
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 26, 2018

KORN/FERRY INTERNATIONAL

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-14505
(Commission File Number)

95-2623879
(IRS Employer
Identification No.)

1900 Avenue of the Stars, Suite 2600
Los Angeles, California
(Address of Principal Executive Offices)

90067
(Zip Code)

Registrant's telephone number, including area code: **(310) 552-1834**

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

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

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

Emerging growth company

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

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

As discussed under Item 5.07 of this Current Report on Form 8-K, on September 26, 2018, at the 2018 Annual Meeting of Stockholders of Korn/Ferry International (the “Company”), the Company’s stockholders approved the Company’s proposal to amend the Restated Certificate of Incorporation (the “Certificate”) to allow holders of 25% of outstanding shares to call special stockholder meetings. The amendments to the Certificate became effective upon the filing of a Certificate of Amendment to the Certificate with the Secretary of State of the State of Delaware on October 1, 2018.

In addition, as disclosed in the 2018 Proxy Statement, if the Certificate amendments were approved by the Company’s stockholders, the Company’s Fifth Amended and Restated Bylaws (the “Bylaws”) would be amended to specify the procedures for stockholder-called special meetings. The Board of Directors approved the Bylaw amendments, which became effective upon the filing of the Certificate of Amendment on October 1, 2018, and the Bylaws were restated as the Sixth Amended and Restated Bylaws to reflect the amendments.

The foregoing description of the amendments to the Certificate and Bylaws is qualified by reference to the full text of the Certificate of Amendment and the Bylaws, copies of which are filed herewith as Exhibits 3.1 and Exhibit 3.2, respectively, and incorporated herein by reference. The Board of Directors also approved a Restated Certificate of Incorporation (the “Restated Certificate”), that restated and integrated, but did not further amend, the Certificate (as amended through the filing of the Certificate of Amendment described above). On October 1, 2018, the Company filed the Restated Certificate with the Secretary of State of the State of Delaware and it was effective on filing. The foregoing description of the Restated Certificate is qualified in its entirety by reference to the text of the Restated Certificate, which is filed as Exhibit 3.3 to this Current Report on Form 8-K.

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

At the 2018 Annual Meeting of Stockholders, stockholders of the Company (i) elected the eight nominees named in the Proxy Statement to serve as directors until the Company’s 2019 Annual Meeting of Stockholders and until their successors have been duly elected and qualified, subject to their earlier death, resignation or removal, (ii) approved a non-binding advisory resolution approving the Company’s executive compensation, (iii) ratified the appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for the Company’s 2019 fiscal year, (iv) approved the Company’s proposal to amend the Restated Certificate of Incorporation to allow holders of 25% of outstanding shares to call special stockholder meetings and (v) did not approve a stockholder’s proposal requesting amendments to allow holders of 10% of outstanding shares to call special stockholder meetings. To the extent applicable, set forth below are the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, with respect to each such matter.

- (1) Election of the eight nominees named in the Proxy Statement to serve on the Board of Directors until the 2019 Annual Meeting of Stockholders.

<i>Nominee</i>	<i>For</i>	<i>Against</i>	<i>Abstain</i>	<i>Broker Non-Votes</i>
Doyle N. Beneby	49,672,829	758,985	46,052	2,880,308
Gary D. Burnison	50,370,066	59,834	47,966	2,880,308
William R. Floyd	49,637,124	795,119	45,623	2,880,308

Christina A. Gold	49,672,409	759,712	45,745	2,880,308
Jerry P. Leamon	49,558,122	873,128	46,616	2,880,308
Angel R. Martinez	50,337,885	93,951	46,030	2,880,308
Debra J. Perry	49,709,757	722,845	45,264	2,880,308
George T. Shaheen	49,691,373	741,374	45,119	2,880,308

(2) Non-binding advisory resolution to approve the Company's executive compensation.

For	Against	Abstain	Broker Non-Votes
41,138,490	9,276,125	63,251	N/A

(3) Ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the Company's 2019 fiscal year.

For	Against	Abstain	Broker Non-Votes
51,856,837	1,495,280	6,057	N/A

(4) Approval of Amendments to the Company's Restated Certificate of Incorporation to allow holders of 25% of outstanding shares to call special stockholder meetings.

For	Against	Abstain	Broker Non-Votes
45,202,612	1,059,154	4,216,100	N/A

(5) Stockholder proposal requesting amendments to allow holders of 10% of outstanding shares to call special stockholder meetings.

For	Against	Abstain	Broker Non-Votes
21,835,317	28,619,079	23,470	N/A

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit 3.1 [Certificate of Amendment of Restated Certificate of Incorporation of the Company dated October 1, 2018.](#)

Exhibit 3.2 [Sixth Amended and Restated Bylaws of the Company dated October 1, 2018.](#)

Exhibit 3.3 [Restated Certificate of Incorporation of the Company dated October 1, 2018.](#)

SIGNATURES

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

KORN/FERRY INTERNATIONAL

(Registrant)

Date: October 2, 2018

/s/Jonathan Kuai

(Signature)

Name: Jonathan Kuai

Title: General Counsel and Corporate Secretary

CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
KORN/FERRY INTERNATIONAL

KORN/FERRY INTERNATIONAL, a corporation organized and existing under and by the virtue of the General Corporation Law of the State of Delaware (the “Company”), DOES HEREBY CERTIFY as follows:

FIRST: The Restated Certificate of Incorporation of the Company (as amended theretofore from time to time and in effect on such date) (the “Certificate”) is hereby amended such that Section 2 of Article XII is amended and restated in its entirety to read as set forth below:

Ability to Call Special Meetings. Special meetings of the stockholders: (a) may be called by the Board of Directors, the Chair of the Board of Directors, the Chief Executive Officer or the President of the Corporation, and (b) shall be called by the Chair of the Board of Directors or the Corporate Secretary upon the written request or requests of one or more persons that: (i) own (as such term is defined in the Bylaws of the Corporation, as amended from time to time) shares representing at least 25% of the Common Stock outstanding as of the record date fixed in accordance with the Bylaws of the Corporation to determine who may deliver a written request to call a special meeting, and (ii) comply with such other requirements and procedures for requesting a special meeting of stockholders as may be set forth in the Bylaws of the Corporation and amended from time to time. The foregoing provisions of this Article XII shall be subject to the provisions of the Bylaws of the Corporation (as amended from time to time) that, among other things, limit the ability to make a request for a special meeting and that specify the circumstances pursuant to which a request for a special meeting will be deemed to be revoked. Special meetings may not be called by any other person or persons.

SECOND: The foregoing amendments to the Restated Certificate of Incorporation were duly adopted in accordance with the terms of Section 242 of the General Corporation Law.

[Signature page follows]

IN WITNESS WHEREOF, KORN/FERRY INTERNATIONAL has caused this certificate to be signed by its duly authorized officer on this 1st day of October, 2018.

KORN/FERRY INTERNATIONAL

By: /s/ Jonathan Kuai
Name: Jonathan Kuai
Title: Corporate Secretary

SIXTH AMENDED AND RESTATED BYLAWS

of

KORN/FERRY INTERNATIONAL,

a Delaware corporation

(effective October 1, 2018)

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SIXTH AMENDED AND RESTATED BYLAWS

for the regulation, except
as otherwise provided by statute or
its Certificate of Incorporation,

of

KORN/FERRY INTERNATIONAL

(effective October 1, 2018)

ARTICLE I OFFICES.

Section 1 REGISTERED OFFICE.

The registered office of the corporation in the State of Delaware shall be fixed in the Certificate of Incorporation (as defined below) of the corporation.

Section 2 PRINCIPAL EXECUTIVE OFFICE.

The corporation's principal executive office shall be fixed and located at such place, either within or without the State of Delaware, as the Board of Directors of the corporation (the "Board") shall determine. The Board is granted full power and authority to change said principal executive office from one location to another.

Section 3 OTHER OFFICES.

The corporation may have such other offices, either within or without the State of Delaware, as the Board may designate or the business of the corporation may from time to time require.

ARTICLE II STOCKHOLDERS.

Section 1 PLACE OF MEETINGS.

Meetings of the stockholders shall be held at the principal executive office of the corporation or at another place, if any, within or without the State of Delaware as may be designated by the Board and filed with the Secretary of the corporation.

Section 2 ANNUAL MEETINGS.

The annual meetings of the stockholders shall be held at such time, date, and place, if any, either within or without the State of Delaware, as may be fixed by the Board. At such meetings, directors shall stand for election and any other proper business may be transacted. The

Board may postpone, reschedule, or cancel any annual meeting of the stockholders previously scheduled by the Board.

Section 3 BUSINESS WHICH MAY BE CONDUCTED AT
 MEETINGS OF THE STOCKHOLDERS.

(a) *Annual Meetings of the Stockholders.*

- (i) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of the stockholders only (A) pursuant to the corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board, or (C) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 3 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting, and who complies with the notice procedures set forth in this Section 3. For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make nominations or propose other business (other than a proposal included in the corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) at an annual meeting of stockholders.
- (ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(i) of this Section 3, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business, other than the nominations of persons for election to the Board, must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive office of the corporation not later than the close of business (as defined in paragraph (c)(ii) of this Section 3) on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement (as defined in paragraph (c)(ii) of this Section 3) of the date of such meeting is first made by the corporation). In no event shall an adjournment, recess, or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (A) as to each person whom the stockholder proposes to nominate for election as a director, all information relating to such person that is

required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under Exchange Act (and such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); provided, however, that, in addition to the information required in the stockholder's notice pursuant to this paragraph (a)(ii), the corporation may require each such person to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such person to serve as a director of the corporation, including information relevant to a determination whether such person can be considered an independent director, (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the bylaws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting, and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made, (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (2) the class and number of shares of stock of the corporation which are owned of record by such stockholder and such beneficial owner, and a representation that the stockholder will notify the corporation in writing within 5 business days after the record date for such meeting of the class and number of shares of stock of the corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting (except as otherwise provided in paragraph (a)(iv) of this Section 3), and (3) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at such meeting to propose such business or nomination, and (D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the business is proposed or the nomination is made, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "control person") (1) the class and number of shares of stock of the corporation which are beneficially owned (as defined in paragraph (c)(ii) of this Section 3) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within 5 business days after the record date for such meeting of the class and number of shares of stock of the corporation

beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting (except as otherwise provided in paragraph (a)(iv) of this Section 3), (2) a description of any agreement, arrangement, or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner, or control person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the corporation in writing within 5 business days after the record date for such meeting of any such agreement, arrangement, or understanding in effect as of the record date for the meeting (except as otherwise provided in paragraph (a)(iv) of this Section 3), (3) a description of any agreement, arrangement, or understanding (including without limitation any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner, or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the corporation's stock, or maintain, increase, or decrease the voting power of the stockholder, beneficial owner, or control person with respect to securities of the corporation, and a representation that the stockholder will notify the corporation in writing within 5 business days after the record date for such meeting of any such agreement, arrangement, or understanding in effect as of the record date for the meeting (except as otherwise provided in paragraph (a)(iv) of this Section 3), and (4) a representation whether the stockholder or beneficial owner, if any, intends or is part of a group which intends (x) to solicit proxies from stockholders in support of such proposal or nomination, and/or (y) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding stock required to approve or adopt the proposal.

- (iii) Notwithstanding anything in the second sentence of paragraph (a)(ii) of this Section 3 to the contrary, in the event that the number of directors to be elected to the Board of the corporation at the annual meeting is increased and there is no public announcement by the corporation naming the nominees for the additional directorships at least 10 days prior to the last day a stockholder may deliver a notice in accordance with paragraph (a)(ii) of this Section 3, a stockholder's notice required by this Section 3 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary of the corporation at the principal executive office of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

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- (iv) Notwithstanding anything in paragraphs (a) and (b) of this Section 3 to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 3 shall set forth a representation that the stockholder will notify the corporation in writing within 5 business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (C)(2) and (D)(1) – (3) of paragraph (a)(ii) of this Section 3, and such information when provided to the corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(b) *Special Meetings of the Stockholders.* Only such business shall be conducted at a special meeting of the stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of the stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board, (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 3 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election, and who complies with the notice procedures set forth in this Section 3, or (iii) in the case of a stockholder-requested special meeting, by any stockholder of the corporation pursuant to Section 4 of this Article II. In the event the corporation calls a special meeting of the stockholders (other than a stockholder-requested special meeting) for the purpose of electing one or more directors to the Board, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by this paragraph shall be delivered to the Secretary at the principal executive office of the corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall an adjournment, recess, or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notwithstanding any other provision of these bylaws, in the case of a stockholder-requested special meeting, no stockholder may nominate a person for election to the Board or propose any other business to be considered at the meeting, except pursuant to the written request(s) delivered for such special meeting pursuant to Section 4 of this Article II.

(c) *General.*

- (i) Only persons who are nominated in accordance with the procedures set forth in these bylaws shall be eligible to be elected at an annual or special meeting of the stockholders of the corporation to serve as directors, and only such business shall be conducted at a meeting of the stockholders as

shall have been brought before the meeting in accordance with the procedures set forth in these bylaws. Except as otherwise provided by law, the Board, the Chair of the Board, or the chair of the meeting, shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these bylaws (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made or solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (D)(4) of paragraph (a)(ii) of this Section 3), and (B) if any proposed nomination or business was not made or proposed in compliance with these bylaws, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 3, unless otherwise required by law, if the stockholder does not provide the information required under clauses (C)(2) and (D)(1) – (3) of paragraph (a)(ii) of this Section 3 to the corporation within the time frames specified herein, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of the stockholders of the corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of these bylaws, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager, or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the corporation prior to the making of such nomination or proposal at such meeting by such stockholder stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

- (ii) For purposes of these bylaws, the “close of business” shall mean 6:00 p.m. local time at the principal executive office of the corporation on any calendar day, whether or not the day is a business day, and a “public announcement” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed or furnished by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act. For purposes of clause (D)(1) of paragraph (a)(ii) of this Section 3, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement, or understanding (whether or not in writing) (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (B) the

right to vote such shares, alone or in concert with others, and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

- (iii) Notwithstanding the foregoing provisions of this Section 3 (or anything in Section 4 of this Article II, in the case of a stockholder-requested special meeting), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 3. Nothing in this Section 3 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, or (B) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the certificate of incorporation of the corporation, including any certificate of designations relating to any series of Preferred Stock, as any such documents may be amended and restated from time to time (collectively, the "Certificate of Incorporation").

Section 4 SPECIAL MEETINGS.

(a) *General.* Special meetings of the stockholders (i) may be called by the Board, the Chair of the Board, the Chief Executive Officer, or the President, and (ii) shall be called by the Chair of the Board or the Secretary of the corporation upon the written request or requests of one or more persons that (a) Own (as defined in paragraph (b)(i) of this Section 4) shares representing at least the percentage of the corporation's common stock required under the Certificate of Incorporation that is outstanding as of the record date fixed in accordance with these bylaws to determine who may deliver a written request to call the special meeting (hereinafter, the "Requisite Percent"), and (b) comply with the other requirements and procedures for calling special meetings of stockholders set forth in these bylaws. Special meetings may not be called by any other person or persons. Subject to the provisions of applicable law, only such business shall be considered at a special meeting of the stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. The Board may postpone, reschedule, or cancel any special meeting of the stockholders previously scheduled pursuant to this Section 4.

(b) *Procedures for Stockholder-Requested Special Meetings.*

- (i) For purposes of satisfying the Requisite Percent under this Section 4, a person is deemed to "Own" only those outstanding shares of common stock of the corporation as to which such person possesses both (A) the full voting and investment rights pertaining to the shares, and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares. Notwithstanding the foregoing, the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) sold by such person or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its

affiliates pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such person or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of stock of the corporation, if the instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such person's or its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of such shares by such person or its affiliate. A person "Owns" shares held in the name of a nominee or other intermediary so long as such person retains both (A) the full voting and investment rights pertaining to the shares, and (B) the full economic interest in the shares. The person's Ownership of shares is deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the person, but not during any period in which the person has loaned the shares.

- (ii) Any stockholder seeking to request a special meeting shall first request that the Board fix a record date to determine the stockholders entitled to request a special meeting (the "Ownership Record Date") by delivering notice in writing to the Secretary of the corporation at the principal executive office of the corporation (the "Record Date Request Notice"). A stockholder's Record Date Request Notice shall contain the name and address of the stockholder, the class or series and number of shares of stock of the corporation which are Owned of record and beneficially by the stockholder and state the business proposed to be acted on at the meeting.
- (iii) Following receipt of a valid Record Date Request Notice by the Secretary of the Corporation, the Board may set an Ownership Record Date. Notwithstanding any other provision of these bylaws, the Ownership Record Date shall not precede the date upon which the resolution fixing the Ownership Record Date is adopted by the Board, and shall not be more than 10 days after the close of business (as defined in paragraph (c)(ii) of Section 3) on the date upon which the resolution fixing the Ownership Record Date is adopted by the Board. If the Board, within 10 days after the date upon which a valid Record Date Request Notice is received by the Secretary of the corporation, does not adopt a resolution fixing the Ownership Record Date, the Ownership Record Date shall be the close of business on the 10th day after the date upon which a valid Record Date Request Notice is received by the Secretary of the corporation (or, if such 10th day is not a business day, the first business day thereafter).

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- (iv) In order for a special meeting requested by the stockholders to be called by the Chair of the Board or the Secretary of the corporation, one or more written requests for a special meeting signed by stockholders (or their duly authorized agents) who Own or who are acting on behalf of persons who Own, as of the Ownership Record Date, at least the Requisite Percent (the “Special Meeting Request”), shall be delivered to the Secretary of the corporation. A Special Meeting Request shall (A) state the business (including the identity of nominees for election as a director, if any) proposed to be acted on at the meeting, which shall be limited to the business set forth in the Record Date Request Notice received by the Secretary of the corporation, (B) bear the date of signature of each such stockholder (or duly authorized agent) submitting the Special Meeting Request, (C) set forth the name and address of each stockholder submitting the Special Meeting Request, as they appear on the corporation’s books, (D) contain the information required by paragraph (a)(ii) of Section 3 with respect to any director nominations or other business proposed to be presented at the special meeting, and as to each stockholder requesting the meeting and each other person (including any beneficial owner) on whose behalf the stockholder is acting, other than stockholders or beneficial owners who have provided such request solely in response to any form of public solicitation for such requests, (E) include documentary evidence that the requesting stockholders Own the Requisite Percent as of the Ownership Record Date; provided, however, that if the requesting stockholders are not the beneficial owners of the shares representing the Requisite Percent, then to be valid, the Special Meeting Request must also include documentary evidence of the number of shares Owned by the beneficial owners on whose behalf the Special Meeting Request is made as of the Ownership Record Date, and (F) be delivered to the Secretary of the corporation at the principal executive office of the corporation, by hand or by certified or registered mail, return receipt requested, within 60 days after the Ownership Record Date. The Special Meeting Request shall be updated and supplemented within 5 business days after the record date for determining the stockholders entitled to vote at the stockholder requested-special meeting (or by the opening of business on the date of the meeting, whichever is earlier, if the record date for determining the stockholders entitled to vote at the meeting is different from the record date for determining the stockholders entitled to notice of the meeting), and in either case such information when provided to the corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting. In addition, the requesting stockholder and each other person (including any beneficial owner) on whose behalf the stockholder is acting, shall provide such other information as may be reasonably requested by the corporation within 10 business days of such a request.
- (v) After receiving a Special Meeting Request, the Board shall determine in good faith whether the stockholders requesting the special meeting have

satisfied the requirements for calling a special meeting, and the corporation shall notify the requesting stockholder of the Board's determination about whether the Special Meeting Request is valid, which determination shall be conclusive and binding on the corporation and all stockholders and other persons. The date, time and place of the special meeting shall be fixed by the Board, and the date of the special meeting shall not be more than 90 days after the date on which the Board fixes the date of the special meeting. The record date for the special meeting shall be fixed by the Board as set forth in Section 9 of this Article II.

- (vi) A Special Meeting Request shall not be valid, and the corporation shall not call a special meeting if (A) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under, or that involves a violation of, applicable law, (B) an item of business that is the same or substantially similar (as determined in good faith by the Board) to any item that was presented at a meeting of the stockholders occurring within 90 days preceding the earliest date of signature on the Special Meeting Request, provided that the removal of directors and the filling of the resulting vacancies shall not be considered the same or substantially similar to the election of directors at the preceding annual meeting of stockholders, (C) the Special Meeting Request is delivered during the period commencing 90 days prior to the first anniversary of the preceding year's annual meeting and ending on the date of the next annual meeting of stockholders, or (D) the Special Meeting Request does not comply with the requirements of this Section 4.
- (vii) Any stockholder who submitted a Special Meeting Request may revoke its written request by written revocation delivered to the Secretary of the corporation at the principal executive office of the corporation at any time prior to the stockholder-requested special meeting. A Special Meeting Request shall be deemed revoked (and any meeting scheduled in response may be cancelled) if the stockholders submitting the Special Meeting Request, and any beneficial owners on whose behalf they are acting (as applicable), do not continue to Own at least the Requisite Percent at all times between the date the Record Date Request Notice is received by the Corporation and the date of the applicable stockholder-requested special meeting, and the requesting stockholder shall promptly notify the Secretary of the corporation of any decrease in Ownership of shares of stock of the corporation that results in such a revocation. If, as a result of any revocations, there are no longer valid unrevoked written requests from the Requisite Percent, the Board shall have the discretion to determine whether or not to proceed with the special meeting.
- (viii) Business transacted at a stockholder-requested special meeting shall be limited to (A) the business stated in the valid Special Meeting Request received from the Requisite Percent, and (B) any additional business that the Board determines to include in the corporation's notice of meeting (or

any supplement thereto). If none of the stockholders who submitted the Special Meeting Request (or a qualified representative thereof as defined in paragraph (c)(i) of Section 3) appears at the special meeting to present the matter or matters to be brought before the special meeting that were specified in the Special Meeting Request, the corporation need not present the matter or matters for a vote at the meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Section 5 NOTICE OF ANNUAL OR SPECIAL MEETINGS.

(a) *Time Periods.* Notice of each annual or special meeting of the stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Such notice shall state the place, if any, date, and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting), the means of remote communications, if any, by which stockholders may be deemed present in person or represented by proxy and vote at the meeting, and (i) in the case of the annual meeting, those matters which the Board, at the time of the mailing of the notice, intends to present for action by the stockholders (but, subject to Section 3 of this Article II and the provisions of applicable law, any other matters properly brought may be presented at the meeting for action), or (ii) in the case of a special meeting, the purpose or purposes for which the meeting was called. The notice of any meeting at which directors are to stand for election shall include the names of nominees intended at the time of the notice to be presented by the Board for election.

(b) *Method.* Notice of a stockholders' meeting shall be given (i) in writing, (ii) by United States mail, addressed to the stockholder at the address of such stockholder appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice, or (iii) by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware.

Notice by mail shall be deemed to have been given at the time written notice is deposited in the United States mail, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or delivered to a common carrier for transmission. Notice by electronic transmission shall be deemed given as provided in Section 232 of the Corporation Law of the State of Delaware. An affidavit that notice has been given, executed by the Secretary, any Assistant Secretary or any transfer agent or other agent of the corporation, shall be *prima facie* evidence of the facts stated in the notice in the absence of fraud. Notice shall be deemed to have been given to all stockholders who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the General Corporation Law of the State of Delaware.

Section 6 QUORUM—REQUIRED VOTES.

Except as otherwise provided by law, the Certificate of Incorporation, or these bylaws, at each meeting of the stockholders the presence in person or by proxy of the holders of a majority

in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the chair of the meeting, or the stockholders so present, by a majority in voting power thereof, may adjourn the meeting from time to time in the manner provided in Section 7 of this Article II until a quorum shall attend. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted.

Section 7 ADJOURNED OR RECESSED MEETINGS AND
NOTICE THEREOF.

Any meeting of the stockholders, annual or special, may be adjourned or recessed for any reason from time to time by the chair of the meeting, subject to any rules and regulations adopted by the Board pursuant to Section 12 of this Article II, and may be adjourned for any reason from time to time by the stockholders so present, by a majority in voting power thereof. Notice need not be given of any adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 9 of this Article II and notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 8 VOTING.

Except as otherwise provided by law, the stockholders entitled to notice of any meeting or to vote at any such meeting shall be only those persons in whose name shares stand on the stock records of the corporation on the record date determined in accordance with Section 9 of this Article II.

Voting at meetings of the stockholders need not be by written ballot. At any meeting of the stockholders for the election of directors, each nominee for election as a director in an uncontested election shall be elected if the number of votes cast for the nominee's election exceeds the number of votes cast against the nominee's election. In all director elections other than uncontested elections, the nominees for election as a director shall be elected by a plurality of the votes cast. For purposes of this Section 8, an "uncontested election" means any meeting of the stockholders at which the number of candidates does not exceed the number of directors to be elected and with respect to which (a) no stockholder has submitted notice of an intent to nominate a candidate for election at such meeting in accordance with Section 3 of this Article II, or (b) such a notice has been submitted, and on or before the 5th business day prior to the date that the corporation files its definitive proxy statement relating to such meeting with the Securities and Exchange Commission (regardless of whether thereafter revised or

supplemented), the notice has been (i) withdrawn in writing to the Secretary of the corporation, (ii) determined not to be a valid notice of nomination, with such determination to be made by the Board (or a committee thereof) pursuant to Section 3 of this Article II, or if challenged in court, by a final court order, or (iii) determined by the Board (or a committee thereof) not to create a bona fide election contest.

All other matters shall, unless otherwise provided by the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the corporation, or as otherwise provided by law or pursuant to any regulation applicable to the corporation, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

Section 9 RECORD DATE.

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of the 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 may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date (a) in the case of determination of stockholders entitled to notice of any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting, which shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination, and (b) subject to Section 14 of this Article II, in the case of any other action, shall not be more than 60 days prior to such other action. If no record date is fixed (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business (as defined in paragraph (c)(ii) of this Section 3) 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, and (b) subject to Section 14 of this Article II, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. 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 may fix a new record date for the adjourned meeting.

Section 10 PROXIES.

Each stockholder entitled to vote for directors, or on any other matter, may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering a revocation of the proxy or a proxy bearing a later date to the Secretary of the corporation.

A proxy validly delivered to the corporation shall mean any written authorization which is signed by the person executing the proxy, as well as any electronic transmission (to include without limitation transmissions by facsimile and by computer messaging systems), which is authorized by a stockholder or the stockholder's attorney in fact, which gives another person or persons power to vote with respect to the shares of such stockholder. A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. If it is determined that such electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 10 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 11 INSPECTORS OF ELECTION.

(a) *Appointment of Inspectors.* In advance of any meeting of the stockholders, the Board shall appoint inspectors of election to act at such meeting. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chair of the meeting may, and on the request of any stockholder or stockholder's proxy shall, make such appointment at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more stockholders' proxies, the majority of shares present shall determine whether one or three inspectors are to be appointed.

(b) *Duties of Inspectors.* The duties of such inspectors shall include: determining the number of shares outstanding and the voting power of each; determining the shares represented at the meeting; determining the existence of a quorum; determining the authenticity, validity, and effect of proxies; receiving votes and ballots; counting and tabulating all votes and ballots; certifying the results; and doing such acts as may be proper to conduct the election or vote with fairness to all stockholders. If there are three inspectors, the decision, act or certificate of a majority is in all respects the decision, act or certificate of all. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. Inspectors need not be stockholders. No director or nominee for the office of director at an election shall be appointed as an inspector at such election.

Section 12 CONDUCT OF MEETING.

(a) *Chair of Meeting.* The Chair of the Board shall preside at all meetings of the stockholders, or, in his or her absence, another person designated by the Board. The chair of the meeting shall conduct each such meeting in a businesslike and fair manner, but

shall not be obligated to follow any technical, formal, or parliamentary rules or principles of procedure. Without limiting the generality of the foregoing, the chair of the meeting shall have all of the powers usually vested in the chair of a meeting of stockholders, in addition to specific powers relating to the matters addressed in paragraph (b) of this Section 12.

(b) *Organization.* The date and time of the opening and the closing of the polls for each matter upon which the stockholders shall vote at a meeting of stockholders shall be announced at the meeting. The Board may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chair of the meeting shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the chair, are necessary, appropriate, or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board or by the chair of the meeting, may include without limitation, establishing (i) an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies, and such other persons as the chair of the meeting shall permit, (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof, (v) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants, (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any), and (vii) procedures (if any) requiring attendees to provide the corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board, the chair of the meeting may convene and, for any or no reason, from time to time, adjourn, and/or recess any meeting of stockholders pursuant to Section 7 of this Article II. The chair of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to declare that a nomination or other business was not properly brought before the meeting if the facts warrant (including if a determination is made, pursuant to Section 3 of this Article II, that a nomination or other business was not made or proposed, as the case may be, in accordance with Section 3 of this Article II), and if such chair should so declare, such nomination shall be disregarded or such other business shall not be transacted. The Secretary of the corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chair of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(c) *Meetings by Remote Communications.* The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders not physically present or represented by proxy at a meeting of stockholders may, by means of remote communication (i) participate in a meeting of stockholders, and

(ii) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or a person representing a stockholder by proxy, (B) the corporation shall implement reasonable measures to provide such stockholders and persons representing stockholders by proxy a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or person representing a stockholder by proxy votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 13 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The Secretary of the corporation shall prepare and make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder, provided that nothing in this Section 13 shall require the corporation to include electronic mail addresses or other electronic contact information on such list. 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 10 days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting, or (b) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, or the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 14 CONSENT OF STOCKHOLDERS IN LIEU OF MEETING.

(a) Pursuant to the Certificate of Incorporation, any action required to be taken at any annual or special meeting of the stockholders of the corporation, or any action which may be taken at any annual or special meeting of the stockholders duly called in accordance with the Certificate of Incorporation or these bylaws, may be effected by written consent of the

stockholders in lieu of a meeting only if the action to be effected by written consent of the stockholders and the taking of such action by such written consent have expressly been approved in advance by the Board, and only if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and if evidence of such instruction or provision is provided to the corporation, such later effective time shall serve as the date of signature so long as such person did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

(b) Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the corporation in the manner prescribed in paragraph (c) of this Section 14.

(c) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent in writing without a meeting shall, by written notice to the Secretary of the corporation, request that the Board approve the action to be effected by written consent of the stockholders and the taking of such action by such written consent. The Board shall promptly, but in all events within 10 days after the date on which such a request is received, decide whether to grant such approval. Following the receipt of such approval, the stockholder shall, by written notice to the Secretary, request the Board to fix a record date. The Board shall promptly, but in all events within 10 days after the date on which the request for a record date is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with paragraphs (a) and (b) of this Section 14. If no record date has been fixed by the Board and prior action by the Board is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board adopts the resolution taking such prior action.

(d) Within 5 business days after receipt of the earliest dated consent delivered to the corporation in the manner provided in this Section 14, the corporation, shall retain nationally

recognized independent inspectors of elections for the purposes of performing a review of the validity of consents and any revocations thereof. The cost of retaining inspectors of election shall be borne by the corporation.

(e) At any time that stockholders soliciting consents in writing to corporate action have a good faith belief that the requisite number of valid and unrevoked consents to authorize or take the action specified has been received by them, the consents shall be delivered by the soliciting stockholders to the corporation's registered office in the State of Delaware, or principal place of business, or to the Secretary of the corporation, together with a certificate stating their belief that the requisite number of valid and unrevoked consents has been received as of a specific date, which date shall be identified in the certificate. In the event that delivery shall be made to the corporation's registered office in Delaware, such delivery shall be made by hand or by certified or registered mail, return receipt requested. Upon receipt of such consents, the corporation shall cause the consents to be delivered promptly to the inspectors of election. The corporation also shall deliver promptly to the inspectors of election any revocations of consents in its possession, custody, or control as of the time of receipt of the consents.

(f) The corporation shall give prompt notice to the stockholders of the results of any consent solicitation or the taking of corporate action without a meeting by less than unanimous written consent.

(g) This Section 14 shall in no way impair or diminish the right of any stockholder or director, or any officer whose title to office is contested, to contest the validity of any consent or revocation thereof, or to take any other action with respect thereto.

ARTICLE III **DIRECTORS.**

Section 1 **POWERS.**

Subject to limitations of the Certificate of Incorporation, of these bylaws, and of the General Corporation Law of the State of Delaware relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed by or under the direction of the Board and it shall have the final authority in matters of strategy and policy matters for the corporation.

The Board may delegate management duties for the operation of the business of the corporation to those persons to whom authority is properly delegated by the Board, including officers of the corporation, provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these bylaws

(a) To select and remove officers (in accordance with the provisions of these bylaws), prescribe the powers and duties for them as may not be inconsistent with law, the Certificate of Incorporation, or these bylaws, and fix their compensation.

(b) To conduct, manage, and control the affairs and business of the corporation and to make such rules and regulations therefor not inconsistent with law, the Certificate of Incorporation, or these bylaws, as the Board may deem best.

(c) To adopt, alter, amend, and repeal these bylaws from time to time as the Board may deem best.

(d) To adopt, make, and use a corporate seal, and to prescribe the forms of any certificates of stock, and to alter the form of such seal and of such certificates from time to time as the Board may deem best.

(e) To authorize the issuance of shares of stock of the corporation from time to time, upon such terms and for such consideration as may be lawful.

(f) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefor.

(g) To adopt such rules and regulations for the conduct of its meetings as the Board may deem best.

Section 2 NUMBER OF DIRECTORS.

The authorized number of directors shall be as set forth in the Certificate of Incorporation. The Board shall fix the exact number of directors by resolution duly adopted by the Board.

Section 3 NOMINATION, ELECTION, QUALIFICATION AND
TERM OF OFFICE.

(a) *Eligibility for Election as Director.* Only persons who are nominated by, or at the direction of the Board, or by a stockholder who has given timely written notice to the Secretary of the corporation in accordance with Section 3 of Article II of these bylaws or has submitted a valid Special Meeting Request to the Secretary of the corporation in accordance with Section 4 of Article II of these bylaws, will be eligible for election as directors of the corporation.

(b) *Meetings at which Directors May Be Elected.* The directors shall stand for election at each annual meeting of the stockholders, but if any such annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of the stockholders called for that purpose.

(c) *Qualified Directors.* For a person to be qualified to serve as a director of the corporation, such person need not be an employee or stockholder of the corporation during his or her directorship.

(d) *Length of Term for Directors.* Each director shall hold office until the next annual meeting of stockholders and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal.

(e) *Removal of Directors.* Any director, or the entire Board, may be removed with or without cause, by the holders of a majority of the shares then entitled to vote at the election of directors.

Section 4 VACANCIES.

Any director may resign, to be effective upon delivery, by giving notice in writing or by electronic transmission to the Board or to the Chair of the Board, President, or Secretary of the corporation, unless the notice specifies a later time for the effectiveness of such resignation or an effective time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. If the resignation is effective at a future time or upon the happening of a future event or events, a successor may be elected to take office when the resignation becomes effective.

Any newly-created directorship resulting from an increase in the authorized number of directors or any vacancies in the Board occurring by reason of death, resignation, retirement, disqualification, or removal may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office until the next annual meeting and until such director's successor has been elected and qualified.

The stockholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 5 PLACE OF MEETING.

Regular or special meetings of the Board shall be held at any place within or without the State of Delaware which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal executive office of the corporation.

Section 6 REGULAR MEETINGS.

The Board shall hold a regular meeting annually or at such other intervals as the Board deems appropriate for the purpose of organization, election of officers and the transaction of other business.

Other regular meetings of the Board shall be held without call on such dates and at such times as may be fixed by the Board. Call and notice of all regular meetings of the Board are hereby dispensed with.

Special meetings of the Board for any purpose or purposes may be called at any time by the Chair, the Chief Executive Officer, the President, the Secretary of the corporation, or by a majority of the directors then in office.

Special meetings of the Board shall be held upon four days' written notice or at least twenty-four hours' notice given personally or by telephone or electronic transmission, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means of communication. Any written notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of the corporation or as may have been given to the corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

Section 8

QUORUM.

A majority of the total number of directors then authorized constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Section 11 of this Article III. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law or by the Certificate of Incorporation.

Section 9

PARTICIPATION IN MEETINGS BY
COMMUNICATIONSEQUIPMENT.

Members of the Board, or any committee thereof, may participate in a meeting through the use of conference telephones, electronic video screen equipment, or other similar communications equipment. Participation in such a meeting shall constitute presence in person at that meeting by a member of the Board if all of the following apply

- (i) each member participating in the meeting can hear and communicate with all of the other members concurrently,
- (ii) each member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation, and

- (iii) the corporation is able to verify both of the following (x) a person participating in the meeting is a director or other person entitled to participate in the Board meeting, and (y) all actions of, or votes by, the Board are taken or cast only by the directors and not by persons who are not directors.

Section 10 WAIVER OF NOTICE.

Notice of a meeting need not be given to any director who signs, or provides by electronic transmission, a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. 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 11 ADJOURNMENT.

A majority of the directors present, whether or not a quorum is present, or the chair of the meeting may adjourn any directors' meeting to another time and place.

Section 12 FEES AND COMPENSATION.

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the Board. The corporation shall not compensate directors who are also employees of the corporation.

Section 13 ACTION WITHOUT MEETING.

Any action required or permitted to be taken by the Board, or any committee thereof, may be taken without a meeting if all members of the Board or committee shall consent in writing or by electronic transmission to such action. Such consent or consents shall have the same effect as a unanimous vote of the Board or committee and shall be filed with the minutes of the proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 14 RIGHTS OF INSPECTION.

Every director shall have the right at any reasonable time to examine the corporation's stock ledger, a list of the stockholders of the corporation, and the corporation's other books and records for any purpose reasonably related to such director's position as a director.

Section 15 COMMITTEES.

The Board may appoint one or more committees, each consisting of one or more directors, and delegate to such committees such powers and authority of the Board as determined by the Board, except no such committee shall have power or authority in reference to the following

- (a) Approving, adopting or recommending to the stockholders any action or matter expressly required by the General Corporation Law of the State of Delaware to be submitted to the stockholders for approval, or
- (b) Adopting, altering, amending, or repealing these bylaws or any of them.

Any such committee must be designated, and the members or alternate members thereof appointed, by resolution adopted by a majority of the total number of directors then authorized and any such committee may be designated by such name as the Board shall specify. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any absent or disqualified member. Alternate members of a committee may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other action of any such committee shall be governed by the provisions of this Article III applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee.

Section 16 CHAIR OF THE BOARD.

The Board shall elect one of its members to be Chair of the Board and shall fill any vacancy in the position of Chair of the Board at such time and in such manner as the Board shall determine. The Chair of the Board shall preside at all meetings of stockholders and directors, and shall perform such other and further duties as may from time to time be required by the Board. If the Chair of the Board is not present at a meeting of the Board, another director chosen by the Board shall preside.

ARTICLE IV OFFICERS.

Section 1 OFFICERS.

The senior officers of the corporation shall be a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, and a Secretary. The corporation may also have, at the discretion of the Board, a President, a Chief Administrative Officer, one or more Vice Presidents, one or more Assistant Secretaries, Treasurers, Assistant Treasurers, and such other officers as may be elected or appointed in accordance with the provisions of Section 2 of this Article IV.

The senior officers of the corporation shall be elected by the Board annually or at such other intervals as the Board deems appropriate. In addition, other officers may be elected or appointed in accordance with the provisions of Section 5 of this Article IV. All officers, whether elected or appointed, shall serve at the pleasure of the Board, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successors shall be elected.

The Board may elect, and may empower the Chief Executive Officer to appoint, such other subordinate officers as the business of the corporation may require, each of whom shall hold office for such period and shall have such authority and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

Section 3

ELECTED SENIOR OFFICERS.

The elected senior officers of the corporation shall have those positions and those duties named below in this Section 3. Further, in each case, the named officer also shall have the general powers and duties of governance or management usually vested in that office and such other powers and duties as may be prescribed by the Board.

The Chief Executive Officer shall be the senior executive officer of the corporation. The President, if any, shall have the general powers and duties of management of the corporation. The Chief Operating Officer shall have the general powers and duties to carry out general administrative and financial management of the corporation.

The Secretary shall keep or cause to be kept, at the principal executive office and such other place as the Board may order, a book of minutes of all meetings of stockholders, the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, a copy of these bylaws of the corporation at the principal executive office or such other place as the Board may order.

The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, if one has been appointed, a share register, or a duplicate share register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, and, if such shares are represented by certificates, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board and any committees thereof required by these bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Chief Executive Officer.

The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, and

shall send or cause to be sent to the stockholders of the corporation such financial statements and reports as are by law or these bylaws required to be sent to them.

The Chief Financial Officer shall deposit, or cause to be deposited, all moneys and other valuables in the name and to the credit of the corporation in depositaries of the corporation. The Chief Financial Officer shall disburse, or cause to be disbursed, the funds of the corporation as may be ordered by the Board, the Chief Executive Officer or the President, shall render to the Chief Executive Officer, the President, and the directors, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board, the Chief Executive Officer or the President.

Section 4 REMOVAL AND RESIGNATION.

Any officer elected by the Board may be removed only by the Board, either with or without cause, at any time. In the case of an officer not elected by the Board, such an officer may be removed by another officer upon whom such power of removal may be conferred by the Board. Any removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time by giving notice to the corporation in writing or by electronic transmission, subject to the rights of the corporation under any contract between the corporation and the officer. Any such resignation shall take effect at the date of delivery of such notice or at any later time specified therein, including upon the happening of a future event or events, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 VACANCIES.

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular election or appointment to such office.

ARTICLE V **OTHER PROVISIONS.**

Section 1 INSPECTION OF BYLAWS.

The corporation shall keep in its principal executive office in the State of California, or if its principal executive office is not in such State at its principal business office in such State, the original or a copy of these bylaws as amended to date, which shall be open to inspection by stockholders at all reasonable times during office hours. If the principal executive office of the corporation is located outside the State of California and the corporation has no principal business office in such state, it shall upon the written request of any stockholder furnish to such stockholder a copy of these bylaws as amended to date.

Subject to the provisions of applicable law unless otherwise specifically determined by the Board or pursuant to authority delegated by the Board, any note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing and any assignment or endorsements thereat executed or entered into between the corporation and any other person, may be signed by (a) any two of the Chief Executive Officer, the President, the Chief Financial Officer, and the General Counsel, or (b) any Executive Vice President, any senior vice president, the Secretary, any Assistant Secretary, or any Assistant Treasurer of the corporation, in each case only with regard to such instruments or documents that pertain to or relate to such person's duties or business functions, and when so signed shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board or pursuant to authority delegated by the Board, and, unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement, or to pledge its credit or to render it liable for any purpose or amount.

Section 3

CERTIFICATES OF STOCK.

The shares of the corporation shall be represented by certificates; provided, however, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of shares of the corporation represented by certificates shall be entitled to have a certificate signed in the name of the corporation by the Chair of the Board, or the Chief Executive Officer, the President, or a Vice President, and by the Chief Financial Officer or an Assistant Treasurer or the Secretary or an Assistant Secretary, representing the number of shares and the class or series of shares registered in certificate form. Any or all of the signatures on the certificate may be facsimile. If any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were an officer, transfer agent, or registrar at the date of issue.

Except as provided in this Section 3, no new share certificate or uncertificated shares shall be issued in lieu of any certificate theretofore issued by the corporation unless the latter is surrendered and cancelled at the same time. The Board may, however, if any certificate for shares is alleged to have been lost, stolen, or destroyed, authorize the issuance of a new certificate or uncertificated shares in lieu thereof, and the corporation may require that the corporation be given a bond or other adequate security sufficient to indemnify it against any claim that may be made against it (including expense or liability) on account of the alleged loss, theft, or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 4 REPRESENTATION OF SHARES OF OTHER CORPORATIONS.

Any officer or officers authorized by the Board are each authorized to vote, represent, and exercise on behalf of the corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

Section 5 ELECTION OF FISCAL YEAR.

The Fiscal Year of the corporation shall be fixed by resolution of the Board.

Section 6 CONSTRUCTION AND DEFINITIONS.

Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Corporation Law of the State of Delaware shall govern the construction of these bylaws.

Section 7 AMENDMENTS.

These bylaws may be altered, amended, or repealed either by the approval of the majority of the voting power of the then outstanding voting stock of the corporation or, subject to the provisions of the General Corporation Law of the State of Delaware, by the approval of the Board.

Section 8 EMERGENCY BYLAWS.

In the event of any emergency, disaster, or catastrophe, as referred to in Section 110 of the General Corporation Law of the State of Delaware, or other similar emergency condition, as a result of which a quorum of the Board or a standing committee of the Board cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate.

ARTICLE VI INDEMNIFICATION.

Section 1 RIGHT TO INDEMNIFICATION.

The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnitee") who was or is made or is threatened to be made a party to or is otherwise involved in any action, suit, or proceeding, whether of a civil, criminal, administrative, investigative, or other nature (a "proceeding"), by reason of the fact that he or she, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the written request of the corporation as a director, officer, employee, or agent of another corporation or of a

partnership, joint venture, trust, non-profit entity, or other enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) actually and reasonably incurred by such Indemnitee. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article VI, the corporation shall be required to indemnify or advance expenses to an Indemnitee in connection with a proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such proceeding (or part thereof) by the Indemnitee was authorized by the Board.

Section 2 PREPAYMENT OF EXPENSES.

The corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnitee in defending any proceeding in advance of its final disposition, provided, however, that, a payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt by the corporation of an undertaking by the Indemnitee to repay all amounts advanced if it should be ultimately determined that the Indemnitee is not entitled to be indemnified under this Article VI or otherwise.

Section 3 CLAIMS.

If a claim for indemnification or advancement of expenses under this Article VI is not paid in full within 60 days after a written claim for indemnification or 20 days after a written claim for advancement by the Indemnitee has been received by the corporation, the Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the corporation shall have the burden of proving that the Indemnitee is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 4 NON-EXCLUSIVITY OF RIGHTS.

The rights conferred on any Indemnitee by this Article VI shall not be exclusive of any other rights which such Indemnitee may have or hereafter acquire under any statute, provision of a certificate of incorporation, bylaws, agreement, or vote of the stockholders or disinterested directors or otherwise.

Section 5 OTHER SOURCES.

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

Section 6 AMENDMENT OR REPEAL.

Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any act or omission occurring prior to the time of such repeal or modification.

The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnatee who has ceased to be a director or officer and shall inure to the benefit of the Indemnatee's heirs, executors, and administrators.

If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever (a) the validity, legality, and enforceability of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal, or unenforceable, that are not by themselves invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent of the parties that the corporation provide protection to the indemnitee to the fullest enforceable extent.

This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitees when and as authorized by appropriate corporate action.

RESTATED CERTIFICATE OF INCORPORATION

OF

KORN/FERRY INTERNATIONAL

Korn/Ferry International, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY AS FOLLOWS:

FIRST: The Corporation filed its original Certificate of Incorporation with the Secretary of State of Delaware on September 13, 1999.

SECOND: The Board of Directors of the Corporation duly adopted, pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, a Restated Certificate of Incorporation of the Corporation.

THIRD: The Restated Certificate of Incorporation, as adopted by the Board of Directors of the Corporation, is as follows:

Article I: Name

The name of the corporation is Korn/Ferry International (the "Corporation").

Article II: Registered Office

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

Article III: Purpose

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

Article IV: Stock

Section 1. Authorized Shares. The total number of shares of all classes which the Corporation shall have the authority to issue shall be 200,000,000, which shall be divided into two classes, one to be designated "Common Stock," which shall consist of 150,000,000 authorized shares, \$0.01 par value per share, and a second class to be designated as "Preferred Stock," which shall consist of 50,000,000 authorized shares, \$0.01 par value per share.

Section 2. Preferred Stock of the Corporation. The Preferred Stock may be issued in one or more series, from time to time, each series to be appropriately designated by a distinguishing number, letter or title, prior to the issuance of any shares thereof. The first series of Preferred Stock shall initially consist of 10,000 shares and shall be designated "7.5% Convertible Series A Preferred Stock" ("Series A Preferred Stock").

Section 3. Authority of Board of Directors to Issue Stock. Each series of Preferred Stock shall consist of such number of shares and have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolutions or resolutions providing for the issuance of such series adopted by the Board of Directors of the Corporation (the "Board of Directors"), and the Board of Directors is hereby expressly vested with authority, to the full extent now or hereafter provided by law, to adopt any such resolution or resolutions. The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (a) The number of shares constituting the series and the distinctive designation of that series;
- (b) The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- (c) Whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
- (d) Whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;
- (e) Whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;
- (f) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;
- (g) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and
- (h) Any other relative rights, preferences and limitations of that series.

Section 4. No Preemptive or Preferential Rights. No holders of shares of the Corporation of any class, now or hereafter authorized, shall have any preferential or preemptive rights to subscribe for, purchase or receive any shares of the Corporation of any class, now or hereafter authorized, or any options or warrants to subscribe for such shares, or any rights to subscribe for, purchase or receive any securities convertible to or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the Corporation.

Section 5. Series A Preferred Stock.

(a) Designation. Each share of Series A Preferred Stock shall be identical in all respects to every other share of Series A Preferred Stock. The shares of Series A Preferred Stock are subject to subordination in the manner, and to the extent, set forth in that certain Subordination Agreement, dated as

of June 13, 2002, made by the Corporation and certain other persons in favor of Bank of America and certain senior creditors.

(b) *Number of Shares.* The number of shares of Series A Preferred Stock shall initially be 10,000. Such number may from time to time be increased (but not in excess of the total number of authorized shares of Preferred Stock) or decreased (but not below the number of shares of Series A Preferred Stock then outstanding) by the Board of Directors. Shares of Series A Preferred Stock that are redeemed, purchased or otherwise acquired by the Corporation or converted into Common Stock shall be cancelled and shall revert to authorized but unissued shares of Preferred Stock undesignated as to series.

(c) *Definitions.* As used herein with respect to Series A Preferred Stock:

(i) *“Accrued Dividends,”* with respect to any share of Series A Preferred Stock, means an amount computed at the annual dividend rate for Series A Preferred Stock, from the Closing Date or the Accrual Date, as applicable, to and including the date to which such dividends are to be accrued (whether or not such dividends have been declared), less the aggregate amount of all dividends previously paid on such share whether in cash or stock.

(ii) *“Average Closing Price”* with respect to any period shall be calculated on a volume-weighted average basis. Specifically, it shall be computed by (x) multiplying the Closing Price on each Trading Day within the period by a fraction, the numerator of which is the trading volume of the Common Stock for such Trading Day on the New York Stock Exchange or within the relevant trading market if not the New York Stock Exchange, and the denominator of which is the aggregate trading volume for the trading period, and (y) adding together the products thus derived.

(iii) *“Business Day”* means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions in New York, New York or Los Angeles, California are not authorized or obligated by law, regulation or executive order to close.

(iv) *“Closing Date”* means June 13, 2002.

(v) *“Closing Price”* on any Trading Day means the last reported sales price regular way or, in case no such reported sale takes place on such Trading Day, the average of the reported closing bid and asked prices regular way, in each case on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange, market or quotation system on which the Common Stock is listed or admitted to trading, or, if such prices are not available, Closing Price shall mean the price per share of the Common Stock determined by the Board of Directors on a reasonable basis and in good faith.

(vi) *“Fair Market Value”* on any day means the Closing Price.

(vii) *“Fundamental Change”* means any transaction (including any merger, consolidation, recapitalization or other reorganization) or a series of related transactions as a result of which all or substantially all of the outstanding Common Stock is converted into or exchanged for stock, other securities, cash or assets.

(viii) *“Junior Stock”* means the Common Stock and any other class or series of stock of the Corporation hereafter authorized over which Series A Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(ix) "Note" means the 7.5% Convertible Subordinated Note Due 2010 of the Corporation.

(x) "Parity Stock" means any other class or series of stock of the Corporation that ranks on a parity with Series A Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(xi) "Redemption Date" means the date fixed for redemption by or pursuant to this Certificate of Designations.

(xii) "Trading Day" means a day on which the principal national securities exchange, market or quotation system on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading, a Business Day.

(xiii) "Warrants" means the eight-year warrants issued pursuant to the Purchase Agreement, dated as of June 13, 2002, by and between the Corporation and the other parties thereto.

(d) Dividends.

(i) *Rate.* Holders of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds legally available therefor, cumulative dividends per share of Series A Preferred Stock at the annual rate of 7.5% (or as such rate may be modified pursuant to the next paragraph) of the Issuance Price. The Issuance Price means \$1000 per share of Series A Preferred Stock, as adjusted to reflect the occurrence of any stock split, stock dividend, stock combination, stock subdivision or similar recapitalization affecting such share.

In the event that any Registration Default (as such term is defined in the Investor Rights Agreement, entered into as of the Closing Date by and between the Corporation and the other parties thereto, hereinafter the "Investor Rights Agreement") exists and is continuing, then the annual rate of 7.5% referred to in the foregoing paragraph shall be increased by one percentage point per quarter, up to a maximum of 14%, until such time as the Registration Default ceases to continue (as set forth in the Investor Rights Agreement) at which point the annual rate shall immediately be reduced to 7.5%.

(ii) *Payment.* Dividends are payable semi-annually on the thirteenth day of June and December in each year (or, if any such date is not a Business Day, on the next succeeding Business Day), beginning December 13, 2002, to holders of record on the Business Day preceding such dividend payment date, fixed for that purpose by the Board of Directors in advance of payment of each particular dividend. The amount of dividends payable for the initial dividend period and any period shorter than a full semi-annual period during which shares are outstanding shall be computed on the basis of a 360-day year of twelve 30-day months and the actual number of days elapsed in the period which is payable. The dividend payable per share of Series A Preferred Stock for each full dividend period shall be computed by dividing the annual dividend rate by two. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payments on shares of Series A Preferred Stock which may be in arrears; provided, however, that to the extent that the Corporation does not declare and pay the amounts specified in Section 5(d)(i) above on the dividend payment date on which such dividend is payable, the holders of the Series A Preferred Stock thus affected shall also receive, but only out of funds legally available for the payment of dividends, additional dividends in an amount equal to 2.0% per annum of such overdue amount for each day (beginning with the first day following such dividend payment date) for which such failure to declare and pay such dividends continues.

Dividends payable on shares of Series A Preferred Stock shall be paid in additional shares of Series A Preferred Stock; provided, however, that on any dividend payment date occurring on or before the second anniversary of the Closing Date, dividends equal to 1% of the Issuance Price shall be paid in cash and equal to 6.5% of the Issuance Price shall be paid in additional shares of Series A Preferred Stock, and provided, further, at the option of the Corporation, dividends payable on shares of Series A Preferred Stock on any dividend payment date occurring after the second anniversary of the Closing Date may be paid entirely in cash or in additional shares of Series A Preferred Stock. To the extent that dividends are paid in additional shares of Series A Preferred Stock, such shares shall be valued at the Issuance Price, and such additional shares shall be entitled to receive cumulative dividends beginning from the date of issuance (such date an "Accrual Date").

(iii) *Priority of Dividends.* So long as any share of Series A Preferred Stock remains outstanding, no dividend whatsoever shall be paid or declared and no distribution shall be made on any Junior Stock, other than a dividend or distribution payable solely in Junior Stock, and no shares of Junior Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of (A) a reclassification of Junior Stock for or into Junior Stock, (B) the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, or (C) the repurchase of Common Stock from the Corporation's employees up to an aggregate amount of up to \$1,000,000 of Common Stock per year) provided, however, that dividends may be paid on Junior Stock if (i) all Accrued Dividends on all outstanding shares of Series A Preferred Stock for all past dividend periods have been paid in full and (ii) in the case of a dividend or distribution, there shall contemporaneously have been declared and paid or made on each outstanding share of Series A Preferred Stock a dividend or distribution in the same amount as the Corporation would have paid on such share if such share had been converted into Common Stock on the record date for the payment of such dividend or distribution and had received the dividend or distribution payable on such Common Stock. Subject to the foregoing, such dividends and distributions (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor.

(e) Liquidation Rights.

(i) *Voluntary or Involuntary Liquidation.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series A Preferred Stock shall be entitled, before any distribution or payment out of the assets of the Corporation may be made to the holders of any Junior Stock, to receive in full an amount per share equal to the greater of (i) the Issuance Price, together with an amount equal to all Accrued Dividends to the date of payment and (ii) the amount that a holder of one share of Series A Preferred Stock would be entitled to receive if such shares were converted into Common Stock immediately prior to such liquidation, dissolution or winding up. Such greater amount per share shall be the "Liquidation Preference Amount".

(ii) *Partial Payment.* If the assets of the Corporation are not sufficient to pay the Liquidation Preference Amount in full to all holders of Series A Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series A Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate Liquidation Preference Amounts of Series A Preferred Stock and all such Parity Stock.

(iii) *Residual Distributions.* If the Liquidation Preference Amount has been paid in full to all holders of Series A Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(iv) *Merger, Consolidation and Sale of Assets Not Liquidation.* For purposes of this Section 5(e), the merger or consolidation of the Corporation with any other corporation, including a merger in which the holders of Series A Preferred Stock receive cash or property for their shares, or the sale of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

(f) Redemption.

(i) *Optional Redemption by the Corporation.* Any time after the third anniversary of the Closing Date, the Corporation, at the option of the Board of Directors, may redeem in whole or in part the shares of Series A Preferred Stock at the time outstanding, at any time or from time to time, upon notice given as provided in Section 5(f)(vi), at the redemption price in effect at the notice date as provided in this Section 5(f), provided, however, that (A) no shares of Series A Preferred Stock may be redeemed pursuant to this Section 5(f)(i) if at any time during the 135 days prior to the Redemption Date the Shelf Registration Statement (as defined in the Investor Rights Agreement) with respect to the Common Stock into which any shares of Series A Preferred Stock are convertible shall not be effective, (B) optional redemption may only be made if the Corporation certifies to the holders in the redemption notice sent in accordance with Section 5(f)(vi) that it is able, financially and otherwise, to make the redemption payment, and there has been no default (as set forth in Section 5(f)(ix)) by the Corporation on an obligation to pay for shares of Series A Preferred Stock duly called for redemption in accordance with this Section 5(f) within the 12 months prior to the date of such notice, (C) optional redemption may only be made pursuant to this Section 5(f)(i) if, after giving effect to such redemption (and any simultaneous redemption of Notes), the ratio of (a) the aggregate outstanding principal amount of the Notes and (b) the product of (x) the number of issued and outstanding shares of Series A Preferred Stock and (y) the Issuance Price, is equal to 4:1, and (D) the Corporation shall not be permitted to redeem shares of Series A Preferred Stock pursuant to this Section 5(f)(i) if, after giving effect to such redemption (and any simultaneous redemption of Notes), the sum of (a) the aggregate outstanding principal amount of the Notes and (b) the product of (x) the number of issued and outstanding shares of Series A Preferred Stock and (y) the Issuance Price, does not exceed \$15,000,000.00. The foregoing clauses (C) and (D) shall not limit the Corporation's right pursuant to this Section 5(f)(i) to redeem all of the outstanding principal amount of the Notes and all of the outstanding shares of Series A Preferred Stock in one redemption.

(ii) *Redemption Price.* The redemption price for shares of Series A Preferred Stock redeemed pursuant to Section 5(f)(i) hereof shall be set by the Corporation in its discretion pursuant to any available redemption price calculation methodology set forth below.

The Corporation may in its discretion set the redemption price for each share of Series A Preferred Stock at 100% of the Issuance Price together with an amount equal to all Accrued Dividends to the date of redemption, provided, however, that the Corporation may not set the redemption price using this methodology unless the Average Closing Price of the Common Stock over the 20 Trading Day period immediately preceding the Redemption Date is equal to or greater than the price that is the result of dividing (i) the price specified in the following schedule by (ii) the number of shares of Common Stock into which such share of Series A Preferred Stock would be convertible on the notice date (such price, the "Minimum Share Purchase Price").

Redemption Date	Basis of Minimum Share Purchase Price Calculation
After the third and through and including the fourth anniversary of the Closing Date	2.0 x Issuance Price

After the fourth and through and including the fifth anniversary of the Closing Date	2.25 x Issuance Price
After the fifth anniversary of the Closing Date	25 x Issuance Price

The Corporation may in its discretion set the redemption price for each share of Series A Preferred Stock at the product of (i) the number of shares of Common Stock into which such share of Series A Preferred Stock would be convertible on the notice date and (ii) the greater of (x) the Average Closing Price over the 20 Trading Day period immediately preceding the notice date and (y) the Minimum Share Purchase Price.

(iii) *Mandatory Redemption.* The Corporation shall, on the eighth anniversary of the Closing Date, redeem all of the outstanding shares of Series A Preferred Stock at a redemption price per share equal to (i) 101% of the Issuance Price plus (ii) an amount equal to all Accrued Dividends to such Redemption Date.

(iv) *Optional Redemption by the Holders.* After the sixth anniversary of the Closing Date, all (or a portion) of the shares of Series A Preferred Stock shall be subject to redemption at the option of the holders thereof at a redemption price per share equal to (i) 101% of the Issuance Price plus (ii) an amount equal to all Accrued Dividends to the Redemption Date. In addition, if a Registration Default exists and is continuing, and either (a) the Shelf Registration Statement has not been declared effective by the Securities and Exchange Commission (the "SEC") on or before the 365th calendar day after the date of filing of the Shelf Registration Statement or (b) the Shelf Registration Statement is declared effective by the SEC but the Shelf Registration Statement thereafter ceases to be effective and such failure to be effective continues for a period of 90 consecutive calendar days, or more than 120 days in any 365 day period, then all of the shares of Series A Preferred Stock shall be subject to redemption at the option of the holders thereof, beginning on such 365th or 91st or 121st day, as the case may be, until such time as the Registration Default ceases to continue (as set forth in the Investor Rights Agreement) at a redemption price equal to the greater of (y) 100% of the Issuance Price plus an amount equal to all Accrued Dividends to the Redemption Date or (z) the product of the number of shares of Common Stock into which such share of Series A Preferred Stock would be convertible on the date of the exercise of such option by the holder and the Average Closing Price over the 20 Trading Day period immediately preceding such date.

Any holder of Series A Preferred Stock electing to redeem shares of Series A Preferred Stock pursuant to this Section 5(f)(iv) shall give notice in writing of such election to the Corporation (or its successor, if the Corporation is no longer in existence) at its principal office, which notice shall set forth the name of the holder and the number of shares of Series A Preferred Stock to be redeemed. Such written notice of election shall be irrevocable without the consent of the Corporation, in its sole discretion. The Corporation shall forthwith give notice to all other holders of Series A Preferred Stock of any such notice of redemption, specifying the date fixed by the Corporation for redemption of such shares of Series A Preferred Stock, such date to be not more than 45 days nor less than 30 days from the notice date. Such other holders of Series A Preferred Stock may elect to sell to the Corporation all or a portion of their shares of Series A Preferred Stock by delivering written notice to the Corporation within 15 days after the distribution of the notice regarding optional redemption by the Corporation. Each holder of shares of Series A Preferred Stock that has given timely notice to the Corporation shall be entitled to receive the redemption price thereof as described in this Section 5(f)(iv), without interest, after surrender to the principal office of the Corporation of the certificate or certificates for the shares to be surrendered.

(v) *Change Of Control.* For the purposes of this Section 5(f): (1) a sale, conveyance or disposition of all or substantially all of the assets of the Corporation, (ii) the effectuation of a transaction (including a merger, consolidation, recapitalization or other reorganization) or series of related transactions as a result of which 50% or more of the issued and outstanding voting securities of the resulting entity are beneficially owned by a person, corporation, entity or group other than the stockholders of the Corporation immediately prior to such transactions, or (iii) the effectuation of a transaction (including a merger, consolidation, recapitalization or other reorganization) or series of related transactions as a result of which any person or “group” (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) shall succeed in having a sufficient number of its nominees elected to the Corporation’s Board of Directors such that such nominees will constitute a majority of the Board of Directors, shall be a “Change of Control Event.” In the event of a Change of Control Event, each holder of a share of Series A Preferred Stock shall have the right to receive, at the option of the holder, (i) 101% of the Issuance Price plus an amount equal to all Accrued Dividends to the date of the Change of Control Event, or (ii) the per share consideration to be received by a holder of the Common Stock into which such share of Series A Preferred Stock is convertible as of such Change of Control Event. Upon the consummation of a Change of Control Event that is a Fundamental Change, each share of Series A shall automatically be converted into the right to receive, at the election of the holder in accordance with the third paragraph of this Section 5(f)(v), one of the two forms of consideration described above.

On or before the 30th calendar day after a Change of Control Event (or the 30th calendar day prior to such Change of Control Event that is a Fundamental Change), the Corporation shall give notice in accordance with this Section 5(f)(v) of the redemption right or other right to receive consideration set forth herein arising as a result thereof to each holder. To exercise a redemption right, a Holder shall deliver to the Corporation (or an agent designated by the Corporation for such purposes in the notice referred to above) on or before the 90th calendar day after such Change of Control Event (or if such Change of Control Event is a Fundamental Change then on or before such date of such Fundamental Change) (a) written notice of the holder’s exercise of such right, which notice shall set forth the name of the holder, the number of shares of Series A Preferred Stock to be redeemed, and a statement that the option to exercise the redemption right or receive the consideration is being made thereby, and (b) the certificates for the shares of Series A Preferred Stock with respect to which the redemption right is being exercised, duly endorsed for transfer to the Corporation. Such written notice shall be irrevocable without the consent of the Corporation, in its sole discretion.

(vi) *Notice of Redemption.* Each notice of a redemption of shares of Series A Preferred Stock or otherwise to be provided by the Corporation under this Section 5(f) shall be made by hand delivery or delivered by overnight courier, addressed to the holders of record of the shares to be redeemed at their respective addresses appearing on the books of the Corporation. Each such notice shall state, as appropriate, the following and may contain such other information as the Corporation deems advisable: (a) the Redemption Date, (b) the number of such shares of Series A Preferred Stock held by such holder to be redeemed, (c) the redemption price, (d) the place or places where one or more certificates for such shares of Series A Preferred Stock are to be surrendered for redemption and (e) such items as are required to be stated in a notice of an optional redemption by the Corporation pursuant to Section 5(f)(i) above. The “notice date” shall be the date such notice is mailed. Such mailing shall be at least 30 days and not more than 45 days before the date fixed for redemption. Any notice mailed as provided in this Section 5(f)(vi) shall be conclusively presumed to have been duly given upon receipt, but failure duly to give such notice by overnight mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Upon duly delivering notice to a holder of Series A Preferred Stock, the Corporation may not thereafter rescind such notice of redemption or the Company’s obligation to pay the redemption price.

(vii) *Partial Redemption.* In case of any optional redemption of only part of the shares of Series A Preferred Stock at the time outstanding (other than in the case of optional redemption by the holders pursuant to Section 5(f)(iv)), the shares to be redeemed shall be selected either pro rata or by lot or in such other manner as the Board of Directors may determine to be equitable.

(viii) *Effectiveness of Redemption.* If notice of redemption has been duly given and if on or before the Redemption Date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares of Series A Preferred Stock called for redemption (or to be redeemed pursuant to Section 5(f)(iv)), so as to be and continue to be available therefor, then, notwithstanding that any certificate (or an affidavit of loss and indemnification in lieu thereof has been provided to the Corporation as provided below) for any share of Series A Preferred Stock so called for redemption (or to be redeemed pursuant to Section 5(f)(iv)) has not been surrendered for cancellation, on and after the Redemption Date all shares of Series A Preferred Stock so called for redemption (or to be redeemed pursuant to Section 5(f)(iv)) shall cease to be outstanding and all rights with respect to such shares of Series A Preferred Stock shall forthwith on such Redemption Date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption without interest. In the event any certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the holder certifying to the satisfaction of the Corporation that such certificate has been lost, stolen or destroyed and entering into an indemnity agreement against any claim that may be made against it with respect to such certificate, the Corporation will deliver any redemption price in respect thereof issuable and/or payable in exchange for such lost, stolen or destroyed certificate pursuant to the terms of this Section 5(f). Any funds unclaimed at the end of one year from the Redemption Date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares of Series A Preferred Stock so called for redemption (or to be redeemed pursuant to Section 5(f)(iv)) shall look only to the Corporation for payment of the redemption price of such shares of Series A Preferred Stock.

(ix) *Redemption Default.* If the Corporation defaults on an obligation incurred hereunder to pay a redemption price payable pursuant to the terms of this Section 5(f), the holder of any share of Series A Preferred Stock subject to such default (a) shall receive additional dividends in an amount equal to 2.0% per annum for each day for which such default continues, and (b) may at its option either (A) enforce its right to receive such redemption price and receive the additional interest due thereon pursuant to clause (b) or (B) terminate or rescind such attempted redemption.

(g) *Conversion Rights.* Each share of Series A Preferred Stock shall be convertible at the option of the holder thereof at any time into fully paid and non-assessable shares of Common Stock of the Corporation (calculated as to each conversion to the nearest 1/100th of a share) on and subject to the following terms and conditions:

(i) *Conversion Price.* The conversion price at which shares of Series A Preferred Stock shall be convertible into Common Stock (the "Conversion Price") shall initially be \$10.25 per share and shall be adjusted in certain events as provided in Section 5(g)(v). Each share of Series A Preferred Stock shall be taken at the Issuance Price and any Accrued Dividends for the purpose of conversion.

(ii) *Surrender of Certificates.* In order to convert shares of Series A Preferred Stock into Common Stock the holder must surrender, at the office of any transfer agent for the Common Stock or at such other office as the Board of Directors may designate, the certificate or certificates for the shares to be converted, duly endorsed or assigned either to the Corporation or in blank, together with irrevocable written notice that such holder elects to convert such shares. Such shares shall be deemed to be converted immediately before the close of business on the date of such surrender, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record

holder or holders of such Common Stock at such time. As promptly as practicable on or after such date, and in any event within 3 Business Days, the Corporation shall issue and deliver at such office to the person or persons entitled to receive the same a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with payment in lieu of any fraction of a share as provided in Section 5(g)(iv).

(iii) *Shares Called for Redemption.* In case shares of Series A Preferred Stock are called for redemption, the right to convert such shares shall cease and terminate at the close of business on the Business Day before the date fixed for redemption' provided, however, that such right may be reinstated in case of a default in payment of the redemption price as set forth in Section 5(f)(ix).

(iv) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of shares of Series A Preferred Stock, but, instead of any fraction of a share that would otherwise be issuable, the Corporation shall pay cash in an amount equal to the same fraction of the Closing Price on the date of surrender of the certificate or certificates for such shares for conversion, or, if such date is not a Trading Day, on the next Trading Day.

(v) *Adjustment of Conversion Price Anti-Dilution.* The Conversion Price and the number and kind of shares of capital stock or other property issuable on conversion shall be adjusted from time to time as follows.

(A) *Sales of Common Stock Below Fair Market Value.* In case the Corporation shall issue or grant to any person (whether directly or by assumption in a merger or otherwise, other than upon a Fundamental Change to which Section 5(g)(v) (E) applies) (a) rights, warrants, options, exchangeable securities or convertible securities (each referred to herein as "Rights") entitling such person to subscribe for or purchase shares of Common Stock at a price per share less than the Fair Market Value or (b) shares of Common Stock at a price per share less than the Fair Market Value, on the record date fixed for the determination of persons entitled to receive such Rights or such shares, the Conversion Price in effect immediately before the close of business on the record date fixed for such determination shall be reduced by multiplying such Conversion Price by a fraction, of which (i) the numerator is the number of shares of Common Stock outstanding (including all shares of Common Stock issued or issuable upon conversion of any convertible security or upon the exercise of any rights, warrants or options) on such record date plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase pursuant to such Rights, or so issued, would purchase at the Fair Market Value on such record date and (ii) the denominator shall be the number of shares of Common Stock outstanding (including all shares of Common Stock issued or issuable upon conversion of any convertible security or upon the exercise of any rights, warrants or options) at the close of business on such record date plus the number of shares of Common Stock so offered for subscription or purchase pursuant to such Rights, or so issued. If, after any such record date, any such Rights or shares are not in fact issued, or are not exercised prior to the expiration thereof, the Conversion Price shall be immediately readjusted, effective as of the date such Rights or shares expire, or the date the Board of Directors determines not to issue such Rights or shares, to the Conversion Price that would have been in effect if the unexercised Rights had never been granted or such record date had not been fixed, as the case may be. Such adjustment shall be made successively whenever any such event shall occur. For the purposes of this paragraph, the aggregate of the offering price received or to be received by the Corporation shall include the maximum aggregate amount (if any) payable upon exercise or conversion of such Rights. The value of any consideration received or to be received by the Corporation, if other than cash, is to be determined by the Board of Directors on a reasonable basis and in good faith.

(B) *Stock Splits and Combinations.* In case the Corporation shall subdivide its outstanding Common Stock into a greater number of shares or combine its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately before the time when such subdivision or combination becomes effective shall be adjusted so that the holder of each share of Series A Preferred Stock converted thereafter shall be entitled to receive the number of shares of Common Stock that such holder would have received if such shares of Series A Preferred Stock had been converted immediately prior thereto at the Conversion Price then in effect. Such adjustment shall be made successively whenever any such event shall occur.

(C) *Stock Dividends in Common Stock.* In case the Corporation shall pay a dividend or make a distribution in shares of Common Stock on any class of capital stock of the Corporation, the Conversion Price in effect immediately before the close of business on the record date fixed for determination of stockholders entitled to receive such dividend or distribution shall be reduced by multiplying such Conversion Price by a fraction, of which the numerator is the number of shares of Common Stock outstanding (including all shares of Common Stock issued or issuable upon conversion of any convertible security or upon the exercise of any rights, warrants or options) on such record date and the denominator is the sum of such number of shares and the total number of shares of Common Stock issued in such dividend or distribution. Such adjustment shall be made successively whenever any such event shall occur.

(D) *Distributions of Indebtedness, Securities or Assets.* In case the Corporation shall distribute to all holders of Common Stock (whether by dividend or in a merger or consolidation or otherwise) evidences of indebtedness, shares of capital stock of any class or series, other securities, cash or assets (other than Common Stock or a dividend or distribution payable exclusively in cash and other than as a result of a Fundamental Change), the Conversion Price in effect immediately before the close of business on the record date fixed for determination of stockholders entitled to receive such distribution shall be reduced by multiplying such Conversion Price by a fraction, of which the numerator is the Fair Market Value on such record date less the fair market value (as determined by the Board of Directors, whose determination in good faith shall be conclusive) of the portion of such evidences of indebtedness, shares of capital stock, other securities, cash and assets so distributed applicable to one share of Common Stock and the denominator is such Fair Market Value. Such adjustment shall be made successively whenever any such event shall occur. In case such distribution is not made after such a record date has been fixed, the Conversion Price shall be readjusted to the Conversion Price that would have been in effect if such record date had not been fixed.

(E) *Fundamental Changes.* In case any Fundamental Change shall occur, the holder of each share of Series A Preferred Stock outstanding immediately before such Fundamental Change shall have, in addition to all other rights hereunder, the right to receive the kind and amount of stock, other securities, cash and assets that such holder would have received if such share of Series A Preferred Stock had been converted immediately prior thereto. The Corporation agrees that it will not be a party to or permit any Fundamental Change to occur unless the foregoing provisions are included in the terms thereof, and unless the holders of Series A Preferred Stock shall continue to have all of its rights and privileges hereunder in an equivalent manner after giving effect to the Fundamental Change.

(F) *Exempted Issuances.* Notwithstanding any other provision in this Section 5(g)(v), the foregoing provisions of this Section 5(g)(v) shall not apply to, and no adjustment shall be made to the Conversion Price for:

(1) shares of Common Stock issuable upon the exercise of options or other convertible securities to be issued pursuant to the Company's stock option, performance award or employee benefit plans; provided, however, that this exemption shall be limited to 7,000,000 shares of

Common Stock issuable upon and an additional 1,574,501 shares of Common Stock issuable upon the exercise of options reserved for grant in September 2002 pursuant to the Company's option exchange program;

(2) shares of Common Stock issuable upon the exercise of options or other convertible securities previously issued pursuant to the Corporation's stock option, performance award or employee benefit plan;

(3) shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock, the Note or exercise of outstanding Warrants, or pay-in-kind dividends paid on the Series A Preferred Stock or the Note;

(4) securities that have been approved for issuance or grant by the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock; or

(5) securities that are issued in conjunction with an acquisition or a non-financing strategic transaction approved by the Board of Directors; provided, however, that the number of shares of Common Stock or securities convertible into Common Stock issued by the Corporation in conjunction with non-financing strategic transactions that are exempt from the foregoing provisions of this Section 5(g)(v) shall be limited to 20% of the shares of Common Stock outstanding (including all shares of Common Stock issued or issuable upon conversion of any convertible security or upon the exercise of any rights, warrants or options) immediately prior to the Closing Date.

(G) *No Adjustment for Participating Distributions.* Notwithstanding any of the provisions of this Section 5(g)(v), no adjustment to the Conversion Price shall be made pursuant to a distribution by the Corporation in which the holders of Series A Preferred Stock shares have participated on an as-converted to Common Stock basis in accordance with Section 5(d)(iii).

(H) *Deferral of Certain Conversions Requiring Adjustment.* In any case in which this Section 5(g)(v) requires that an adjustment as a result of any event become effective from and after a record date, the Corporation may elect to defer until after the occurrence of such event (A) issuing to the holder of any shares of Series A Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion over and above the shares issuable on the basis of the Conversion Price in effect immediately before adjustment and (B) paying to such holder any amount in cash in lieu of a fractional share of Common Stock pursuant to Section 5(g)(iv) above. In any such case the Corporation shall issue or cause a transfer agent to issue due bills or other appropriate evidence of the right to receive the shares the issuance of which is so deferred.

(I) *Deferral of Small Adjustments.* Any adjustment in the Conversion Price otherwise required by this Section 5(g) may be postponed until the date of the next adjustment (or the date of conversion, if earlier) otherwise required to be made if such adjustment (together with any other adjustments postponed pursuant to this paragraph (ix) and not theretofore made) would not require an increase or decrease of more than 0.5% in such Conversion Price. All calculations under this Section 5(g)(v) shall be made to the nearest cent or to the nearest 1/100th of a share, as the case may be.

(J) *Voluntary Reduction in Conversion Price.* The Board of Directors may make such reductions in the Conversion Price, in addition to those required by this Section 5(g)(v), as it shall deem necessary to avoid taxation of any dividend or distribution of stock or rights to acquire stock or any event treated as a deemed dividend or distribution for Federal income tax purposes to the recipients.

(vi) *Notice of Conversion Price Adjustments.* Whenever the Conversion Price is adjusted as herein provided:

(A) The Corporation shall compute and file with each transfer agent for the shares of Series A Preferred Stock the adjusted Conversion Price in accordance with this Section 5(g) and shall prepare a certificate signed by the Corporation's chief financial officer setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based; and

(B) A notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price shall be made by hand delivery or delivered by overnight courier, as soon as practicable to the holders of record of outstanding shares of Series A Preferred Stock at their respective addresses appearing on the books of the Corporation.

(vii) *Notice of Certain Events.* In case:

(A) The Corporation declares a dividend or other distribution on its Common Stock;

(B) The Corporation authorizes the issuance to the holders of its Common Stock of rights or warrants entitling them to subscribe for or purchase any shares of capital stock of any class or any other subscription rights or warrants; or

(C) Of any reclassification of the capital stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation or merger to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or of any sale, transfer or other disposition of all or substantially all of the assets of the Corporation or of any other transaction or event that would constitute or result in a Fundamental Change or a Change in Control; or

(D) Of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

then the Corporation shall file with each transfer agent for the shares of Series A Preferred Stock and shall deliver by hand delivery or by overnight courier to the holders of record of outstanding shares of Series A Preferred Stock, at their respective addresses appearing on the books of the Corporation, at least 5 days before the applicable record or effective date hereinafter specified, a notice stating (x) the date as of which the holders of record of Common Stock to be entitled to such dividend, distribution, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, disposition, liquidation, dissolution or winding up or Fundamental Change is expected to become effective, and the date as of which it is expected that holders of record of Common Stock shall be entitled to exchange their shares for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, disposition, liquidation, dissolution or winding up or Fundamental Change. Failure to give notice as required by this Section 5(g)(vii), or any defect in such notice, shall not affect the validity of any such dividend, distribution, right, warrant, reclassification, consolidation, merger, sale, transfer, disposition, liquidation, dissolution or winding up or Fundamental Change, or the vote on any action authorizing such.

(viii) *Reservation of Shares.* The Corporation shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, solely for the purpose of issuance upon conversion of shares of Series A Preferred Stock, the full number of shares of Common Stock then deliverable upon conversion of all shares of Series A Preferred Stock outstanding.

(h) Voting Rights.

(i) *General.* The holders of Series A Preferred Stock shall be entitled to vote and, except as hereinafter provided, shall vote together with the holders of Common Stock (and of any other class or series that may similarly be entitled to vote with the holders of Common Stock) as a single class on all matters on which holders of Common Stock are entitled to vote.

In so voting, the holders of Series A Preferred Stock shall be entitled to cast such number of votes as such holders would have been entitled to cast if the Series A Preferred Stock and the Note had been converted into Common Stock on the record date for the determination of holders entitled to vote. Each share of Series A Preferred Stock shall be entitled to cast a pro rata portion of such number of votes.

(ii) *Other Voting Rights.* So long as the sum of (a) the aggregate outstanding principal amount of the Notes and (b) the product of (x) the number of issued and outstanding shares of Series A Preferred Stock and (y) the Issuance Price, exceeds \$15,000,000.00, the Corporation will not, without the prior written consent of the holders of two thirds of the Series A Preferred Stock at the time outstanding, permit the taking of the following actions or take any action that has the effect of:

(A) waiving, amending, altering, repealing or changing the rights, preferences or privileges of the Series A Preferred Stock, as provided herein or in the certificate of incorporation, whether by merger, consolidation or otherwise;

(B) authorizing or issuing any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over the Series A Preferred Stock with respect to voting, the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(C) reclassifying any outstanding shares of equity securities, including any security convertible into or exercisable for any such equity security, into equity securities having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(D) authorizing or paying any dividend or distribution with respect to Common Stock or any other class or series of Junior Stock;

(E) increasing the authorized number of shares of Series A Preferred Stock other than in connection with the payment of dividends on the Series A Preferred Stock;

(F) altering or changing the business of the Corporation in any fundamental respect; or

(G) effecting a voluntary liquidation, dissolution or winding up of the Corporation;

provided, however, that the amendment of the certificate of incorporation so as to authorize or create, or to increase the authorized amount of, any Junior Stock or any shares of any class or series or any securities convertible into shares of any class or series of capital stock of the Corporation ranking on a parity with Series A Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation shall not be deemed to affect adversely the rights, preferences or privileges of the Series A Preferred Stock; provided, further, that no such vote or

consent of the holders of Series A Preferred Stock shall be required if provision is made for the redemption pursuant to Section 5(f) of all shares of Series A Preferred Stock at the time outstanding at or before the time when such amendment, alteration or repeal is to take effect or when such authorization, creation or increase in the authorized amount of any shares or convertible securities is to be made, as the case may be.

(i) Other Rights. The shares of Series A Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the certificate of incorporation of the Corporation.

Article V: Incorporator

The name and mailing address of the incorporator are as follows: Peter L. Dunn, Korn/Ferry International, 1800 Century Park East, Suite 900, Los Angeles, California 90067.

Article VI: Bylaws

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend and repeal the Bylaws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any bylaw whether adopted by them or otherwise; provided, however, that the affirmative vote of the majority of the voting power of the then outstanding voting stock of the Corporation shall be required for stockholders to adopt, amend, alter or repeal any provision of the Bylaws of the Corporation.

Article VII: Election of Directors

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

Article VIII: Number of Directors

Except as otherwise provided for or fixed by or pursuant to the provisions of Article IV of this Certificate of Incorporation or any resolution or resolutions of the Board of Directors providing the issuance of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the Board of Directors shall consist of not fewer than 8 nor more than 15 directors, the exact number of directors within such limits to be determined solely by the Board of Directors in the manner set forth in the Bylaws of the Corporation. Commencing with the 2013 annual meeting of stockholders, directors shall be elected for a term ending on the date of the next annual meeting of stockholders following their election and until their successors shall have been duly elected and qualified, or until their earlier death, resignation or removal.

Article IX: Director Liability

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

Article X: Removal of Directors

Any or all directors may be removed with or without cause by the holders of a majority of the shares entitled to vote at an election of directors.

Article XI: Reservation of Rights by the Corporation

The Corporation hereby reserves the right at any time and from time to time to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by or pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article XI.

Article XII: Meetings of the Stockholders

Section 1. Place of Meetings. Meetings of the stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide.

Section 2. Ability to Call Special Meetings. Special meetings of the stockholders: (a) may be called by the Board of Directors, the Chair of the Board of Directors, the Chief Executive Officer or the President of the Corporation, and (b) shall be called by the Chair of the Board of Directors or the Corporate Secretary upon the written request or requests of one or more persons that: (i) own (as such term is defined in the Bylaws of the Corporation, as amended from time to time) shares representing at least 25% of the Common Stock outstanding as of the record date fixed in accordance with the Bylaws of the Corporation to determine who may deliver a written request to call a special meeting, and (ii) comply with such other requirements and procedures for requesting a special meeting of stockholders as may be set forth in the Bylaws of the Corporation and amended from time to time. The foregoing provisions of this Article XII shall be subject to the provisions of the Bylaws of the Corporation (as amended from time to time) that, among other things, limit the ability to make a request for a special meeting and that specify the circumstances pursuant to which a request for a special meeting will be deemed to be revoked. Special meetings may not be called by any other person or persons.

Article XIII: Books of the Corporation

The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Delaware) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

Article XIV: Action by Written Consent of Stockholders Prohibited

No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of the stockholders may be effected by written consent of the stockholders in lieu of a meeting of the stockholders, unless the action to be effected by written consent of stockholders and the taking of such action by such written consent have expressly been approved in advance by the Board of Directors of the Corporation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be executed on its behalf by its Corporate Secretary on this 1st day of October, 2018.

KORN/FERRY INTERNATIONAL

By: /s/ Jonathan Kuai
Name: Jonathan Kuai
Title: Corporate Secretary