be adopted by the stockholders, in each case without the affirmative vote of the holders of 66-2/3% of the shares of

the Corporation's capital stock then outstanding and entitled to vote in the election of directors, voting together as a single class.

**ARTICLE VI
LIMITATION OF LIABILITY**

A director 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; provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve willful misconduct, gross negligence, bad faith, reckless disregard or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is hereafter amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of this Article VI by the stockholders of the Corporation or otherwise shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. Notwithstanding the foregoing and Article VII, for so long as the Corporation is registered or regulated under the Investment Company Act of 1940, as amended (the "1940 Act"), neither this Certificate of Incorporation nor the Bylaws of the Corporation shall limit the liability of, or permit the indemnification of, any director or officer of the Corporation for actions or matters for which such limitation or indemnification would be prohibited by the 1940 Act or by any valid rule, regulation or order of the Securities and Exchange Commission thereunder.

**ARTICLE VII
INDEMNIFICATION**

Each person who was or is made a party or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "Proceeding"), by reason of the fact that he/she 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, partnership, limited liability company, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "Indemnitee"), whether the basis of such Proceeding is alleged action in an official capacity as a director or officer or in any other capacity while so serving, shall be indemnified and held harmless by the Corporation to the full extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), or by other applicable law as then in effect, against all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such Indemnitee in connection therewith. Such indemnification shall

continue as to a person who has ceased to be a director, officer, partner, member or trustee and shall inure to the benefit of his or her heirs, executors and administrators. Each person who is or was serving as a director or officer of a subsidiary of the Corporation shall be deemed to be serving, or have served, at the request of the Corporation. Notwithstanding the foregoing, indemnification under this Article VII shall not be permitted if the Indemnitee did not act in good faith with the reasonable belief that its conduct was in, or not opposed to, the best interest of the Corporation, or if the Indemnitee's conduct constituted gross negligence, bad faith, reckless disregard, or willful misconduct.

(A) **Procedure.** Any indemnification (but not advancement of expenses) under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth herein. Such determination shall be made with respect to a person who is a director or officer at the time of such determination (a) by a majority vote of the directors who were not parties to such proceeding (the "Disinterested Directors"), even though less than a quorum, (b) by a committee of Disinterested Directors designated by a majority vote of Disinterested Directors, even though less than a quorum, (c) if there are no such Disinterested Directors, or if such Disinterested Directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders.

(B) **Advances for Expenses.** Expenses (including attorneys' fees, costs and charges) incurred by a director or officer of the Corporation in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation as authorized in this Article VII. The majority of the Disinterested Directors may, in the manner set forth above, and upon approval of such director or officer of the Corporation, authorize the Corporation's counsel to represent such person, in any Proceeding, whether or not the Corporation is a party to such Proceeding.

(C) **Procedure for Indemnification.** Any indemnification or advance of expenses (including attorney's fees, costs and charges) under this Article VII shall be made promptly, and in any event within 60 days upon the written request of the director or officer (and, in the case of advance of expenses, receipt of a written undertaking by or on behalf of Indemnitee to repay such amount if it shall ultimately be determined that Indemnitee is not entitled to be indemnified therefor pursuant to the terms of this Article VII). The right to indemnification or advances as granted by this Article VII shall be enforceable by the director or officer in any court of competent jurisdiction, if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within 60 days. Such person's costs and expenses incurred in connection with successfully establishing his/her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses (including attorney's fees, costs and charges) under this Article VII where the required undertaking, if any, has been received by the Corporation) that the claimant has not met the standard of conduct set forth herein, but the burden of proving such defense shall be on the Corporation. Neither the

failure of the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he/she has met the applicable standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), nor the fact that there has been an actual determination by the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(D) **Other Rights; Continuation of Right to Indemnification.** The indemnification and advancement of expenses provided by this Article VII shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification under this Article VII shall be deemed to be a contract between the Corporation and each director or officer of the Corporation who serves or served in such capacity at any time while this Article VII is in effect. Any repeal or modification of this Article VII or any repeal or modification of relevant provisions of the DGCL or any other applicable laws shall not in any way diminish any rights to indemnification of such director or officer or the obligations of the Corporation arising hereunder with respect to any Proceeding arising out of, or relating to, any actions, transactions or facts occurring prior to the final adoption of such modification or repeal. For the purposes of this Article VII, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation, so that any person who is or was a director or officer of such a constituent corporation or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article VII, with respect to the resulting or surviving corporation, as he/she would if he/she had served the resulting or surviving corporation in the same capacity.

(E) **Insurance.** The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become 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, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her or on his/her behalf in any such capacity, or arising out of his/her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VII; provided, however, that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the Board of Directors.

(F) **Savings Clause.** If this Article VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each person entitled to indemnification under the first paragraph of this Article VII as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification is available to such person pursuant to this Article VII to the full extent permitted by any applicable portion of this Article VII that shall not have been invalidated and to the full extent permitted by applicable law.

(G) **Additional Indemnification Rights.** The Corporation may, to the fullest extent permitted by law, grant rights to indemnification, exculpation and the advancement of expenses to any employee or agent of the Corporation, and to any other person, in each case to the extent permitted by applicable law, consistent with the provisions of this Article VII and as set forth in the Bylaws or in a written contract between the Corporation and the relevant person.

(H) **Repeal and Modification.** Any repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection of any director, officer, employee or agent of the Corporation existing at the time of such repeal or modification.

ARTICLE VIII STOCKHOLDER ACTION

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, upon and following the closing of the IPO, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by written consent of the stockholders.

ARTICLE IX AMENDMENT

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred upon stockholders or others hereunder are granted subject to this reservation. Notwithstanding the foregoing, the affirmative vote of the holders of at least 66-2/3% of the shares of the Corporation's capital stock then outstanding and entitled to vote in the election of directors, voting together as a single class shall be required to amend or repeal any provision of Articles V, VI, VII, VIII or IX of this Certificate of Incorporation.

**ARTICLE X
LIQUIDATION**

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, if the Corporation has not consummated the IPO within three (3) years following the date of the merger of the Fifth Street Mezzanine Partners III, L.P., a Delaware limited partnership, with and into the Corporation, upon the request of any stockholder, the stockholders shall have the right, to the fullest extent permitted by law, to approve one of the following actions by majority vote of the stockholders: (i) to cause the Corporation to cease making investments; (ii) to cause the Corporation to dissolve and wind up its affairs; (iii) to cause the Corporation to liquidate its portfolio; or (iv) to cause the Corporation to take any other action designed to provide the stockholders with liquidity.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which amends, restates and integrates the provisions of the Certificate of Incorporation of the Corporation and which has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL, has been executed by the undersigned on January 2, 2008.

/s/ Bernard D. Berman

Name: Bernard D. Berman

Office: Executive Vice President and Secretary

FIFTH STREET FINANCE CORP.
(a Delaware corporation)

AMENDED AND RESTATED
BYLAWS

Effective January 2, 2008

TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE I OFFICES</u>	1
<u>Section 1. Registered Office.</u>	1
<u>Section 2. Additional Offices.</u>	1
<u>ARTICLE II MEETINGS OF STOCKHOLDERS</u>	1
<u>Section 1. Place of Meetings.</u>	1
<u>Section 2. Annual Meeting.</u>	1
<u>Section 3. Notice of Meetings.</u>	1
<u>Section 4. Special Meetings.</u>	2
<u>Section 5. List of Stockholders.</u>	2
<u>Section 6. Quorum; Adjournments.</u>	2
<u>Section 7. Organization.</u>	2
<u>Section 8. Order of Business.</u>	3
<u>Section 9. Voting.</u>	3
<u>Section 10. Inspectors.</u>	3
<u>Section 11. Advance Notice Provisions for Election of Directors.</u>	4
<u>Section 12. Advance Notice Provisions for Business to be Transacted at Annual Meeting.</u>	5
<u>ARTICLE III DIRECTORS</u>	6
<u>Section 1. General Powers.</u>	6
<u>Section 2. Number and Election.</u>	6
<u>Section 3. Resignations, Newly Created Directorships, Vacancies and Removals.</u>	6
<u>Section 4. Place of Meetings.</u>	7
<u>Section 5. Annual Meeting.</u>	7
<u>Section 6. Regular Meetings.</u>	7
<u>Section 7. Special Meetings.</u>	7
<u>Section 8. Notice of Meetings.</u>	7
<u>Section 9. Waiver of Notice and Presumption of Assent.</u>	8

<u>Section 10.</u>	<u>Quorum; Manner of Action.</u>	8
<u>Section 11.</u>	<u>Organization.</u>	8
<u>Section 12.</u>	<u>Compensation.</u>	8
<u>Section 13.</u>	<u>Action by Consent.</u>	8
<u>Section 14.</u>	<u>Meetings by Telephone or Similar Communications.</u>	9
<u>ARTICLE IV COMMITTEES</u>		9
<u>Section 1.</u>	<u>Committees.</u>	9
<u>Section 2.</u>	<u>Committee Rules.</u>	11
<u>ARTICLE V OFFICERS</u>		11
<u>Section 1.</u>	<u>Number and Qualifications.</u>	11
<u>Section 2.</u>	<u>Election and Term of Office.</u>	11
<u>Section 3.</u>	<u>Resignations.</u>	12
<u>Section 4.</u>	<u>Removal.</u>	12
<u>Section 5.</u>	<u>Vacancies.</u>	12
<u>Section 6.</u>	<u>Compensation.</u>	12
<u>Section 7.</u>	<u>Chairman of the Board.</u>	12
<u>Section 8.</u>	<u>Chief Executive Officer.</u>	12
<u>Section 9.</u>	<u>President.</u>	13
<u>Section 10.</u>	<u>Chief Operating Officer.</u>	13
<u>Section 11.</u>	<u>Vice President.</u>	13
<u>Section 12.</u>	<u>Chief Financial Officer; Treasurer.</u>	13
<u>Section 13.</u>	<u>Chief Investment Officer.</u>	14
<u>Section 14.</u>	<u>Secretary.</u>	14
<u>Section 15.</u>	<u>The Assistant Treasurer.</u>	14
<u>Section 16.</u>	<u>The Assistant Secretary.</u>	15
<u>Section 17.</u>	<u>Chief Compliance Officer.</u>	15
<u>Section 18.</u>	<u>Other Officers, Assistant Officers and Agents.</u>	15
<u>Section 19.</u>	<u>Officers' Bonds or Other Security.</u>	15
<u>Section 20.</u>	<u>Absence or Disability of Officers.</u>	15
<u>ARTICLE VI INDEMNIFICATION; EXCULPATION</u>		15
<u>Section 1.</u>	<u>General.</u>	15
<u>Section 2.</u>	<u>Severability.</u>	16

<u>ARTICLE VII STOCK CERTIFICATES AND THEIR TRANSFER</u>	16
<u>Section 1. Stock Certificates.</u>	16
<u>Section 2. Facsimile Signatures.</u>	17
<u>Section 3. Lost Certificates.</u>	17
<u>Section 4. Transfers of Stock.</u>	17
<u>Section 5. Transfer Agents and Registrars.</u>	17
<u>Section 6. Regulations.</u>	17
<u>Section 7. Fixing the Record Date.</u>	17
<u>Section 8. Registered Stockholders.</u>	18
<u>ARTICLE VIII GENERAL PROVISIONS</u>	18
<u>Section 1. Dividends.</u>	18
<u>Section 2. Reserves.</u>	18
<u>Section 3. Seal.</u>	18
<u>Section 4. Fiscal Year.</u>	18
<u>Section 5. Checks, Notes, Drafts; Etc.</u>	18
<u>Section 6. Execution of Contracts, Deeds, Etc.</u>	19
<u>Section 7. Inspection of Books and Records.</u>	19
<u>Section 8. References to Days.</u>	19
<u>Section 9. Inconsistent Provisions.</u>	19
<u>ARTICLE IX AMENDMENTS</u>	19

AMENDED AND RESTATED BYLAWS

OF

FIFTH STREET FINANCE CORP.

ARTICLE I
OFFICES

Section 1. Registered Office. The registered office of the Corporation in the State of Delaware shall be located at 1209 Orange Street, Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

Section 2. Additional 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 as the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. All meetings of the stockholders for the election of directors or for any other purpose shall be held at any such place, either within or outside the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meeting. An annual meeting of stockholders shall be held each year and stated in a notice of meeting or in a duly executed waiver thereof. The date, time and place of such meeting shall be determined by the Chief Executive Officer of the Corporation; provided that if the Chief Executive Officer does not act, the Board of Directors shall determine the date, time, and place of such meeting. At such annual meeting, the stockholders shall elect, by a plurality vote, a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 3. Notice of Meetings. Except as otherwise expressly required by statute, written notice of each annual and special meeting of stockholders stating the date, time and place of the meeting (and, in the case of a special meeting, the purpose or purposes for which the meeting is called) shall be given to each stockholder of record entitled to vote thereat not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Notice shall be given personally or by mail and, if by mail, shall be sent in a postage prepaid envelope, addressed to the stockholder at his address as it appears on the records of the Corporation. Notice by mail shall be deemed given at the time when the same shall be deposited in the United States mail, postage prepaid. Notice of any meeting shall not be required to be given to any

person (a) who attends such meeting, except when such person attends the meeting in person or by proxy 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, or (b) who (either before or after the meeting) shall submit a signed written waiver of notice thereof either in person or by proxy. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any written waiver of notice.

Section 4. Special Meetings. Special meetings of stockholders may be called for any purpose by the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer and may be held on such date and at such time and place, either within or outside the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof.

Section 5. List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum: Adjournments. The holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereat (present in person or represented by proxy) shall constitute a quorum for the transaction of business at all meetings of stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. If such quorum shall not be present or represented by proxy at any meeting of stockholders, then the stockholders entitled to vote thereat (present in person or represented by proxy) shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented by proxy. At such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called. If the adjournment is for more than thirty (30) days, or, if after adjournment a new record date is set, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 7. Organization. At each meeting of stockholders, the Chairman of the Board of Directors (if one shall have been elected, or, in his absence or if one shall not have been elected, the Chief Executive Officer, or in the absence of the Chief Executive Officer, the President, or in the absence of the President, such officer as the Board of Directors may designate) shall act as chairman of the meeting. The Secretary (or, in his 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 8. Order of Business. The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

Section 9. Voting. Except as otherwise provided by the Certificate of Incorporation or the General Corporation Law of the State of Delaware, each stockholder of the Corporation shall be entitled at each meeting of stockholders to one (1) vote for each share of capital stock of the Corporation standing in his name on the record of stockholders of the Corporation: (a) on the date fixed pursuant to the provisions of Section 7 of Article VII of these Bylaws as the record date for the determination of the stockholders who shall be entitled to notice of and to vote at such meeting; or (b) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held.

Each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for him by a proxy that is in writing or transmitted as permitted by law, including, without limitation, electronically, via telegram, internet, interactive voice response system, or other means of electronic transmission executed or authorized by such stockholder or his attorney-in-fact, but no proxy shall be voted after (3) three years from its date, unless the proxy provides for a longer period. Any such proxy shall be delivered to the secretary of the meeting at or prior to the time designated in the order of business for so delivering such proxies. Any proxy transmitted electronically shall set forth information from which it can be determined by the secretary of the meeting that such electronic transmission was authorized by the stockholder. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereon, present and voting, in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted and the number of votes to which each share is entitled.

Section 10. Inspectors. The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, then the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the

number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

Section 11. Advance Notice Provisions for Election of Directors. From and after the closing of the initial public offering of the securities of the Corporation (the "IPO"), only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as provided under Section 3 of this Article II, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) (subject to Section 1(a) of Article IV of these Bylaws) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 11 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 11.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than ninety (90) days prior to the date of the anniversary of the previous year's annual meeting; provided, however, that in the event the annual meeting is scheduled to be held on a date more than thirty (30) days prior to or delayed by more than sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the later of the close of business ninety (90) days prior to such annual meeting or the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other

information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice; and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 11. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 12. Advance Notice Provisions for Business to be Transacted at Annual Meeting. From and after the closing of the IPO, no business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 12 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 12.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days prior to the date of the anniversary of the previous year's annual meeting; provided, however, that in the event the annual meeting is scheduled to be held on a date more than thirty (30) days prior to or delayed by more than sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the later of the close of business ninety (90)

days prior to such annual meeting or the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business; and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 12; provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 12 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

ARTICLE III DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

Section 2. Number and Election. The number of directors constituting the whole board as of the date of the approval of these Bylaws shall be seven (7) but may be increased or decreased from time to time by the Board of Directors; provided, however, that (i) the number of directors shall not be fewer than five (5) or greater than nine (9) and (ii) no decrease in the number of directors shall shorten the term of any incumbent director. Except as otherwise provided by the Bylaws, the directors shall be elected at the annual meeting of stockholders.

Section 3. Resignations, Newly Created Directorships, Vacancies and Removals. Any director of the Corporation may resign at any time by giving notice in writing or by electronic

transmission of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal or any other cause shall be filled as provided in the Certificate of Incorporation. Any director may be removed as provided in the Certificate of Incorporation.

Section 4. Place of Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. 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 (which, if required by law, shall be on the same day and at the same place where such annual meeting of stockholders shall be held). In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such other time or place (within or outside the State of Delaware) as shall be specified in a notice thereof given as hereinafter provided in Section 8 of this Article III.

Section 6. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors may fix. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or by 2 or more directors or by the Chief Executive Officer.

Section 8. Notice of Meetings. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by law or these Bylaws. Notice of each special meeting of the Board of Directors, and of each regular and annual meeting of the Board of Directors for which notice shall be required, shall be given by the Secretary as hereinafter provided in this Section 8, in which notice shall be stated the time and place of the meeting. Except as otherwise required by these Bylaws, such notice need not state the purposes of such meeting. Notice of any special meeting, and of any regular or annual meeting for which notice is required, shall be given to each director at least (a) twelve (12) hours before the meeting if by telephone or by being personally delivered or sent by telex, telecopy, email or similar means or (b) three (3) days before the meeting if delivered by mail to the director's residence or usual place of business. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid, or when transmitted if sent by telex, telecopy, or similar means. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Any director may waive notice of any meeting by a writing signed by the director entitled to the notice and filed with the minutes or corporate records.

Section 9. Waiver of Notice and Presumption of Assent. Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends 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. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 10. Quorum; Manner of Action. A majority of the entire 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 statute or the Certificate of Incorporation or these Bylaws, 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. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of the time and place of any such adjourned meeting shall be given to all of the directors unless such time and place were announced at the meeting at which the adjournment was taken, in which case such notice shall only be given to the directors who were not present thereat. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The directors shall act only as a Board of Directors and the individual directors shall have no power as such.

Section 11. Organization. At each meeting of the Board of Directors, the Chairman of the Board of Directors, if one shall have been elected, or, in the absence of the Chairman of the Board of Directors or if one shall not have been elected, the Chief Executive Officer (or, in his absence, another director chosen by a majority of the directors present) shall act as chairman of the meeting and preside thereat. The Secretary or, in his absence, any person appointed by the chairman of the meeting, shall act as secretary of the meeting and keep the minutes thereof.

Section 12. Compensation. The Board of Directors shall have authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Section 13. Action by Consent. Unless restricted by the Certificate of Incorporation, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings are filed with the minutes of the proceedings of the Board of Directors or such

committee, as the case may be. 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 14. Meetings by Telephone or Similar Communications. Unless restricted by the Certificate of Incorporation, any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV COMMITTEES

Section 1. Committees. The Board of Directors, by resolutions adopted by a majority of the whole Board, may appoint such committee or committees as it shall deem advisable and with such functions and duties as the Board of Directors shall prescribe. The following Committees of the Board of Directors shall be established in addition to any additional Committee the Board of Directors may in its discretion establish as described herein:

(a) Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee shall consist of at least three directors. The members of the Nominating and Corporate Governance Committee shall not be “interested persons” of the Corporation, as such term is defined in the Investment Company Act of 1940, and shall be “independent directors” as defined in applicable listing standards and regulations. A majority of the members of the entire Nominating and Corporate Governance Committee shall constitute a quorum, and the actions of a majority of those present at a meeting at which a quorum is present shall be actions of the Committee. The Nominating and Corporate Governance Committee shall have and may exercise those rights, powers and authority of the Board of Directors as may from time to time be granted to it by the Board of Directors; provided, however, that in addition to any such rights, powers or authority, the Nominating and Corporate Governance Committee shall nominate to the Board of Directors for its consideration nominees for election to the Board of Directors to replace those Directors whose terms expire at the annual meeting of stockholders next ensuing and to fill any vacancies on the Board of Directors.

(b) Audit Committee. There shall be an Audit Committee composed of at least of three directors. The members of the Audit Committee shall not be “interested persons” of the Corporation, as such term is defined in the Investment Company Act of 1940, and shall be “independent directors” as defined in applicable listing standards and regulations. The Audit Committee shall have and may exercise those rights, powers and authority of the Board of Directors as may from time to time be granted to it by the Board of Directors; provided, however, that in addition to any such rights, powers or authority, the Audit Committee shall issue instructions to and receive reports from outside accounting firms and serve as the liaison between the Corporation and the said firms; and review all potential conflict-of-interest situations arising in respect of the Corporation’s affairs and involving the Corporation’s affiliates or employees, and to make a report, oral or written, to the full Board of Directors with recommendations for their resolutions.

(c) Valuation Committee. There shall be a Valuation Committee composed of at least three directors. A majority of the entire members of the Valuation Committee shall constitute a quorum and the actions of a majority of those present at a meeting at which a quorum is present shall be the actions of the Committee. The Valuation Committee shall have and may exercise those rights, powers and authority of the Board of Directors as may from time to time be granted to it by the Board of Directors; provided, however, that in addition to any such rights, powers or authority, the Valuation Committee shall be responsible for reviewing and approving for submission to the Board of Directors, in good faith, the fair value of the Corporation’s debt and equity investments that are not publicly traded or for which current market values are not readily available.

(d) Other Committees. The Board of Directors, by resolution passed by a majority of the entire Board of Directors, may designate one or more additional committees, each committee to consist of one or more of the directors of the Corporation. Subject to subsections (a) and (b) of this Section 13, 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. Except to the extent restricted by

statute or the Certificate of Incorporation, each such committee, to the extent provided in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors and may authorize the seal of the Corporation to be affixed to all papers which require it. Each such committee shall serve at the pleasure of the Board of Directors and shall have such name as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors.

Section 2. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee or in these Bylaws. Unless otherwise provided in such a resolution or in these Bylaws, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. Unless otherwise provided by resolution or in these Bylaws, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 1(d) of this Article IV, of such committee is or are absent or disqualified, the member or members thereof 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 place of any such absent or disqualified member.

ARTICLE V OFFICERS

Section 1. Number and Qualifications. The officers of the Corporation shall be elected by the Board of Directors and shall include the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Compliance Officer and the Secretary. The Corporation, at the discretion of the Board of Directors, may also have such other officers as are desired, including a Chairman of the Board of Directors, one or more Vice Presidents, a Chief Operating Officer, a Chief Investment Officer, a Treasurer one or more Assistant Treasurers, one or more Assistant Secretaries, and such other officers as may be necessary or desirable for the business of the Corporation. If there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, Assistant Vice President or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, and no officer (except the Chairman of the Board of Directors, if any) need be a director. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except that the offices of Chief Executive Officer and the Secretary shall be filled as expeditiously as possible.

Section 2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as is convenient. The Chairman of the Board of Directors (if one is elected) and Chief Executive Officer shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of stockholders or as

soon thereafter as is convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned or have been removed, as hereinafter provided in these Bylaws.

Section 3. Resignations. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon receipt. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

Section 4. Removal. Any officer of the Corporation may be removed, either with or without cause, at any time, by the Board of Directors at any meeting thereof.

Section 5. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term by the Board of Directors then in office.

Section 6. Intentionally Left Blank

Section 7. Chairman of the Board. The Chairman of the Board of Directors (if such an officer be elected) shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as from time to time may be assigned to him by the Board of Directors or prescribed by these Bylaws. If there is no Chief Executive Officer, then the Chairman of the Board of Directors shall also be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 8 of this Article V.

Section 8. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have the powers and perform the duties incident to that position. He shall, in the absence of the Chairman of the Board of Directors, or if a Chairman of the Board of Directors shall not have been elected, preside at each meeting of the Board of Directors or the stockholders. He shall have the right to attend the meetings of the Board of Directors and all committees of the Board of Directors. Subject to the powers of the Board of Directors, he shall be in the general and active charge of the entire business and affairs of the Corporation, including authority over its officers, agents and employees, and shall have such other duties as may from time to time be assigned to him by the Board of Directors. The Chief Executive Officer shall be responsible for implementing all orders and resolutions of the Board of Directors, and shall execute bonds, mortgages and other contracts required to be executed under the seal of the Corporation, except when required or permitted by law to be otherwise signed and executed and except when the signing and execution thereof shall be

expressly delegated by the Board of Directors or the Chief Executive Officer to some other officer or agent of the Corporation.

Section 9. President. The President shall perform all duties incident to the office of President and shall have general charge of the business and affairs of the Corporation. The President shall report to the Chief Executive Officer and shall have such other duties as may from time to time be assigned to him by the Board of Directors or the Chief Executive Officer or as may be provided in these Bylaws. At the written request of the Chief Executive Officer, or in his absence or in the event of his inability to act, the President shall perform the duties of the Chief Executive Officer, and, when so acting, shall have the powers of and be subject to the restrictions placed upon the Chief Executive Officer in respect of the performance of such duties.

Section 10. Chief Operating Officer. The Chief Operating Officer shall perform all duties incident to such office and shall be responsible for the general direction of the operations of the business. The Chief Operating Officer shall report to the Chief Executive Officer and shall have such other duties as may be assigned to him by the Board of Directors, or the Chief Executive Officer or as may be provided in these Bylaws.

Section 11. Vice President. Each Vice President shall perform all such duties as from time to time may be assigned to him by the Board of Directors, the President or the Chief Executive Officer. At the written request of the President, or in the absence or disability of the President, Vice Presidents (in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors) shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions placed upon the President in respect of the performance of such duties.

Section 12. Chief Financial Officer; Treasurer. The Chief Financial Officer:

- (a) Shall have charge and custody of, and be responsible for, all the funds and securities of the Corporation;
- (b) Shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation;
- (c) Shall deposit all moneys and other valuables to the credit of the Corporation in such depositories as may be designated by the Board of Directors or pursuant to its direction;
- (d) Shall receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever;
- (e) Shall disburse the funds of the Corporation and supervise the investments of its funds, taking proper vouchers therefore;

(f) Shall render to the Board of Directors, whenever the Board of Directors may require, an account of the financial condition of the Corporation; and

(g) Shall in general, perform all duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned to him by the Board of Directors, the Chief Executive Officer or the President.

The Chief Financial Officer may also be the Treasurer of the Corporation if so determined by the Board of Directors. The Treasurer shall assist the Chief Financial Officer in the performance of his duties and shall perform such other duties as may be required by law or as from time to time may be assigned to such officer by the Board of Directors, the Chief Executive Officer or the President.

Section 13. Chief Investment Officer. The Chief Investment Officer shall perform the duties, undertake the responsibilities and exercise the authority customarily performed, undertaken and exercised by persons situated in a similar executive capacity and shall also have such other duties as from time to time may be assigned to such officer by the Board of Directors or the Chief Executive Officer.

Section 14. Secretary. The Secretary shall:

(a) Shall keep or cause to be kept in one or more books provided for the purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders;

(b) Shall verify all notices are duly given in accordance with the provisions of these Bylaws and as required by law;

(c) Shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all certificates for shares of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal;

(d) Shall verify that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and

(e) Shall, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board of Directors, the Chief Executive Officer or the President.

Section 15. The Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or, if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability to act or his failure to act (in violation of a duty to act or

in contravention of direction to act by the Board of Directors), perform the duties and exercise the powers of the Treasurer and shall perform such other duties as from time to time may be assigned by the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer.

Section 16. The Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his inability to act or his failure to act (in violation of a duty to act or in contravention of direction to act by the Board of Directors), perform the duties and exercise the powers of the Secretary and shall perform such other duties as from time to time may be assigned by the Board of Directors, the Chief Executive Officer, the President or the Secretary.

Section 17. Chief Compliance Officer. The Chief Compliance Officer, subject to the direction of and reporting to the Board of Directors, shall be responsible for the oversight of the Corporation's compliance with the Federal securities laws. The designation, compensation and removal of the Chief Compliance Officer must be approved by the Board of Directors, including a majority of the directors who are not "interested persons" (as such term is defined in Section 2(a)(19) of the Investment Company Act of 1940) of the Corporation. The Chief Compliance Officer shall perform such executive, supervisory and management functions and duties as may be assigned to him or her from time to time.

Section 18. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these Bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

Section 19. Officers' Bonds or Other Security. If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his duties, in such amount and with such surety as the Board of Directors may require.

Section 20. Absence or Disability of Officers. In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

ARTICLE VI INDEMNIFICATION; EXCULPATION

Section 1. General. Indemnification and the right to advancement of expenses of the officers and directors of the Corporation shall be governed by Articles VI and VII of the Certificate of Incorporation. As permitted by Article VII of the Certificate of Incorporation, the Corporation shall, to the fullest extent permitted by law, provide indemnification and the right to the advancement of expenses, to the investment adviser of the Corporation (which entity (the "Adviser") must satisfy the definition of "Advisor" in Appendix III of the Second Amended and Restated Limited Partnership Agreement of Fifth Street Mezzanine Partners III, L.P., a Delaware limited Partnership (the "Fund") dated as of September 7, 2007 (the "Fund Agreement")), the Principals (as defined below) and any of their respective affiliates, partners, members, shareholders, managers, directors, officers and employees and any other person who serves at the request of the Adviser on behalf of the Corporation as an officer, director, partner, employee or agent of any other entity (each, an "Indemnified Person") on the same general terms set forth in Article VII of the Certificate of Incorporation, the terms of which are incorporated herein *mutatis mutandi*. For purposes of these Bylaws, "Principals" means each of (a) Leonard

M. Tannenbaum, (b) Bernard D. Berman, (c) Marc A. Goodman, (d) Robert S. Kiesel, (e) Juan E. Alva and (f) any other individual that the general partner of the Fund, designated as a Principal, with the approval of the advisory board of the Fund, pursuant to the terms of the Fund Agreement, in each case for so long as each such individual continues to be affiliated with the Management Company (as defined in the Fund Agreement). The officers and directors of the Corporation, the Adviser, the Principals, and any of their respective affiliates, partners, members, shareholders, managers, directors, officers and employees and any other person who serves at the request of the Adviser on behalf of the Corporation as an officer, director, partner, employee or agent of any other entity (each, an "Indemnified Person") will, to the fullest extent permitted by law, not be liable to the Corporation or any of its stockholders for any loss suffered by the Corporation or any stockholders which arises out of any action or omission of such Indemnified Person if (1) such Indemnified Person acted in good faith and reasonably believed that such course of conduct was in, or not opposed to, the best interest of the Corporation and (2) such conduct did not constitute gross negligence, bad faith, reckless disregard or willful misconduct.

Section 2. Severability. Any determination by any court of competent jurisdiction of the invalidity of any provision of this Article VI will not affect the validity of any other provision of this Article VI, which will remain in full force and effect.

ARTICLE VII STOCK CERTIFICATES AND THEIR TRANSFER

Section 1. Stock Certificates. The Board of Directors may issue stock certificates, or may provide by resolution or resolutions that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares of stock. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by a certificate and, upon request, every holder of uncertificated shares shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman of the Board, the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him or her in the Corporation. A certificate representing shares issued by the Corporation shall, if the Corporation is authorized to issue more than one class or series of stock, set forth upon the face or back of the certificate, or shall state that the Corporation will furnish to any stockholder upon request and without charge, a full statement of the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. The Corporation shall furnish to any holder of uncertificated shares, upon request and without charge, a full statement of the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Any request by a holder for a certificate shall be in writing and directed to the Secretary of the Corporation.

Section 2. Facsimile Signatures. Any or all of the signatures on a certificate may be a facsimile, engraved or printed. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond in such sum as it may direct sufficient to indemnify it against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 4. Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its records; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

Section 5. Transfer Agents and Registrars. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

Section 6. Regulations. The Board of Directors may make such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

Section 7. Fixing the Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. 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 the close of business on the day next preceding the day

on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 8. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Dividends. Subject to the provisions of statutes and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting. Dividends may be paid in cash, in property or in shares of stock of the Corporation, unless otherwise provided by statute or the Certificate of Incorporation.

Section 2. Reserves. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors may, from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors may think conducive to the interests of the Corporation. The Board of Directors may modify or abolish any such reserves in the manner in which it was created.

Section 3. Seal. The seal of the Corporation shall be in such form as shall be approved by the Board of Directors, which form may be changed by resolution of the Board of Directors.

Section 4. Fiscal Year. The fiscal year of the Corporation shall end on September 30 of each fiscal year and may thereafter be changed by resolution of the Board of Directors.

Section 5. Checks, Notes, Drafts; Etc. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

Section 6. Execution of Contracts, Deeds, Etc. The Board of Directors may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

Section 7. Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right of inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in the State of Delaware or at its principal place of business.

Section 8. References to Days. For purposes of these Bylaws, all references herein to "days" shall mean calendar days unless otherwise expressly indicated to mean business days. Any period of time referenced herein that is scheduled to end on a day that is not a calendar day and any event that is scheduled to occur on a day that is not a calendar day, unless otherwise expressly indicated, shall instead end or occur on the next succeeding business day.

Section 9. Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE IX
AMENDMENTS

Except as otherwise provided in these Bylaws, these Bylaws may be amended or repealed or new Bylaws adopted only in accordance with Article V of the Certificate of Incorporation.

No. _____ **FIFTH STREET FINANCE CORP.** _____ Shares
Incorporated under the Laws of the State of Delaware

CUSIP NO. [_____]

Common Stock Par Value \$.01 Per Share

SEE REVERSE FOR CERTAIN DEFINITIONS

*THIS CERTIFIES THAT _____ IS THE OWNER OF
_____ FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK,
WITH A PAR VALUE OF \$.01 PER SHARE, OF FIFTH STREET FINANCE CORP. (the "Corporation"), transferable on the books of the Corporation in
person or by duly authorized attorney upon surrender of this certificate if properly endorsed. This certificate is not valid unless countersigned by the
Transfer Agent and registered by the Registrar.*

WITNESS the seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated: _____, 2007

FIFTH STREET FINANCE CORP.

Secretary

*CORPORATE SEAL
2007
DELAWARE*

Chief Executive Officer

Transfer Agent

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



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

Unif Gift Min Act - _____ Custodian _____
(Cust) (Minor)
Under Uniform Gifts to Minors
Act: _____
(State)

Additional Abbreviations may also be used though not in the above list.

IMPORTANT NOTICE

A statement of the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights as established, from time to time, by the Certificate of Incorporation and by any certificate of designation, the number of shares constituting each class and series, and designations thereof, may be obtained by the holder hereof upon request and without charge at the principal office of the Corporation.

KEEP THIS CERTIFICATE IN A SAFE PLACE. IF IT IS LOST, STOLEN OR DESTROYED, THE CORPORATION WILL REQUIRE A BOND OF INDEMNITY AS A CONDITION TO THE ISSUANCE OF A REPLACEMENT CERTIFICATE.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

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

shares of the Common Stock represented by this Certificate, and do hereby irrevocably constitute and appoint _____ Attorney, to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ *By:* _____

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

Signature(s) Guaranteed:

By: _____

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15).
