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

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**FORM 8-K**

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

**Date of report (Date of earliest event reported): January 26, 2016 (January 26, 2016)**

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**Lifetime Brands, Inc.**  
(Exact Name of Registrant as Specified in Its Charter)

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

**0-19254**  
(Commission File Number)

**11-2682486**  
(IRS Employer Identification No.)

**1000 Stewart Avenue, Garden City, New York 11530**  
(Address of Principal Executive Offices) (Zip Code)

**(Registrant's Telephone Number, Including Area Code) 516-683-6000**

**(Former Name or Former Address, if Changed Since Last Report) N/A**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*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))
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**Item 1.01. Entry into a Material Definitive Agreement.**

Effective January 26, 2016, the Board of Directors (the "Board") of Lifetime Brands, Inc., a Delaware corporation (the "Company"), approved an amended and restated form of director's and officer's indemnification agreement (the "D&O Indemnification Agreement") to supersede the previous form of director's and officer's indemnification agreement. In many instances, the revisions to the amended and restated form of D&O Indemnification Agreement are to conform the Company's prior form of indemnification agreement to the indemnification provisions of the Company's bylaws, which were amended and restated, effective as of January 26, 2016 (as amended and restated, the "Bylaws") and to the provisions contained in Section 145 of the Delaware General Corporation Law, as amended (the "DGCL"), including, but not limited to, those discussed below in Item 5.03. The foregoing description of the amended and restated form of D&O Indemnification Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the amended and restated form of D&O Indemnification Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and incorporated by reference herein in this Item 1.01 in its entirety.

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

The information included in Item 1.01 of this Current Report on Form 8-K relating to the Company's amended and restated form of D&O Indemnification Agreement is incorporated by reference in this Item 5.02.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws.**

On January 26, 2016, the Board approved amendments to amend and restate the Company's Bylaws, effective as of January 26, 2016. The Bylaws were last amended on June 10, 2014. Among other things, the amendments to the Bylaws:

- Amend the provisions related to the advance notice of stockholder proposals required to be provided by stockholders seeking to propose business for consideration at a stockholders' meeting, including, but not limited to, revisions to:
  - Further specify the information required to be provided by proposing stockholders, including any associated and/or affiliated persons, including persons acting in concert therewith, persons who are members of any Schedule 13D group (as such term is used in Rule 13d-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) with such proposing stockholders in connection with the proposed business and persons who are participants in any solicitation of proxies by such proposing stockholders in respect of the proposed business, in their advance notice of stockholder proposals, including, but not limited to, the following information regarding such persons:
    - their ownership, direct and indirect, in the Company's securities, including any shares, owned beneficially (as defined in Rule 13d-3 (or any successor thereof) under the Exchange Act) and/or held of record by such persons (including any shares of any class or series of the Company as to which such person has a right to acquire beneficial ownership, whether such right is exercisable immediately or only after the passage of time),
    - any derivative interests that are directly or indirectly, held or maintained by such persons with respect to any shares of any class or series of shares of the Company's securities (including any short position or any borrowing or lending of shares of stock) that has been made by or on behalf of such persons, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk of stock price changes for, any such persons or any of their "affiliates" or "associates" (as such

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terms are defined in Rule 12b-2 of the Exchange Act) or to increase or decrease the voting power or pecuniary or economic interest of such persons or any of their affiliates or associates with respect to stock of the Company, including any security or instrument that would not otherwise constitute a “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence,

- any relationships between such persons and the Company or any director, officer, affiliate or associate of the Company, including any direct or indirect interest in any agreements, arrangements and understandings, written or oral,
  - any pending, or to the knowledge of any such persons threatened legal proceeding in which any proposing stockholder is a party or participant involving the Company or any officer, director, affiliate or associate of the Company,
  - all agreements, arrangements and understandings, written or oral (a) between or among any such persons or (b) between or among any such persons and any other person or entity (including their names) in connection with the proposal of business by a stockholder, including without limitation, any agreements that would be required to be disclosed by any such person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D that would be filed pursuant to the Exchange Act and the rules and regulations promulgated thereunder (regardless of whether the requirement to file a Schedule 13D is applicable to such person or other person or entity), and
  - all other information relating to such persons that would be required to be disclosed in a proxy statement or other filing required to be made by such persons in connection with the solicitation of proxies by such persons in support of the business proposed to be brought before the stockholders’ meeting pursuant to Section 14(a) and Regulation 14A under the Exchange Act.
- Specify that in the event that the date of the annual meeting of stockholders is more than thirty (30) calendar days before or more than sixty (60) calendar days after the one-year anniversary date of the immediately preceding year’s annual meeting of stockholders, or if the Company did not hold an annual meeting (or a special meeting in lieu thereof) in the preceding fiscal year, notice by the stockholder of a stockholder proposal to be timely must be so delivered, or mailed and received, not later than the later of (i) the close of business on the ninetieth (90th) calendar day prior to the scheduled date of such stockholders’ meeting or (ii) the close of business on the tenth (10th) calendar day following the day on which public disclosure of the date of such stockholders’ meeting was first made;
  - Further specify the information required to be provided about the business proposed to be brought before a stockholders’ meeting, including, but not limited to, the reasons for conducting such business at the meeting, why the taking of the action or actions proposed to be taken would be in the best interests of the Company and its stockholders and any benefit anticipated to accrue to the proposing stockholder or any associated persons if the business proposed is brought before the meeting;
  - Revise the definition of “proposing persons” to include, in addition to the proposing stockholder providing the advance notice of stockholder proposal, the beneficial owner, if different, and affiliates and associates of such beneficial owner, persons acting in concert therewith, persons who are members of any Schedule 13D group with such proposing stockholders in connection with such proposed business and persons who are participants in any solicitation of proxies by such proposing stockholders in respect of such proposed business;

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- Include a definition of persons deemed to be “acting in concert”;
  - Clarify the requirement for the proposing stockholder to, from time to time, update and supplement the information provided by such stockholder in its advance notice of stockholder proposals and to include a provision that allows the Company, the Board or any duly authorized committee thereof to request the proposing stockholder to provide written verification of the information submitted by the stockholder;
  - Specify the agreements, arrangements and understandings, written and oral, (a) between or among any proposing stockholders or (b) between or among any proposing stockholders and any other person or entity (including their names) in connection with the proposal of such business by a stockholder, that are required to be disclosed in a stockholder’s advance notice of business to be brought before a stockholders’ meeting;
  - Require that the advance notice of stockholder proposals include a representation as to whether the proposing stockholder or any associated persons intend to deliver a proxy statement and form of proxy to holders of at least the percentage of the Company’s outstanding capital stock entitled to vote and required to approve the proposed business described in the advance notice and, if so, identifying such person;
  - Specify that notwithstanding any notice of the annual meeting sent to stockholders on behalf of the Company, a stockholder must provide its own notice of a stockholder proposal to the Secretary of the Company which complies with the Bylaws;
  - Clarify certain procedural matters relating to the proposal of business by a stockholder including, but not limited to, the requirements for a stockholder to bring business before a stockholders’ meeting;
  - Clarify that the stockholder or a qualified representative of such stockholder must be present in person at a stockholders’ meeting and must represent that it will be present at such meeting in order for a stockholder proposal to be brought before the meeting; and
  - Clarify that, in addition to the requirements contained in the Bylaws for what information must be included in the advance notice of stockholder proposals, a proposing stockholder must also comply with all applicable requirements of the Exchange Act and the DGCL with respect to any stockholder proposal and business that may be sought to be brought before an annual meeting of stockholders.
  - Amend the provisions related to the advance notice of director nominations required to be provided by stockholders seeking to propose director nominees for consideration at a stockholders’ meeting, including, but not limited to, revisions to:
    - Further specify the information required to be provided by nominating stockholders and associated persons, including persons acting in concert therewith, persons who are members of any Schedule 13D group with such nominating stockholders and persons who are participants in any solicitation of proxies by such nominating stockholders in respect of the director nominations proposed, in their advance notice of nominations of candidates for election to the Board, including, but not limited to, information about such persons, including their ownership, direct and indirect, in the Company’s securities, including any derivative interests and any agreements with respect thereto;

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- Further specify the information required to be provided about the person(s) being nominated for election to the Board, including, but not limited to, the following:
    - all information that would be required to be disclosed pursuant to Items 403 and 404 under Regulation S-K if the stockholder giving the notice or other associated persons were the “registrant” for purposes of such rule and the proposed nominee was a director or executive officer of such registrant,
    - a description in reasonable detail of any and all agreements, arrangements and/or understandings, written or oral, between each proposed nominee and any person or entity (other than the Company) with respect to any direct or indirect compensation, reimbursement or indemnification in connection with such proposed nominee’s service or action as a member of the Board; and
    - a description in reasonable detail of any and all litigation, whether or not judicially resolved, settled or dismissed, relating to the proposed nominee’s past or current service on the board of directors (or similar governing body) of any corporation, limited liability company, partnership, trust or any other entity where a legal complaint filed in any state or federal court located within the United States alleges that the proposed nominee committed any act constituting (a) a breach of fiduciary duties, (b) misconduct, (c) fraud, (d) breaches of confidentiality obligations, and/or (e) a breach of the entity’s code of conduct applicable to directors;
  - Specify that in the case of a special meeting of stockholders called in accordance with the Bylaws for the purpose of electing directors, or in the event that the date of the annual meeting of stockholders is more than thirty (30) calendar days before or more than sixty (60) calendar days after the one-year anniversary date of the immediately preceding year’s annual meeting of stockholders, or if the Company did not hold an annual meeting (or a special meeting in lieu thereof) in the preceding fiscal year, notice by the stockholder of a director nomination to be timely must be so delivered, or mailed and received, not later than the later of (i) the close of business on the ninetieth (90th) calendar day prior to such stockholders’ meeting or (ii) the close of business on the tenth (10th) calendar day following the day on which public disclosure of the date of such stockholders’ meeting was first made;
  - Clarify the requirement for the nominating stockholder to, from time to time, update and supplement the information provided by such stockholder in its advance notice of director nominations and to include a provision that allows the Company, the Board or any duly authorized committee thereof to request the nominating stockholder or a proposed director nominee to provide written verification of the information submitted by the stockholder;
  - Specify the agreements, arrangements and understandings, written or oral, (a) between or among any nominating stockholders or (b) between or among any nominating stockholders and any other person or entity (including their names) in connection with the proposal of a director nomination by a nominating stockholder, that are required to be disclosed in a stockholder’s advance notice of director nominations to be brought before a stockholders’ meeting;
  - Specify that notwithstanding any notice of the stockholders’ meeting sent to stockholders on behalf of the Company, a stockholder must provide its own notice of a director nomination to the Secretary of the Company which complies with the Bylaws;
  - Clarify certain procedural matters relating to the proposal of a director nomination by a stockholder including, but not limited to, the prerequisites for a stockholder to bring a director nomination before a stockholders’ meeting;

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- Provide that the stockholder or a qualified representative of such stockholder must be present in person at a stockholders' meeting and must represent that it will be present at such meeting in order for a proposed director nomination to be brought before the meeting; and
  - Clarify that, in addition to the requirements contained in the Bylaws for what information must be included in the advance notice of director nominations, a proposing stockholder must also comply with all applicable requirements of the Exchange Act and the DGCL with respect to any director nomination that may be sought to be brought before a stockholders' meeting.
  - Delete the provisions related to the information that was required to be provided in a stockholder's request that the Board fix a record date for a corporate action or actions that the stockholder seeks to have the stockholders take by written consent.
  - Clarify, in light of a recent ruling by the Delaware Chancery Court in a litigation proceeding that did not involve the Company, that, consistent with Section 141(k) of the DGCL and except as otherwise provided in the DGCL, any director or the entire Board of Directors may be removed, with or without cause, by the holders of not less than a majority of the outstanding shares of stock of the Company then entitled to vote at an election of directors.
  - Provide more detailed procedural provisions with respect to stockholders' meetings, including, but not limited to, the organization and conduct of the meeting, meeting protocol, the retention of inspectors of election for such meetings, and proxies for such meetings.
  - Clarify that the indemnification that the Company provides to its directors, officers and other agents is to the fullest extent permitted by applicable law except as specifically limited by the Second Restated Certificate of Incorporation or the Bylaws. In connection with such amendments, provisions have been added to the Bylaws to clarify the type of proceedings that are indemnified, the expenses that are indemnifiable, actions that are in an "official capacity" and actions "at the request of the Company." In addition, the rights granted to indemnified persons to be advanced expenses incurred in defending a proceeding in advance of its final disposition have also been clarified to provide a specific time period by which the advancement needs to be made and to clarify the statutorily-required undertaking that may be required from an indemnified person regarding repayment of the amounts advanced if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company. Further, provisions were added to the Bylaws to limit the obligation of the Company to indemnify any person in connection with any proceeding under the enumerated circumstances described in the Bylaws. Other provisions provide a process for the Company's Board to determine that indemnification is proper in a particular circumstance in accordance with applicable law, including the provisions contained in Section 145 of the DGCL, provide that the indemnification provided by the Bylaws is not exclusive of other indemnification that may be provided to the director or officer, provide that the conduct of one indemnified person will not be imputed to another, provide that duplicate payments will not be made to indemnified persons, and provide that the Company shall be subrogated to all rights of recovery of any person entitled to indemnification.

In addition to the foregoing, there are various other "clean-up" changes to the Bylaws including, but not limited to, grammatical and other typographical corrections, formatting changes, revisions to headings, titles and captions, defining certain terms and the capitalization of such defined terms, and the inclusion of specific references to the DGCL and the Second Restated Certificate of Incorporation.

The foregoing description of various amendments included in the Bylaws does not purport to be complete and is qualified in its entirety by reference to the complete text of the Bylaws adopted by the Board on January 26, 2016, a copy of which is attached to this Current Report on Form 8-K as Exhibit 3.1 and incorporated by reference in this Item 5.03 in its entirety.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of Lifetime Brands, Inc., as adopted by the Board of Directors on January 26, 2016
10.1	Form of Amended and Restated Director's and Officer's Indemnification Agreement

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**Signature**

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

Lifetime Brands, Inc.

By: /s/ Ronald Shiftan  
Ronald Shiftan  
Chief Operating Officer and  
Vice Chairman of the  
Board of Directors

Date: January 27, 2016



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**Exhibit Index**

<u>Exhibit No.</u>	<u>Description</u>
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10.1	Form of Amended and Restated Director's and Officer's Indemnification Agreement

**LIFETIME BRANDS, INC.**

**AMENDED AND RESTATED BYLAWS**

As adopted on and with effect from January 26, 2016

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**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I STOCKHOLDERS</b>	<b>1</b>
Section 1.1    Annual Meeting	1
Section 1.2    Special Meetings	2
Section 1.3    Matters to be Considered at Meetings	2
Section 1.4    Notice of Meetings	8
Section 1.5    Quorum	8
Section 1.6    Adjourned Meetings	8
Section 1.7    Organization and Conduct of Meetings	9
Section 1.8    Voting	9
Section 1.9    Proxies	10
Section 1.10   Voting Procedures and Inspectors	10
Section 1.11   Record Date for Stockholder Meetings	11
Section 1.12   Waiver of Notice	12
Section 1.13   Consent of Stockholders to Corporate Action Without a Meeting	12
<b>ARTICLE II BOARD OF DIRECTORS</b>	<b>14</b>
Section 2.1    Number and Term of Office	14
Section 2.2    Removal, Vacancies; Resignation	14
Section 2.3    Place of Meeting	14
Section 2.4    Regular Meetings	15
Section 2.5    Special Meetings	15
Section 2.6    Quorum	15
Section 2.7    Organization	15
Section 2.8    Committees	15
Section 2.9    Director Nominations	16
Section 2.10   Consent of Directors or Committee in Lieu of Meeting	18
Section 2.11   Fees and Compensation	19
<b>ARTICLE III OFFICERS</b>	<b>19</b>
Section 3.1    Officers	19
Section 3.2    Chief Executive Officer	19
Section 3.3    Chief Operating Officer	19

---

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 3.4 Chief Financial Officer	20
Section 3.5 Chairman and Vice Chairmen of the Board	20
Section 3.6 The President and Vice Presidents	20
Section 3.7 The Secretary	20
Section 3.8 The Treasurer	21
Section 3.9 Additional Officers	21
Section 3.10 Giving of Bond by Officers	21
Section 3.11 Voting Upon Securities	21
Section 3.12 Compensation of Officers	22
ARTICLE IV INDEMNIFICATION OF DIRECTORS AND OFFICERS	22
Section 4.1 Proceedings Other Than by or in the Right of the Corporation	22
Section 4.2 Proceedings by or in the Right of the Corporation	22
Section 4.3 Indemnification for Expenses of Successful Party	23
Section 4.4 Indemnification of Others	23
Section 4.5 Right to Advancement	23
Section 4.6 Limitations on Indemnification	24
Section 4.7 Procedure for Indemnification; Determination	25
Section 4.8 Procedures For The Determination of Whether Standards Have Been Satisfied	27
Section 4.9 Non-Exclusivity of Rights	27
Section 4.10 Continuation of Rights	27
Section 4.11 Contract Rights	27
Section 4.12 Subrogation	28
Section 4.13 No Duplication of Payments	28
Section 4.14 Severability	28
Section 4.15 No Imputation	28
Section 4.16 Reliance	28
Section 4.17 Notices	28
Section 4.18 Certain Definitions	28
Section 4.19 Intent of Article	30

---

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE V STOCK; SEAL; FISCAL YEAR	31
Section 5.1    Stock Certificates	31
Section 5.2    Lost, Stolen, Mutilated or Destroyed Certificates	31
Section 5.3    Transfer of Shares	31
Section 5.4    Regulations	32
Section 5.5    Electronic Securities Recordation	32
Section 5.6    Dividends	32
Section 5.7    Corporate Seal	32
Section 5.8    Fiscal Year	32
ARTICLE VI MISCELLANEOUS PROVISIONS	32
Section 6.1    Checks, Notes, Etc	32
Section 6.2    Loans	32
Section 6.3    Contracts	33
Section 6.4    Waivers of Notice	33
Section 6.5    Offices Outside of Delaware	33
Section 6.6    Construction	33
Section 6.7    Forum for Adjudication of Disputes	34
ARTICLE VII AMENDMENTS	34

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AMENDED AND RESTATED BYLAWS

OF

LIFETIME BRANDS, INC.

As adopted on and with effect from January [●], 2016

ARTICLE I

STOCKHOLDERS

Section 1.1 Annual Meeting.

(a) Time; Location. The annual meeting of the stockholders of the Corporation shall be held on such date (which date shall not be a legal holiday in the place where the meeting is to be held), at such time and at such place, within or without the State of Delaware, as may be designated only by the Board of Directors or the Chairman of the Board (if any) or as otherwise required by law. Such annual meeting shall be for the purpose of electing directors and for the transaction of such other business as may be properly brought before the meeting in accordance with the Certificate of Incorporation of the Corporation, as the same may be amended from time to time (the "Certificate of Incorporation"), and these Bylaws. The Board of Directors or the Chairman of the Board (if any), as applicable may determine that an annual meeting shall not be held at any place, but shall instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the "DGCL").

(b) Business Before Annual Meeting. Except as otherwise provided by law, at an annual meeting of stockholders, no business shall be transacted and no corporate action shall be proposed or taken except as shall have been properly brought before the annual meeting in accordance with the Certificate of Incorporation and these Bylaws. The only means by which business may be properly brought before an annual meeting are if such business is (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (ii) if not specified in the notice of meeting (or other supplement thereto) provided at the direction of the Board of Directors, otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee of the Board of Directors) or the Chairman of the Board (if any), or (iii) brought before the annual meeting by a stockholder Present in Person (as defined below) who (A) was the beneficial owner of shares of the Corporation's stock entitled to vote at the meeting as of the time of giving the Proposal Notice (as defined below), on the record date for the determination of stockholders entitled to notice of and to vote at the annual meeting and as of the time of the annual meeting, and (B) has complied with Section 1.3 of these Bylaws in all applicable respects. For purposes of these Bylaws, "Present in Person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or, if the proposing stockholder is not an individual, a qualified representative of such proposing stockholder, appear at such annual meeting. Notwithstanding the foregoing, stockholders seeking to nominate persons to serve on the Board of Directors must comply with Section 2.9 and this Section 1.1(b) shall not be applicable to the nominations of directors.

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(c) Representatives. For purposes of these Bylaws, “qualified representative” means (i) if the stockholder is a corporation, any duly authorized officer of such corporation, (ii) if the stockholder is a limited liability company, any duly authorized member, manager or officer of such limited liability company, (iii) if the stockholder is a partnership, any general partner or person who functions as general partner for such partnership, (iv) if the stockholder is a trust, the trustee of such trust, or (v) if the stockholder is an entity other than the foregoing, the persons acting in such similar capacities as the foregoing with respect to such entity.

Section 1.2 Special Meetings. Except as otherwise provided in the Certificate of Incorporation, a special meeting of stockholders of the Corporation, for any purpose or purposes, may be called at any time only by the Board of Directors, the Chairman of the Board (if any) or by a committee of the Board of Directors that has been duly designated by the Board of Directors and whose power and authority, as provided in a resolution of the Board of Directors, include the power to call such special meetings. A special meeting of the stockholders may not be called by any other person or persons. Any special meeting of stockholders shall be held on such date, at such time and at such place within or without the State of Delaware as the Board of Directors (or any duly authorized committee thereof) or the Chairman of the Board (if any), as applicable, shall designate. The Board of Directors (or any duly authorized committee thereof) may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders. The Board of Directors (or any duly authorized committee thereof) or the Chairman of the Board (if any), as applicable, may determine that any special meeting of stockholders shall not be held at any special place, but shall instead be held solely by means of remote communication. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at a special meeting of stockholders, no business shall be transacted and no corporate action shall be taken except as shall have been specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof) and, except as otherwise provided for in Section 2.9 with respect to the election of directors at a special meeting of stockholders solely where the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting in accordance with this Section 1.2, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders.

Section 1.3 Matters to be Considered at Meetings.

(a) Stockholder Proposals. Except with respect to nominations for election to the Board of Directors, which must be made in compliance with the provisions of Section 2.9 of these Bylaws, and except for a stockholder proposal properly made in accordance with Rule 14a-8 (and the interpretations thereunder) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and included in the notice of meeting given by or at the direction of the Board of Directors (or any duly authorized committee thereof) and the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act, and in addition to any other applicable requirements, for a proposal to be properly brought before any annual meeting of stockholders by a stockholder, in addition to the requirements of Section 1.1(b) of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary (the “Proposal Notice”), which Proposal Notice shall be in proper form, and the making of such proposal must be permitted by applicable law, the Certificate of Incorporation and these Bylaws, and must

comply with the notice and other procedures set forth in this Section 1.3 in all applicable respects. To be timely, the Proposal Notice must be delivered to, or mailed and received by, the Secretary at the principal office of the Corporation not earlier than the close of business on the one hundred and twentieth (120th) calendar day and not later than the close of business on the ninetieth (90th) calendar day prior to the one-year anniversary date of the immediately preceding year's annual meeting of stockholders or special meeting in lieu thereof (the "Anniversary Date"); *provided, however*, that in the event that the date of the annual meeting of stockholders is more than thirty (30) calendar days before or more than sixty (60) calendar days after the Anniversary Date, or if the Corporation did not hold an annual meeting of stockholders or special meeting in lieu thereof in the preceding fiscal year, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the later of (i) the close of business on the ninetieth (90th) calendar day prior to such annual meeting or (ii) the close of business on the tenth (10<sup>th</sup>) calendar day following the day on which public disclosure of the date of such annual meeting was first made (or if that day is not a business day for the Corporation, on the next succeeding business day) (a written notice satisfying the time period requirements of this Section 1.3(a) for an annual meeting is referred to as a "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. For purposes of these Bylaws, "public disclosure" or its corollary "publicly disclosed" shall mean (i) disclosure by the Corporation in a document filed or furnished by it with the Securities and Exchange Commission, (ii) in a press release issued through a national news or wire service, or (iii) another method reasonably intended by the Corporation to achieve broad-based dissemination of the information contained therein.

(b) Required Form of Proposal Notice for Stockholder Proposals. To be in proper form, a stockholder's notice to the Secretary of the Corporation (the "Proposal Notice") shall set forth in writing:

(i) Information Regarding the Proposing Person. As to each Proposing Person (as such term is defined in Section 1.3(e)):

(A) the name and address of such Proposing Person, as they appear on the Corporation's stock transfer books;

(B) the class, series and number of shares of the Corporation directly or indirectly beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) and/or held of record by such Proposing Person (including any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, whether such right is exercisable immediately, only after the passage of time or only upon the satisfaction of certain conditions precedent);

(C) a description in reasonable detail of any pending, or to any Proposing Person's knowledge, threatened legal proceeding in which any Proposing Person is a party or participant involving the Corporation or any officer, director "affiliate" (for purposes of these Bylaws, as such term is used by Rule 12b-2 under the Exchange Act) or "associate" (for purposes of these Bylaws, as such term is used by Rule 12b-2 under the Exchange Act) of the Corporation;



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(D) a description in reasonable detail of any relationship (including any direct or indirect interest in any agreement, arrangement or understanding, written or oral) between any Proposing Person or any of its affiliates or associates, on the one hand, and the Corporation or any director, officer, affiliate or associate of the Corporation, on the other hand;

(E) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (together, a “Synthetic Equity Position”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation and a reasonably detailed description of any agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock) that has been made by or on behalf of such Proposing Person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk of stock price changes for, any Proposing Person or any of its affiliates or associates or to increase or decrease the voting power or pecuniary or economic interest of such Proposing Person or any of its affiliates or associates with respect to stock of the Corporation; provided that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer;

(F) a description in reasonable detail of any proxy, contract, arrangement, understanding or relationship, written or oral, pursuant to which the Proposing Person has a right to vote any shares of the Corporation or which has the effect of increasing or decreasing the voting power of such Proposing Person;

(G) a description in reasonable detail of any rights to dividends on the shares of any class or series of shares of the Corporation directly or indirectly held of record or beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation;

(H) a description in reasonable detail of any performance-related fees (other than an asset-based fee) to which the Proposing Person may be entitled as a result of any increase or decrease in the value of shares of the Corporation or any of its derivative securities;

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(I) a description in reasonable detail of any direct or indirect interest of such Proposing Person in any contract or agreement with the Corporation, or any affiliate or associate of the Corporation;

(J) a description in reasonable detail of all agreements, arrangements and understandings, written or oral, (1) between or among any of the Proposing Persons or (2) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of business by a stockholder, including without limitation any agreements that would be required to be disclosed by any Proposing Person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D that would be filed pursuant to the Exchange Act and the rules and regulations promulgated thereunder (regardless of whether the requirement to file a Schedule 13D is applicable to the Proposing Person or other person or entity);

(K) all other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made by any Proposing Person in connection with the solicitation of proxies by any Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) and Regulation 14A under the Exchange Act;

(L) a representation as to whether any Proposing Person intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock entitled to vote and required to approve the proposed business described in the Proposal Notice and, if so, identifying such Proposing Person; and

(M) a representation that the stockholder or its qualified representative intends to appear in person at the meeting to propose the actions specified in the Proposal Notice and to vote all proxies solicited;

(ii) Information Regarding the Proposal: As to each item of business that the stockholder giving the notice proposes to bring before the annual meeting:

(A) a description in reasonable detail of the business desired to be brought before the meeting and the reasons why such stockholder or any other Proposing Person believes that the taking of the action or actions proposed to be taken would be in the best interests of the Corporation and its stockholders;

(B) the text of the proposal or business (including the text of any resolutions proposed for consideration);

(C) a description in reasonable detail of any interest of any Proposing Person in such business, including any anticipated benefit to the stockholder or any other Proposing Person therefrom; and

(D) all other information relating to such proposed business that would be required to be disclosed in a proxy statement or other filing required to be made by any of the Proposing Persons in connection with the solicitation of proxies in support of such proposed business by one or more Proposing Persons pursuant to Section 14(a) and Regulation 14A under the Exchange Act.

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(c) Updating of Proposal Notice.

(i) A stockholder providing notice of any business proposed to be conducted at an annual meeting shall further update and supplement such notice, as necessary, from time to time, so that the information provided or required to be provided in such notice pursuant to this Section 1.3 shall be true, correct and complete in all respects, and such update and supplement shall be received by the Secretary of the Corporation not later than the earlier of (A) five (5) business days following the occurrence of any event, development or occurrence which would cause the information provided to be not true, correct and complete in all respects, and (B) ten (10) business days prior to the meeting at which such proposals contained therein are to be considered.

(ii) If the information submitted pursuant to this Section 1.3 by any stockholder proposing business for consideration at an annual meeting shall not be true, correct and complete in all respects, such information may be deemed not to have been provided in accordance with this Section 1.3.

(iii) Upon written request by the Secretary of the Corporation, the Board or any duly authorized committee thereof, any stockholder proposing business for consideration at an annual meeting shall provide, within five (5) business days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory in the reasonable discretion of the Board, any duly authorized committee thereof or any duly authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 1.3. If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Section 1.3.

(d) Exclusive Means. Except as provided by Rule 14a-8 under the Exchange Act, and notwithstanding anything in these Bylaws to the contrary (other than the provisions of Section 1.3(g) below relating to any proposal properly made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement and other than nominations for election to the Board of Directors which must comply with the provisions of Section 2.9 hereof) this Section 1.3 shall be the exclusive means for any stockholder of the Corporation to propose business to be brought before an annual meeting of stockholders and no business shall be conducted at any annual meeting that is not properly brought before the meeting in accordance with this Section 1.3. If the chairman of such meeting shall determine, based on the facts and circumstances and in consultation with counsel (who may be the Corporation's internal counsel), that such business was not properly brought before the meeting in accordance with this Section 1.3, then the chairman of the meeting shall so declare to the meeting and not permit such business to be transacted at such meeting. In addition, business proposed to be brought by a stockholder may not be brought before an annual meeting if such stockholder takes action contrary to the representations made in the stockholder notice applicable to such business or if the stockholder notice applicable to such business contains an untrue statement of a fact or omits to state a fact necessary to make the statements therein not misleading.

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(e) Definitions of Proposing Person and Acting in Concert.

(i) For purposes of these Bylaws, “Proposing Person” means (i) the stockholder providing the Proposal Notice or Nominating Notice (as defined below), as applicable, (ii) the beneficial owner of the Corporation’s capital stock, if different, on whose behalf the Proposal Notice or Nominating Notice, as applicable, is given, (iii) any affiliate or associate of such beneficial owner (as such terms are defined in Rule 12b-2 (or any successor thereof) under the Exchange Act, (iv) each other person who is the member of a “group” (for purposes of these Bylaws, as such term is used in Rule 13d-5 under the Exchange Act) with any such stockholder or beneficial owner or is otherwise Acting in Concert (as defined below) with any such stockholder or beneficial owner with respect to the proposal or nominations, as applicable, and (v) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or beneficial owner in such solicitation of proxies in respect of any such proposals or nomination, as applicable.

(ii) For purposes of these Bylaws, a person shall be deemed to be “Acting in Concert” with another person if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Corporation in parallel with, such other person where (A) each person is conscious of the other person’s conduct or intent and this awareness is an element in their decision-making processes and (B) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(f) Notice. Notwithstanding any notice of the annual meeting sent to stockholders on behalf of the Corporation, a stockholder must separately comply with this Section 1.3 to conduct business at any stockholder meeting. If the stockholder’s proposed business is the same or relates to business brought by the Corporation and included in its annual meeting notice, the stockholder is nevertheless required to comply and give its own separate and Timely Notice to the Secretary which complies in all respects with the requirements of this Section 1.3.

(g) Rule 14a-8. Nothing in this Section 1.3 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to, and in compliance with, Rule 14a-8 of the Exchange Act.

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(h) Exchange Act and DGCL. In addition to the provisions of this Section 1.3, a stockholder shall also comply with all applicable requirements of the Exchange Act and the DGCL with respect to any stockholder proposal and the business that may be brought thereunder, before an annual meeting.

Section 1.4 Notice of Meetings. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, a written notice of each meeting of the stockholders shall be given not less than ten (10) nor more than sixty (60) calendar days before the date of the meeting to each stockholder of the Corporation entitled to vote at such meeting at the stockholder's address as it appears on the records of the Corporation or by a form of electronic transmission to which the stockholder has consented. The notice shall be approved by the Board of Directors and shall state the place, date and hour of the meeting or the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and may vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called. No notice of meeting shall contain any proposals, director nominations or other actions except as may be properly brought before such meeting pursuant to these Bylaws. Notice given by electronic transmission shall only be valid if it complies with Section 232 of the DGCL. In accordance with Section 222 of the DGCL, an affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 1.5 Quorum. At any meeting of stockholders, the holders of a majority in number of the total outstanding shares of stock of the Corporation entitled to vote at such meeting, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a different number of shares shall be required by law, the Certificate of Incorporation or these Bylaws, in which case the representation of the number of shares so required shall constitute a quorum. Notwithstanding the previous sentence, at any meeting of stockholders at which the holders of any class of stock of the Corporation shall be entitled to vote separately as a class, the holders of a majority in number of the total outstanding shares of such class, present in person or represented by proxy, shall constitute a quorum for purposes of such class vote unless the representation of a different number of shares of such class shall be required by law, by the Certificate of Incorporation or by these Bylaws.

Section 1.6 Adjourned Meetings.

(a) Whether or not a quorum shall be present in person or represented at any meeting of stockholders, the chairman of the meeting may adjourn such meeting from time to time. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and the place, if any, thereof, or the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and may vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders or the holders of any class of stock entitled to vote separately as a class, as the case may be, may transact any business which might have been transacted by them at the original meeting. In no event shall any adjournment or postponement of any meeting or the announcement thereof commence a new time period for giving notice as provided in Section 1.3 or Section 2.9.

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(b) The Board of Directors may postpone any meeting of stockholders or cancel any special meeting of stockholders by public announcement or disclosure prior to the time scheduled for the meeting.

Section 1.7 Organization and Conduct of Meetings.

(a) The Chief Executive Officer or, in the absence of the Chief Executive Officer, the Chairman of the Board (if any) shall call all meetings of the stockholders to order, and shall act as chairman of such meetings. In the absence of the Chief Executive Officer and the Chairman of the Board (if any), the members of the Board of Directors who are present (whether or not constituting a quorum) shall elect a chairman of the meeting.

(b) The Secretary shall act as secretary of all meetings of the stockholders; and in the absence of the Secretary, an Assistant Secretary, if any, shall act as secretary of such meeting of the stockholders; and in the absence of the Secretary or any Assistant Secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting. It shall be the duty of the Secretary to prepare and make, at least ten (10) calendar days before every meeting of stockholders, a complete list of stockholders entitled to vote at such meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder.

(c) To the maximum extent permitted by applicable law, the Board of Directors shall be entitled to adopt, or in the absence of the Board doing so, the chair of the meeting shall be entitled to prescribe, such rules, regulations or procedures for the conduct of meetings of stockholders as it, he or she shall deem appropriate. Such rules, regulations and procedures that the Board or the chairman of any meeting of stockholders may adopt include, without limitation: (1) establishing an agenda for the meeting and the order for the consideration of the items of business on such agenda, (2) restricting admission to the time set for the commencement of the meeting, (3) limiting attendance at the meeting to stockholders of record of the Corporation entitled to vote at the meeting, their duly authorized proxies or other such persons as the chairman of the meeting may determine, (4) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such persons as the chairman of the meeting may determine to recognize and, as a condition to recognizing any such participant, requiring such participant to provide the chairman of the meeting with evidence of his or her name and affiliation, whether he or she is a stockholder or a proxy for a stockholder, and the class and series and number of shares of each class and series of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder, (5) limiting the time allotted to questions or comments by participants, (6) taking such actions as are necessary or appropriate to maintain order, decorum, safety and security at the meeting, (7) removing any stockholder who refuses to comply with meeting procedures, rules or guidelines as established by the chairman of the meeting, (8) complying with any state and local laws and regulations concerning safety and security and (9) taking such other action as, in the discretion of the chairman of the meeting, is deemed necessary, appropriate or convenient for the proper conduct of the meeting. Unless and to the extent determined by the Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

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Section 1.8 Voting.

(a) Except as otherwise provided by law or by the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of the stock of the Corporation registered in the name of such stockholder upon the stock transfer books of the Corporation. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her 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. When directed by the presiding officer or upon the demand of any stockholder, the vote upon any matter before a meeting of stockholders shall be by ballot. Subject to the rights of the holders of any series of preferred stock of the Corporation, directors shall be elected by a plurality of the votes cast at a meeting of stockholders by the stockholders entitled to vote in the election. Except as otherwise provided by law or by the Certificate of Incorporation, whenever any corporate action, other than the election of directors, is to be taken at a meeting of stockholders, it shall be authorized by the affirmative vote of a majority of the shares present in person or represented by proxy and entitled to vote thereon. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his or her discretion, may require that any votes cast at a meeting of stockholders shall be cast by written ballot.

(b) Shares of the stock of the Corporation belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes.

Section 1.9 Proxies. Any stockholders entitled to vote may vote by proxy, provided that the instrument authorizing such proxy to act shall have been executed in writing (which shall include telegraphing, cabling or other means of electronically transmitted written copy which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was duly authorized by the person) by the stockholder himself or herself or by his or her duly authorized attorney-in-fact. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

Section 1.10 Voting Procedures and Inspectors. The Corporation may, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. If no such appointment shall be made, or if any of the inspectors so appointed shall fail to attend, or refuse or be unable to serve, then such appointment may be made by the presiding officer of the meeting at the meeting or any adjournment thereof. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such person's ability. If appointed, the inspectors shall ascertain the number of shares outstanding and the voting power of each; determine the shares represented at the meeting and the validity of proxies and ballots; ascertain the existence of a quorum; count all votes and ballots; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by them; certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots; and do such acts as are proper

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to conduct the election or vote with fairness to all stockholders. On request of the presiding officer at the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. In determining the validity and counting of all proxies and ballots, the inspectors shall act in accordance with applicable law. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballots, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls.

Section 1.11 Record Date for Stockholder Meetings.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to receive payment of any dividend or other distribution or allotment of any rights, or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, but not to express consent to corporate action in writing without a meeting which shall be governed by Section 1.13, as the case may be, the Board of Directors shall fix, in advance, a record date, which shall not be (i) more than sixty (60) nor less than ten (10) calendar days before the date of such meeting, or (ii) in the case of corporate action to be taken by consent in writing without a meeting, not more than ten (10) calendar days after the date upon which the resolution fixing the record date is adopted by the Board of Directors, or (iii) more than sixty (60) calendar days prior to any other action.

(b) If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and the record date for determining stockholders for any other purpose (except corporate action to be taken by consent in writing) shall be at the close of business on the day on which the Board of Directors 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 or postponement of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned or postponed meeting.

(c) If a holder of record of any class of stock of the Corporation, or a series thereof, the holders of which may act by a consent in writing, wishes to have those stockholders authorize or take corporate action by written consent, such stockholder shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) calendar days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date is fixed by the Board within such ten (10) calendar day period, the record date for determining stockholders entitled to consent to corporate action, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation at its registered office in the State of Delaware or to its principal place of business to the attention of the Secretary. Delivery made to



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the registered office of the Corporation for this purpose shall be by hand or by certified or registered mail with return receipt requested. If no record date is so fixed by the Board of Directors and prior action by the Board of Directors 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 of Directors adopts the resolution taking such prior action.

Section 1.12 Waiver of Notice. Notice of any meeting need not be given to any stockholder who shall attend such meeting in person or shall waive notice thereof, before or after such meeting, in writing or by telegram, radiogram, cablegram or other means of electronically transmitted written copy.

Section 1.13 Consent of Stockholders to Corporate Action Without a Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation of the Corporation, any action which may be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed, in person or by proxy, by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted in person or by proxy. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing, but who were entitled to vote on the matter.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request that the Board of Directors fix a record date. The Board of Directors shall promptly, but in all events within ten (10) calendar days after the date on which such written notice is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 1.13(b)). If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 1.13(b) or otherwise within ten (10) calendar days after the date on which such written notice 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 of Directors is required by applicable law, shall be the first date after the expiration of such ten (10) day time period on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 1.13(b), the record date for determining stockholders entitled to consent to corporate action in writing without a meeting if prior action by the Board of Directors is required by applicable law shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

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(c) In the event of the delivery, in the manner provided by this Section 1.13 and applicable law, to the Corporation of written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage independent inspectors of elections for the purpose of performing promptly a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent and without a meeting shall be effective until such inspectors have completed their review, determined that the requisite number of valid and unrevoked consents delivered to the Corporation in accordance with this Section 1.13 and applicable law have been obtained to authorize or take the action specified in the consents, and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders. Nothing contained in this Section 1.13(c) shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

## ARTICLE II

### BOARD OF DIRECTORS

Section 2.1 Number and Term of Office. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors. The number of directors constituting the Board of Directors shall be fixed from time to time by resolution passed by a majority of the Board of Directors. The directors shall, except as hereinafter otherwise provided for filling vacancies, be elected at the annual meeting of stockholders, and shall hold office until their respective successors are duly elected and qualified or until their earlier resignation or removal.

#### Section 2.2 Removal, Vacancies; Resignation.

(a) Removal. Except as otherwise provided by the DGCL, any director or the entire Board of Directors may be removed, with or without cause, with the affirmative vote of the holders of not less than a majority of the outstanding shares of stock of the Corporation then entitled to vote at an election of directors.

(b) Vacancies. Any vacancy occurring on the Board of Directors by reason of death, resignation or removal of any director or for any other reason, and any newly created directorship resulting from any increase in the authorized number of directors, may be filled by, and only by, the affirmative vote of a majority of the directors then in office, although less than a quorum, and any director so elected to fill any such vacancy or newly created directorship shall hold office until the director's successor is duly elected and qualified or until the director's earlier resignation or removal.

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(c) Resignation. Any director may resign at any time by giving notice in writing or by electronic transmission to the Chairman of the Board (if any) or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the occurrence of some other event, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as herein provided in connection with the filling of other vacancies.

Section 2.3 Place of Meeting. The Board of Directors may hold its meetings in such place or places in the State of Delaware or outside the State of Delaware as the Board from time to time shall determine. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 2.4 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board from time to time by resolution shall determine. No notice shall be required for any regular meeting of the Board of Directors; but a copy of every resolution fixing or changing the time or place of regular meetings shall be sent to every director by mail at least five (5) calendar days, or by electronic transmission or overnight courier at least two (2) calendar days, before the first meeting held in pursuance thereof.

Section 2.5 Special Meetings. Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman of the Board (if any), the Chief Executive Officer or by any two of the directors then in office. Notice of the day, hour and place of holding of each special meeting shall be given by mailing the same at least five (5) calendar days before the meeting or by causing the same to be transmitted by electronic transmission or overnight courier at least two (2) calendar days before the meeting to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at any special meeting.

Section 2.6 Quorum. Subject to the provisions of Section 2.2, a majority of the members of the Board of Directors in office (but, unless the Board shall consist solely of one director, in no case less than one-third of the total number of directors nor less than two directors) shall constitute a quorum for the transaction of business and a vote of a majority of the directors present at any meeting of the Board of Directors at which a quorum is present shall be an act of the Board of Directors. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Section 2.7 Organization. The Chairman of the Board or, in the absence of the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the Board of Directors. In the absence of the Chairman of the Board and the Chief Executive Officer, a chairman shall be elected from among the directors present. The Secretary shall act as secretary of all meetings of the directors. In the absence of the Secretary, the Assistant Secretary of the Corporation (if any) shall act as secretary of the meeting, and if both the Secretary and the Assistant Secretary (if any) shall be absent, the chairman of the meeting may appoint any person to act as secretary of the meeting.

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## Section 2.8 Committees.

(a) Creation: Powers. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and the affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by law to be submitted to stockholders for approval, or (ii) adopting, amending or repealing these Bylaws.

(b) Subcommittees. Unless otherwise provided in the Certificate of Incorporation, in these Bylaws or in the resolution of the Board of Directors designating a committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to the subcommittee any or all of the powers and authority of the committee.

## Section 2.9 Director Nominations.

(a) Method of Nomination. Nominations of candidates for election as directors may be made at any annual meeting of stockholders or at any special meeting of stockholders, but in the case of any special meeting of stockholders, only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting in accordance with Section 1.2 of these Bylaws, (i) by, or at the direction of the Board of Directors (or any duly authorized committee thereof), or (ii) by any stockholder of the Corporation Present in Person who is a beneficial owner (as of the time notice of such nomination is given by the stockholder as set forth below, as of the record date for the meeting in question and at the time of the meeting) of any shares of the Corporation's capital stock outstanding and entitled to vote at such meeting who complies with all applicable requirements of this Section 2.9. Only persons nominated in accordance with the procedures set forth in this Section 2.9 shall be eligible for election as directors at any meeting of stockholders.

(b) Stockholder Nominations. For a person to be properly nominated as a candidate for director before any stockholders' meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary (the "Nominating Notice"), which Nominating Notice shall be in proper form. To be timely, the Nominating Notice must be made in writing and delivered to, or mailed and received by, the Secretary at the principal office of the Corporation (i) not earlier than the close of business on the one hundred and twentieth (120th)

calendar day and not later than the close of business on the ninetieth (90th) calendar day prior to the Anniversary Date or (ii) in the case of a special meeting of stockholders called in accordance with these Bylaws for the purpose of electing directors, or in the event that the annual meeting of stockholders is called for a date that is more than thirty (30) calendar days before or more than sixty (60) calendar days after the Anniversary Date, or if the Corporation did not hold an annual meeting (or special meeting in lieu of an annual meeting) in the preceding fiscal year, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the later of (i) the close of business on the ninetieth (90th) calendar day prior to the scheduled date of such stockholders' meeting or (ii) the close of business on the tenth (10th) calendar day following the day on which public disclosure of the date of such stockholders' meeting was first made (or if that day is not a business day for the Corporation, on the next succeeding business day).

(c) Required Form of Nominating Notice. To be in proper form, the Nominating Notice to the Secretary of the Corporation shall set forth in writing:

(i) Information Regarding the Proposing Person. As to each Proposing Person, the information set forth in Section 1.3(b)(i) of these Bylaws (except that for purposes of this Section 2.9(c), any reference to "*business*" or "*proposal*" therein will be deemed to be a reference to the "*nomination*" contemplated by this Section 2.9(c)).

(ii) Information Regarding the Nominee: As to each person whom the stockholder giving notice proposes to nominate for election as a director:

(A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to Section 2.9(c)(i) if such proposed nominee were a Proposing Person;

(B) a description in reasonable detail of any and all litigation, whether or not judicially resolved, settled or dismissed, relating to the proposed nominee's past or current service on the board of directors (or similar governing body) of any corporation, limited liability company, partnership, trust or any other entity where a legal complaint filed in any state or federal court located within the United States alleges that the proposed nominee committed any act constituting (1) a breach of fiduciary duties, (2) misconduct, (3) fraud, (4) breaches of confidentiality obligations, and/or (5) a breach of the entity's code of conduct applicable to directors;

(C) all information relating to such proposed nominee that would be required to be disclosed in a proxy statement or other filing required to be made by any Proposing Person pursuant to Section 14(a) under the Exchange Act to be made in connection with a solicitation of proxies by a Proposing Person for an election of directors in a contested election (including such proposed nominee's written consent to be named in the proxy statement as a nominee and to serve as a director of the Corporation if elected);

(D) a description in reasonable detail of any and all agreements, arrangements and/or understandings, written or oral, between such proposed nominee and any person or entity (other than the Corporation) with respect to any direct or indirect compensation, reimbursement or indemnification in connection with such proposed nominee's service or action as a member of the Board; and

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

(d) Updating of Nominating Notice.

(i) A stockholder providing a Nominating Notice with respect to any nominations proposed to be made at any stockholders’ meeting shall further update and supplement such notice, as necessary, from time to time, so that the information provided or required to be provided in such notice pursuant to this Section 2.9 shall be true, correct and complete in all respects, and such update and supplement shall be received by the Secretary of the Corporation not later than the earlier of (A) five (5) business days following the occurrence of any event, development or occurrence which would cause the information provided to be not true, correct and complete in all respects, and (B) ten (10) business days prior to the meeting at which such proposals contained therein are to be considered.

(ii) If the information submitted pursuant to this Section 2.9 by any stockholder of a proposed nomination to be made at a stockholders’ meeting shall not be true, correct and complete in all respects, such information may be deemed not to have been provided in accordance with this Section 2.9.

(iii) Upon written request by the Secretary of the Corporation, the Board or any duly authorized committee thereof, any stockholder proposing nominees for consideration at a stockholders’ meeting shall provide, within five (5) business days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory in the reasonable discretion of the Board, any duly authorized committee thereof or any duly authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 2.9. If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Section 2.9.

(e) Exclusive Means. Section 2.9 of these Bylaws shall be the exclusive means of any stockholder or beneficial owner of the Corporation’s capital stock to propose a Nominee for the Board of Directors before any stockholders’ meeting. No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Proposing Person seeking to place such candidate’s name in nomination for election at a stockholders’ meeting have complied with this Section 2.9 in all respects. If the chairman of such stockholders’ meeting shall determine, based on the facts and circumstances and in consultation with counsel (who may be the Corporation’s internal counsel), that such Nominee was not properly nominated in accordance with this Section 2.9, then the chairman of the stockholders’ meeting shall so declare such determination to the stockholders’ meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in

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question) shall be void and of no force or effect. In addition, nominations made by a stockholder may not be brought before a stockholders' meeting if such stockholder takes action contrary to the representations made in the Nominating Notice applicable to such nomination or if the Nominating Notice applicable to such nomination contains an untrue statement of a fact or omits to state a fact necessary to make the statements therein not misleading.

(f) Notice. Notwithstanding any notice of stockholders' meeting sent to stockholders on behalf of the Corporation, a stockholder must separately comply with this Section 2.9 to propose director nominations at any stockholders' meeting.

(g) Exchange Act and DGCL. In addition to the provisions of this Section 2.9, a stockholder shall also comply with all applicable requirements of the Exchange Act and the DGCL with respect to any nominations of directors for election at any stockholders' meeting and any solicitations of proxies in connection therewith.

Section 2.10 Consent of Directors or Committee in Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or by these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any duly authorized committee thereof, as the case may be, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or the electronic transmission or transmissions are filed with the minutes of the proceedings of the Board or duly authorized committee thereof, as the case may be.

Section 2.11 Fees and Compensation. The Board of Directors or any duly authorized committee thereof shall have the authority to fix the compensation of directors. The directors shall be paid their reasonable expenses, if any, of attendance at each meeting of the Board of Directors or any committee thereof and may be paid a fixed sum for attendance at each such meeting or an annual retainer or other compensation for service as a director or committee member, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

### ARTICLE III

#### OFFICERS

Section 3.1 Officers. The officers of the Corporation may include a Chairman of the Board, one or more Vice Chairmen of the Board, a President, one or more Vice Presidents, a Secretary, a Treasurer and such additional officers, if any, as shall be elected by the Board of Directors. Each officer shall hold office until his or her successor is duly elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Officers may, but need not, be directors. Unless the Certificate of Incorporation otherwise provides, any number of offices may be held by the same person.

All officers, agents and employees shall be subject to removal, with or without cause, at any time by the Board of Directors. The removal of an officer without cause shall be without prejudice to his or her contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

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In addition to the powers and duties of the officers of the Corporation as set forth in these Bylaws, the officers shall have such authority and shall perform such duties as from time to time may be determined by the Board of Directors.

Section 3.2 Chief Executive Officer. The Board of Directors shall designate one of the officers of the Corporation to be the Chief Executive Officer of the Corporation. Subject to the control of the Board of Directors, the Chief Executive Officer shall have general charge and control of all the business and affairs of the Corporation and shall have all powers and shall perform all duties incident to the position of Chief Executive Officer which may be required by law and such other duties as are required by the Board of Directors. The Chief Executive Officer shall make reports to the Board of Directors and to the stockholders, and shall see that all orders and resolutions of the Board of Directors and of any committee thereof are carried into effect. The Chief Executive Officer shall preside at all meetings of the stockholders and shall have such other powers and perform such other duties as may from time to time be assigned by these Bylaws or by resolution of the Board of Directors.

Section 3.3 Chief Operating Officer. The Board of Directors may designate one of the officers of the Corporation to be the Chief Operating Officer of the Corporation. Subject to the control of the Board of Directors and the Chief Executive Officer, the Chief Operating Officer shall have general charge and control of all the operations of the Corporation and shall have all powers and shall perform all duties incident to the position of Chief Operating Officer. The Chief Operating Officer shall act in a general executive capacity and assist the Chief Executive Officer in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The Chief Operating Officer shall have such other powers and perform such other duties as may from time to time be assigned by these Bylaws or by the Board of Directors or the Chief Executive Officer.

Section 3.4 Chief Financial Officer. The Board of Directors may designate one of the officers of the Corporation to be the Chief Financial Officer of the Corporation. Subject to the control of the Board of Directors and the Chief Executive Officer, the Chief Financial Officer shall have general charge and control of the financial affairs of the Corporation and shall have all powers and shall perform all duties incident to the position of Chief Financial Officer. The Chief Financial Officer shall act in a general executive capacity and assist the Chief Executive Officer in the administration and operation of the Corporation's financial affairs. The Chief Financial Officer shall have such other powers and perform such other duties as may from time to time be assigned by these Bylaws or by the Board of Directors or the Chief Executive Officer.

Section 3.5 Chairman and Vice Chairmen of the Board. The Board of Directors may elect a Chairman of the Board from among its members. The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have all powers and shall perform all duties incident to the office of Chairman of the Board which may be required by law and shall have such other powers and perform such other duties as may from time to time be assigned by these Bylaws or by the Board of Directors. The Board of Directors also may elect one or more Vice-Chairmen to act in the place of the Chairman of the Board upon his or her absence or inability to act. Notwithstanding any provision in these Bylaws to the contrary, in the absence of the Chairman of the Board at any meeting of the directors or the stockholders of the Corporation, with respect to such meeting the Vice-Chairman shall have the powers of the Chairman of the



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Board set forth herein prior to any other person having the right to serve as chairman of or appoint a chairman for such meeting, and in the absence of the Chairman of the Board and all Vice-Chairmen, such person or persons referred to in these Bylaws shall have the power to serve as chairman of or appoint a chairman for such meeting as otherwise provided herein.

Section 3.6 The President and Vice Presidents. The Board of Directors may elect a President and one or more Vice Presidents of the Corporation. Subject to the control of the Board of Directors and the Chief Executive Officer, the President and each Vice President shall have all powers and shall perform all duties incident to their respective offices which may be required by law and shall have such other powers and perform such other duties as may from time to time be assigned by these Bylaws or by the Board of Directors or the Chief Executive Officer.

Section 3.7 The Secretary. The Board of Directors shall elect a Secretary of the Corporation. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the stockholders in books provided for that purpose. The Secretary shall attend to the giving or serving of all notices of the Corporation; shall have custody of the corporate seal of the Corporation and shall affix the same to such documents and other papers as the Board of Directors or the Chief Executive Officer shall authorize and direct; shall have charge of the stock certificate books, transfer books and stock ledgers and such other books and papers as the Board of Directors or the Chief Executive Officer shall direct, all of which shall at all reasonable times be open to the examination of any director, upon application, at the principal place of business of the Corporation during normal business hours. The Secretary shall have all powers and shall perform all duties incident to the office of Secretary and shall also have such other powers and shall perform such other duties as may from time to time be assigned by these Bylaws or by the Board of Directors or the Chief Executive Officer.

Section 3.8 The Treasurer. The Board of Directors shall elect a Treasurer of the Corporation who shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times during normal business hours be open to inspection by any director. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. The Treasurer shall disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board of Directors, the Chief Executive Officer or the Chief Financial Officer. The Treasurer shall render to the Board of Directors, to the Chief Executive Officer or to the Chief Financial Officer, whenever requested, an account of all of his or her transactions as treasurer and of the financial condition of the Corporation, and the Treasurer shall have all powers and shall perform all duties incident to the position of Treasurer which may be required by law and shall have such other powers and perform such other duties as may from time to time be assigned by these Bylaws or by the Board of Directors, the Chief Executive Officer or the Chief Financial Officer.

Section 3.9 Additional Officers. The Board of Directors may from time to time elect such other officers, including a Controller and one or more Assistant Secretaries, Assistant

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Treasurers and Assistant Controllers, as the Board may deem advisable and such officers shall have such authority and shall perform such duties as may from time to time be assigned to them by the Board of Directors or the Chief Executive Officer.

The Board of Directors, the Chief Executive Officer or the Secretary may from time to time delegate to any Assistant Secretary or Assistant Secretaries any of the powers or duties assigned to the Secretary; and the Board of Directors, the Chief Executive Officer or the Chief Financial Officer may similarly delegate to the Treasurer, the Controller or any Assistant Treasurer or Assistant Controller any of the powers or duties assigned to the Chief Financial Officer.

Section 3.10 Giving of Bond by Officers. All officers of the Corporation, if required to do so by the Board of Directors, shall furnish bonds to the Corporation for the faithful performance of their duties, in such amounts and with such conditions and security as the Board shall require.

Section 3.11 Voting Upon Securities. Unless otherwise ordered by the Board of Directors, each of the Chairman of the Board, any Vice Chairman of the Board, the President, any Vice President, the Secretary, the Treasurer, the Controller, any Assistant Secretary, any Assistant Treasurer and any Assistant Controller shall have full power and authority on behalf of the Corporation to give a consent in writing or to attend and to act and to vote, or in the name of the Corporation to execute proxies to vote, at any meeting of holders of interests in any corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise in which the Corporation may hold an interest, and at any such meeting shall possess and may exercise, in person or by proxy, any and all rights, powers and privileges incident to the ownership of such interests. The Board of Directors may from time to time, by resolution, confer like powers upon any other person or persons.

Section 3.12 Compensation of Officers. The officers of the Corporation shall be entitled to receive such compensation for their services as shall from time to time be determined by the Board of Directors.

#### ARTICLE IV

##### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 4.1 Proceedings Other Than by or in the Right of the Corporation. Subject to the other provisions of this Article IV, any person (and the spouses, heirs, executors, administrators and estate of such person) who was or is made a party or is threatened to be made a party to or is otherwise involved in any Proceeding (as defined in Section 4.19 of this Article IV), other than an action by or in the right of the Corporation, by reason of the fact that such person, or another person of whom such person is the legal representative, is or was serving in an Official Capacity (as defined in Section 4.19 of this Article IV) for the Corporation, or, while serving in an Official Capacity for the Corporation, is or was serving, at the request of, for the convenience of, or to represent the interests of, the Corporation, in an Official Capacity for another corporation, limited liability company, partnership, joint venture, trust, association, or other entity or enterprise, whether for profit or not-for profit, including any subsidiaries of the

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Corporation, and any employee benefit plans maintained or sponsored by the Corporation (an “Other Enterprise”), whether the basis of such Proceeding is an alleged action in an Official Capacity or in any other capacity while serving in an Official Capacity, or is an employee of the Corporation specifically designated by the Board as an indemnified employee (hereinafter, each of the foregoing persons, a “Covered Person”), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL (as the same exists or may hereafter be amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against any and all Expenses (as defined in Section 4.19 of this Article IV) actually and reasonably incurred or suffered by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 4.2 Proceedings by or in the Right of the Corporation. Subject to the other provisions of this Article IV, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL (as the same exists now or as it may be hereinafter amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), any Covered Person who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, a Proceeding by or in the right of the Corporation against Expenses actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person, or another person of whom such person is the legal representative, shall have been adjudged to be liable to the Corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such Expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 4.3 Indemnification for Expenses of Successful Party. Notwithstanding the other provisions of this Article IV, to the extent that a Covered Person has been successful on the merits or otherwise in defense of any Proceeding described in Section 4.1 or Section 4.2 of this Article IV, or in defense of any claim, issue or matter therein, such person shall be indemnified against Expenses (as defined in Section 4.19 of this Article IV) actually and reasonably incurred by such person in connection therewith, notwithstanding an earlier determination by the Corporation (including by its directors, stockholders or any Independent Counsel) that the Covered Person is not entitled to indemnification under applicable law. For purposes of these Bylaws, the term “successful on the merits or otherwise” shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of any Proceeding against the Covered Person without any express finding of liability or guilt against the Covered Person, (ii) the expiration of one-hundred twenty (120) calendar days after the making of any claim or threat of a Proceeding without the institution of the same and without any promise or payment made to induce a settlement, and (iii) the settlement of any Proceeding pursuant to which the Covered Person is required to pay less than \$100,000.

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Section 4.4 Indemnification of Others. Subject to the other provisions of this Article IV, the Corporation shall have the power (but shall not be obligated by these Bylaws) to indemnify its employees and its agents to the extent not prohibited by the DGCL or other applicable law. Subject to applicable law, the Board shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the Board determines in its sole discretion.

Section 4.5 Right to Advancement. Expenses incurred by a Covered Person in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding. Such advances shall be paid by the Corporation within ten (10) calendar days after the receipt by the Corporation of a statement or statements from the Covered Person requesting such advance or advances from time to time together with a reasonable accounting of such Expenses; provided, however, that, if the DGCL so requires, the payment of such Expenses incurred by a Covered Person in his or her capacity as a director, officer, employee or representative in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking in writing, by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal (a "final disposition") that such Covered Person is not entitled to be indemnified under this Article IV or otherwise. The Covered Person's undertaking to repay the Corporation any amounts advanced for Expenses shall not be required to be secured and shall not bear interest.

(a) Except as otherwise provided in the DGCL or this Section 4.5, the Corporation shall not impose on the Covered Person additional conditions to the advancement of Expenses or require from the Covered Person additional undertakings regarding repayment. Advancements of Expenses shall be made without regard to the Covered Person's ability to repay the Expenses.

(b) Advancements of Expenses pursuant to this Section 4.5 shall not require approval of the Board or the stockholders of the Corporation, or of any other person or body. The Secretary shall promptly advise the Board in writing of the request for advancement of Expenses, of the amount and other details of the request and of the undertaking to make repayment provided pursuant to this Section 4.5.

(c) Advancements of Expenses to a Covered Person shall include any and all reasonable expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advancements claimed.

(d) The right to advancement of Expenses shall not apply to any claim for which indemnification is excluded pursuant to these Bylaws, but shall apply to any Proceeding referenced in Section 4.6(b), Section 4.6(c) or Section 4.6(d) of this Article IV prior to a determination that the person is not entitled to be indemnified by the Corporation.

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Section 4.6 Limitations on Indemnification. Except as otherwise required by the DGCL or the Certificate of Incorporation, the Corporation shall not be obligated to indemnify any person pursuant to this Article IV in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Exchange Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor;

(c) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the Exchange Act, including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") or the rules of any national securities exchange upon which the Corporation's securities are listed, if such person is held liable therefor;

(d) for any reimbursement of the Corporation by such person of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act, if such person is held liable therefor (including pursuant to any settlement arrangements);

(e) initiated by such person against the Corporation or its directors, officers, employees, agents or other Covered Persons, unless (i) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (iii) otherwise made under Section 4.5 of this Article IV or (iv) otherwise required by applicable law; or

(f) if prohibited by applicable law.

Section 4.7 Procedure for Indemnification; Determination.

(a) To obtain indemnification under this Article IV, a Covered Person shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the Covered Person and is reasonably necessary to determine whether and to what extent the Covered Person is entitled to indemnification.

(b) Upon written request by a Covered Person for indemnification, a determination (the "Determination"), if required by applicable law, with respect to the Covered Person's entitlement thereto shall be made as follows: (i) by the Board of Directors by majority vote of a quorum consisting of Disinterested Directors (as defined in this Article IV, Section 4.19), (ii) if such a quorum of Disinterested Directors cannot be obtained, by majority vote of a

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committee duly designated by the Board (all directors, whether or not Disinterested Directors, may participate in such designation) consisting solely of two or more Disinterested Directors, (iii) if such a committee cannot be designated, by any Independent Counsel (as defined in this Article IV, Section 4.19) selected by the Board, as prescribed in clause (i) above or by the committee of the Board prescribed in clause (ii) above, in a written opinion to the Board, a copy of which shall be delivered to the Covered Person; or if a quorum of the Board cannot be obtained for clause (i) above and the committee cannot be designated under clause (ii) above, selected by majority vote of the Board (in which directors who are parties may participate); or (iv) if such Independent Counsel determination cannot be obtained, by majority vote of a quorum of stockholders consisting of stockholders who are not parties to such Proceeding, or if no such quorum is obtainable, by a majority vote of stockholders who are not parties to the Proceeding.

(c) If, in regard to any Expenses (i) the Covered Person shall be entitled to indemnification pursuant to Article IV, Section 4.3, (ii) no determination with respect to the Covered Person's entitlement is legally required as a condition to indemnification of the Covered Person hereunder, or (iii) the Covered Person has been determined pursuant to Article IV, Section 4.7(b) to be entitled to indemnification hereunder, then payments of the Expenses shall be made as soon as practicable but in any event no later than thirty (30) calendar days after the later of (A) the date on which written demand is presented to the Corporation pursuant to Article IV, Section 4.7(a) or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) of this Section 4.7(c) is satisfied.

(d) If (x) the Corporation (including by its Disinterested Directors, Independent Counsel or stockholders) determines that the Covered Person is not entitled to be indemnified in whole or in part under applicable law, (y) any amount of Expenses is not paid in full by the Corporation according to Article IV, Section 4.7(c) after the Determination is made pursuant to Article IV, Section 4.7(b) that the Indemnitee is entitled to be indemnified, or (z) any amount of any requested advancement of Expenses is not paid in full by the Corporation according to Article IV, Section 4.5 above after a request and an undertaking pursuant to Article IV, Section 4.5 above have been received by the Corporation, in each case, the Covered Person shall have the right to commence litigation in any court of competent jurisdiction, either challenging any such Determination, which shall not be binding, or any aspect thereof (including the legal or factual bases therefor), seeking to recover the unpaid amount of Expenses and otherwise to enforce the Corporation's obligations under these Bylaws and, if successful in whole or in part, the Covered Person shall be entitled to be paid also any and all Expenses incurred in connection with prosecuting such claim. In any such suit, the Corporation shall, to the fullest extent not prohibited by law, have the burden of proof and the burden of persuasion, to establish by clear and convincing evidence, that the Covered Person is not entitled to either (i) the requested indemnification or, (ii) except where the required undertaking, if any, has not been tendered to the Corporation, the requested advancement of Expenses. If the Covered Person commences legal proceedings in a court of competent jurisdiction to secure a determination that the Covered Person should be indemnified under applicable law, any such judicial proceeding shall be conducted in all respects as a *de novo* trial, on the merits, the Covered Person shall continue to be entitled to receive Expense advancements, and the Covered Person shall not be required to reimburse the Corporation for any Expenses advanced, unless and until a final judicial determination is made (as to which all rights of appeal therefrom have been exhausted or

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lapsed) that the Covered Person is not entitled to be so indemnified under applicable law. Neither the failure of the Corporation (including its Disinterested Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the Covered Person is proper in the circumstances because he or she has met the applicable standard of conduct set forth under the DGCL or other applicable law, nor an actual determination by the Corporation (including its Disinterested Directors, Independent Counsel or stockholders) that the Covered Person has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Covered Person has not met the applicable standard of conduct.

(e) The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(f) Notwithstanding anything contained herein to the contrary, if a Determination shall have been made pursuant to Article IV, Section 4.7(b) above that the Covered Person is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to Article IV, Section 4.7(d) above.

(g) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to Article IV, Section 4.7(d) above that the procedures and presumptions of these Bylaws are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of these Bylaws.

#### Section 4.8 Procedures For The Determination of Whether Standards Have Been Satisfied.

(a) All costs incurred by the Corporation in making the Determination shall be borne solely by the Corporation, including, but not limited to, the costs of legal counsel, proxy solicitations and judicial determinations. The Corporation shall also be solely responsible for paying all costs incurred by it in defending any suits or Proceedings challenging payments by the Corporation to a Covered Person under these Bylaws.

(b) The Corporation shall use its best efforts to make the Determination contemplated by this Article IV, Section 4.7(b) hereof as promptly as is reasonably practicable under the circumstances.

Section 4.9 Non-Exclusivity of Rights. The right to indemnification and the advancement of Expenses related to a Proceeding in advance of its final disposition conferred in this Article IV shall not be deemed exclusive of any other rights to which any Covered Person seeking indemnification or advancement of Expenses may be entitled to under any law (common law or statutory law), provision of the Certificate of Incorporation, bylaw, agreement, insurance policy, vote of stockholders or Disinterested Directors or otherwise, both as to action in such

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person's Official Capacity and as to action in another capacity while holding such office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a Covered Person and shall inure to the benefit of the spouses, heirs, executors and administrators of such a person. The Corporation is specifically authorized to enter into an agreement with any of its directors, officers, employees or agents providing for indemnification and advancement of Expenses that may change, enhance, qualify or limit any right to indemnification or the advancement of Expenses provided by this Article IV, to the fullest extent not prohibited by the DGCL or other applicable law.

Section 4.10 Continuation of Rights. The rights of indemnification and advancement of Expenses provided in this Article IV shall continue as to any person who has ceased to serve in an Official Capacity and shall inure to the benefit of his or her spouses, heirs, executors, administrators and estates.

Section 4.11 Contract Rights. Without the necessity of entering into an express contract with any Covered Person, or the person of whom such person is the legal representative, the obligations of the Corporation to indemnify a Covered Person under this Article IV, including the duty to advance Expenses, shall be considered a contract right between the Corporation and such individual and shall be effective to the same extent and as if provided for in a contract between the Corporation and the Covered Person. Such contract right shall be deemed to vest at the commencement of the service of such Covered Person, or the person of whom such person is the legal representative, to or at the request of the Corporation, and no amendment, modification or repeal of this Article IV shall affect, to the detriment of the Covered Person, or the person of whom such person is the legal representative, and such person's heirs, executors, administrators and estate, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

Section 4.12 Subrogation. In the event of payment of indemnification to a Covered Person, the Corporation shall be subrogated to the extent of such payment to any right of recovery such person may have and such person, as a condition of receiving indemnification from the Corporation, shall execute all documents and do all things that the Corporation may deem necessary or desirable to perfect such right of recovery, including the execution of such documents necessary to enable the Corporation effectively to enforce any such recovery.

Section 4.13 No Duplication of Payments. The Corporation shall not be liable under this Article IV to make any payment in connection with any claim made against a Covered Person to the extent such person has otherwise received payment (under any insurance policy, bylaw, agreement or otherwise) of the amounts otherwise payable as indemnity hereunder.

Section 4.14 Severability. If this Article IV or any word, clause, provision or other portion hereof or any award made hereunder shall for any reason be determined to be invalid on any ground by any court of competent jurisdiction, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect, and the Corporation shall nevertheless indemnify and hold harmless each Covered Person indemnified pursuant to this Article IV as to all Expenses with respect to any Proceeding to the fullest extent permitted by any applicable portion of this Article IV that shall not have been invalidated and to the fullest extent permitted by applicable law.



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Section 4.15 No Imputation. The knowledge and/or actions, or failure to act, of any officer, director, employee or representative of the Corporation, an Other Enterprise or any other person shall not be imputed to a Covered Person for purposes of determining the right to indemnification under this Article IV.

Section 4.16 Reliance. Persons who after the date of the adoption of this Article IV or any amendment thereto serve or continue to serve the Corporation in an Official Capacity or who, while serving in an Official Capacity, serve or continue to serve in an Official Capacity for an Other Enterprise, shall be conclusively presumed to have relied on the rights to indemnification and advancement of Expenses contained in this Article IV.

Section 4.17 Notices. Any notice, request or other communication required or permitted to be given to the Corporation under this Article IV shall be in writing and either delivered in person or sent by U.S. mail, overnight courier or by e-mail or other electronic transmission, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

Section 4.18 Certain Definitions.

(a) The term "Corporation" shall include, in addition to Lifetime Brands, Inc. and, in the event of a consolidation or merger involving the Corporation, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of an Other Enterprise, shall stand in the same position under the provisions of this Article IV with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(b) The term "Disinterested Director" means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the Covered Person.

(c) The term "Expenses" shall be broadly construed and shall include all direct and indirect losses, liabilities, damages, expenses, including fees and expenses of attorneys, fees and expenses of accountants, court costs, transcript costs, fees and expenses of experts, witness fees and expenses, travel expenses, printing and binding costs, telephone charges, delivery service fees, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), judgments, fines, penalties (whether civil, criminal or other), ERISA excise taxes assessed on a person with respect to an employee benefit plan, and amounts paid or payable in connection with any judgment, award or settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any indemnification or expense advancement payments, and all other disbursements or expenses incurred in connection with (i) the investigation, preparation, prosecution, defense, mediation, arbitration, appeal or settlement of a Proceeding, (ii) serving as an actual or prospective witness, or preparing to be a witness in a

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Proceeding, or other participation in, or other preparation for, any Proceeding, (iii) any compulsory interviews or depositions related to a Proceeding, (iv) any non-compulsory interviews or depositions related to a Proceeding, subject to the person receiving advance written approval by the Corporation to participate in such interviews or depositions, and (v) responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses shall also include any federal, state, local and foreign taxes imposed on such person as a result of the actual or deemed receipt of any payments under this Article IV.

(d) The term “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporate law and neither currently is, nor in the five (5) years previous to its selection has been, retained to represent (i) the Corporation or the Covered Person in any matter material to either such party (other than with respect to matters concerning the Covered Person under this Article IV or of other indemnitees concerning similar indemnification arrangements or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the Covered Person in an action to determine the Covered Person’s rights under this Article IV.

(e) The term “not opposed to the best interest of the Corporation,” when used in the context of a Covered Person’s service with respect to employee benefit plans maintained or sponsored by the Corporation, describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(f) The term “Official Capacity” shall mean (i) service as a director or officer of the Corporation or (ii) while serving as a director or officer of the Corporation, service, at the request of the Corporation, as an officer, director, manager, member, partner, tax matters partner, employee, agent, fiduciary, trustee or other representative of the Corporation or an Other Enterprise.

(g) The term “Proceeding” shall be broadly construed and shall include any threatened, pending or completed action, suit, investigation (including any internal investigation), inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, regulatory, arbitrative, legislative, investigative or otherwise and whether formal or informal, or any appeal of any kind therefrom, including an action initiated by a Covered Person to enforce a Covered Person’s rights to indemnification or advancement of Expenses under these Bylaws, and whether instituted by or in the right of the Corporation, a governmental agency, the Board of Directors of the Corporation, any duly authorized committee thereof, a class of its security holders or any other party, and whether made pursuant to federal, state or other law, or any inquiry, hearing or investigation (including any internal investigation), whether formal or informal, whether instituted by or in the right of the Corporation, a governmental agency, the Board, any committee thereof, a class of its security holders, or any other party that the Covered Person believes might lead to the institution of any such proceeding.

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(h) The term “serving at the request of the Corporation” shall include any service by an officer or director of the Corporation to the Corporation or an Other Enterprise, including any service as an officer, director, manager, member, partner, tax matters partner, employee, agent, fiduciary, trustee or other representative of the Corporation or an Other Enterprise, including service relating to an employee benefit plan and its participants or beneficiaries, at the request of, for the convenience of, or to represent the interests of, the Corporation or any subsidiary of the Corporation. For the purposes of these Bylaws, a director’s or officer’s service to the Corporation or an Other Enterprise shall be presumed to be “serving at the request of the Corporation,” unless it is conclusively determined to the contrary by a majority vote of the directors of the Corporation, excluding, if applicable, such director. With respect to such determination, it shall not be necessary for the Covered Person to show any actual or prior request by the Corporation or its Board of Directors for such service to the Corporation or such Other Enterprise.

Section 4.19 Intent of Article. The intent of this Article IV is to provide for indemnification of the Covered Persons to the fullest extent permitted by Section 145 of the DGCL. To the extent that such Section or any successor Section may be amended or supplemented from time to time, this Article IV shall be amended automatically and construed so as to permit indemnification of the Covered Persons to the fullest extent from time to time permitted by the DGCL. Neither an amendment nor repeal of this Article IV, nor the adoption of any provision of these Bylaws inconsistent with this Article IV, shall eliminate or reduce the effect of this Article IV in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this Article IV, would accrue or arise, prior to such amendment repeal or adoption of any inconsistent provision.

## ARTICLE V

### STOCK; SEAL; FISCAL YEAR

Section 5.1 Stock Certificates. The shares of stock of the Corporation may be represented by certificates. Certificates for shares of stock of the Corporation shall be in such form, not inconsistent with the Certificate of Incorporation, as shall be approved by the Board of Directors. All certificates shall be signed by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and shall not be valid unless so signed. Any such signature may be a facsimile.

In case any officer or officers who shall have signed any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation, removal or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates had not ceased to be such officer or officers of the Corporation.

All certificates for shares of stock shall be consecutively numbered as the same are issued. The name of the person owning the shares represented thereby with the number of such shares and the date of issue thereof shall be entered on the stock transfer books of the Corporation.

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Except as hereinafter provided, all certificates surrendered to the Corporation for transfer shall be canceled, and no new certificates shall be issued until former certificates for the same number of shares have been surrendered and canceled.

Section 5.2 Lost, Stolen, Mutilated or Destroyed Certificates. Whenever a person owning a certificate for shares of stock of the Corporation alleges that it has been lost, stolen, mutilated or destroyed, he or she shall file in the office of the Corporation an affidavit setting forth, to the best of his or her knowledge and belief, the time, place and circumstances of the loss, theft, mutilation or destruction, and, if required by the Corporation, a bond of indemnity or other indemnification sufficient, in the opinion of the Corporation, to indemnify the Corporation and its agents against any claim that may be made against it or them on account of the alleged loss, theft, mutilation or destruction of any such certificate or the issuance of a new certificate in replacement therefor and, in the case of a mutilated certificate, deliver to the Corporation such mutilated certificate. Thereupon the Corporation may cause to be issued to such person a new certificate in replacement for the certificate alleged to have been lost, stolen, mutilated or destroyed. Upon the stub of every new certificate so issued shall be noted the fact of such issue and the number, date and the name of the registered owner of the lost, stolen, mutilated or destroyed certificate in lieu of which the new certificate is issued.

Section 5.3 Transfer of Shares. Shares of stock of the Corporation shall be transferred on the stock transfer books of the Corporation by the holder thereof, in person or by his attorney duly authorized in writing, upon surrender and cancellation of certificates for the number of shares of stock to be transferred, except as provided in Section 5.2.

Section 5.4 Regulations. The Board of Directors shall have power and authority to make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

Section 5.5 Electronic Securities Recordation. Notwithstanding any provision of this Article V to the contrary, the Corporation may adopt a system of issuance, recordation and transfer of its shares by electronic or other means not involving any issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

Section 5.6 Dividends. Subject to the provisions of the Certificate of Incorporation, the Board of Directors shall have power to declare and pay dividends upon shares of stock of the Corporation, but only out of funds available for the payment of dividends as provided by law.

Subject to the provisions of the Certificate of Incorporation, any dividends declared upon the stock of the Corporation shall be payable on such date or dates as the Board of Directors shall determine. If the date fixed for the payment of any dividend shall in any year fall upon a legal holiday, then the dividend payable on such date shall be paid on the next day not a legal holiday.

Section 5.7 Corporate Seal. The Board of Directors shall provide a suitable seal, containing the name of the Corporation, which seal shall be kept in the custody of the Secretary. A duplicate of the seal may be kept and be used by the Chairman of the Board, the President or any other officer of the Corporation designated by the Board of Directors.

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Section 5.8 Fiscal Year. The fiscal year of the Corporation shall be such fiscal year as the Board of Directors from time to time by resolution shall determine.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Checks, Notes, Etc. All checks, drafts, bills of exchange, acceptances, notes or other obligations or orders for the payment of money shall be signed and, if so required by the Board of Directors, countersigned by such officers of the Corporation and other persons as the Board of Directors from time to time shall designate.

Checks, drafts, bills of exchange, acceptances, notes, obligations and orders for the payment of money made payable to the Corporation may be endorsed for deposit to the credit of the Corporation with a duly authorized depository by the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Controller, any Assistant Controller and such other officers or persons, if any, as the Board of Directors from time to time may designate.

Section 6.2 Loans. No loans and no renewals of any loans shall be contracted on behalf of the Corporation except as authorized by the Board of Directors. When authorized so to do, any officer or agent of the Corporation may effect loans and advances for the Corporation from any bank, trust company or other institution or from any firm, corporation or individual, and for such loans and advances may make, execute and deliver promissory notes, bonds or other evidences of indebtedness of the Corporation. When authorized so to do, any officer or agent of the Corporation may pledge, hypothecate or transfer, as security for the payment of any and all loans, advances, indebtedness and liabilities of the Corporation, any and all stocks, securities and other personal property at any time held by the Corporation, and to that end may endorse, assign and deliver the same. Such authority may be general or confined to specific instances.

Section 6.3 Contracts. Except as otherwise provided by law or in these Bylaws or as otherwise directed by the Board of Directors, the Chairman of the Board, any Vice Chairman of the Board, the President, any Vice President or the Treasurer shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, security agreements and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any of such officers or the Secretary or an Assistant Secretary. The Board of Directors, the Chairman of the Board, any Vice Chairman, the President or any Vice President designated by the Board of Directors may authorize any other officer, employee or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, mortgages, security agreements and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board or any such officer may be general or confined to specific instances.

Section 6.4 Waivers of Notice. Whenever any notice whatever is required to be given by law, by the Certificate of Incorporation or by these Bylaws to any person or persons, a waiver thereof in writing or by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

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Section 6.5 Offices Outside of Delaware. Except as otherwise required by the laws of the State of Delaware, the Corporation may have an office or offices and keep its books, documents and papers outside of the State of Delaware at such place or places as from time to time may be determined by the Board of Directors or the Chief Executive Officer.

Section 6.6 Construction. In these Bylaws, except as otherwise provided, (a) all references to Articles and Sections refer to Articles and Sections of these Bylaws, (b) the definitions given for defined terms shall apply equally to both the singular and plural forms of such terms, (c) references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under said statutes) and to any Section of any statute, rule or regulation including any successor to said Section and (d) references to days shall mean calendar days unless business days are otherwise specified. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective in the jurisdiction involved to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 6.7 Forum for Adjudication of Disputes. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim or breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, the Corporation's Certificate of Incorporation or these Bylaws (in each case, as either may be amended from time to time), or (d) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery or other state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), in all cases to the fullest extent permitted by law and subject to said court having personal jurisdiction over the indispensable parties named as defendants therein. If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 6.7.

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ARTICLE VII

AMENDMENTS

These Bylaws and any amendment thereof may be altered, amended or repealed, or new Bylaws may be adopted, by the Board of Directors; *provided that*, subject to Section 1.1(b), Section 1.2(b) and Section 1.13, these Bylaws and any amendment thereof may be altered, amended or repealed or new Bylaws may be adopted by the holders of a majority of the outstanding stock of the Corporation entitled to vote at any annual meeting of stockholders or at any special meeting of stockholders, *provided that*, in the case of any special meeting of stockholders, that notice of such proposed alteration, amendment, repeal or adoption is included in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof).

These Bylaws are amended and restated effective as of January 26, 2016.

**AMENDED AND RESTATED INDEMNIFICATION AGREEMENT**

This AMENDED AND RESTATED INDEMNIFICATION AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_ (“Agreement”), by and between Lifetime Brands, Inc., a Delaware corporation (the “Corporation”), and \_\_\_\_\_ (“Indemnitee”).

WHEREAS, highly competent persons are reluctant to serve both privately and publicly-held companies as directors, officers, or in other capacities, unless they are provided with appropriate protection from the risk of claims and actions against them arising out of their service to and activities on behalf of such companies; and

WHEREAS, it is therefore reasonable, prudent and necessary for the Corporation to obligate itself contractually to indemnify such persons to the fullest extent permitted by applicable law, so that such persons will serve or continue to serve the Corporation free from undue concern that they will not be adequately indemnified; and

WHEREAS, this Agreement is a supplement to and in furtherance of those provisions regarding the indemnification, advancement of expenses and any other rights provided to, or for the benefit of, Indemnitee by the Second Restated Certificate of Incorporation of the Corporation (the “Certificate”) and/or the Amended and Restated Bylaws of the Corporation (“Bylaws”), any rights granted under the Certificate or Bylaws and any resolutions adopted pursuant thereto and shall not be deemed to be a substitute therefore nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that Indemnitee be indemnified according to the terms of this Agreement; and

WHEREAS, the Corporation and Indemnitee may be a party to a prior form of director’s and officer’s indemnification agreement and the Corporation and Indemnitee desire to supersede and replace any prior such indemnification agreement with this Agreement.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, and of Indemnitee agreeing to serve, or continuing to serve, the Corporation after the date hereof directly or, at the Corporation’s request, as an officer, director, manager, member, partner, tax matters partner, fiduciary or trustee of, or in any other capacity with, an Other Enterprise (as defined below), the sufficiency of such consideration being hereby acknowledged, the Corporation and Indemnitee, intending to be legally bound hereby, do hereby covenant and agree as follows:

Section 1. Definitions. For purposes of this Agreement:

(a) “Change in Control” means a change in control of the Corporation of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form)



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promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), whether or not the Corporation is then subject to such reporting requirement; provided, however, that, without limitation, such a Change in Control shall be deemed to have occurred if (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 20% or more of the combined voting power of the Corporation’s then outstanding securities without the prior approval of at least two-thirds of the members of the Board in office immediately prior to such person attaining such percentage interest; (ii) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board in office immediately prior to such transaction or event constitute less than a majority of the Board thereafter; or (iii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board (including for this purpose any new director whose election or nomination for election by the Corporation’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board.

(b) “Corporate Status” means the status of a person who is or was a director, officer, employee, manager, member, partner, tax matters partner, employee, agent, fiduciary, trustee or other representative of the Corporation or an Other Enterprise (as defined herein) which such person is or was serving at the request of the Corporation.

(c) “Disinterested Director” means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by Indemnitee.

(d) The term “Expenses” shall be broadly construed and shall include all direct and indirect losses, liabilities, damages, expenses, including fees and expenses of attorneys, fees and expenses of accountants, court costs, transcript costs, fees and expenses of experts, witness fees and expenses, travel expenses, printing and binding costs, telephone charges, delivery service fees, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), judgments, fines, penalties (whether civil, criminal or other), ERISA excise taxes assessed on a person with respect to an employee benefit plan, and amounts paid or payable in connection with any judgment, award or settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any indemnification or expense advancement payments, and all other disbursements or expenses incurred in connection with (i) the investigation, preparation, prosecution, defense, settlement, mediation, arbitration and appeal of a Proceeding, (ii) serving as an actual or prospective witness, or preparing to be a witness in a Proceeding, or other participation in, or other preparation for, any Proceeding, (iii) any compulsory interviews or depositions related to a Proceeding, (iv) any non-compulsory interviews or depositions related to a Proceeding, subject to the person receiving advance written approval by the Corporation to participate in such interviews or depositions, (v) responding to, or objecting to, a request to provide discovery in any Proceeding, and (vi) establishing or enforcing a right to indemnification

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under this Agreement, the Bylaws, the Certificate, applicable law or otherwise. Expenses shall also include any federal, state, local and foreign taxes imposed on such person as a result of the actual or deemed receipt of any payments under this Agreement.

(e) “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporate law and neither currently is, nor in the five (5) years previous to its selection has been, retained to represent (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement or of other indemnitees under similar indemnification agreements) or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(f) “Other Enterprise” means another corporation, partnership, limited liability company, joint venture, trust, association or other enterprise, whether for profit or not-for-profit, including any subsidiaries of the Corporation, any entities formed by the Corporation and any employee benefit plans maintained or sponsored by the Corporation or any subsidiary of the Corporation where Indemnitee is serving at the request of the Corporation in any capacity.

(g) The term “Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

(h) The term “Proceeding” shall be broadly construed and shall include any threatened, asserted, pending or completed action, suit, investigation (including any internal investigation), inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, regulatory, arbitral, legislative, investigative or otherwise and whether formal or informal, or any appeal of any kind therefrom, including an action initiated by Indemnitee to enforce Indemnitee’s rights to indemnification or advancement of Expenses under this Agreement or any provision of the Certificate, the Bylaws, the Delaware General Corporation Law, as amended (the “DGCL”), or other applicable law, and whether instituted by or in the right of the Corporation, a governmental agency, the Board of Directors of the Corporation, any authorized committee thereof, a class of its security holders or any other party, and whether made pursuant to federal, state or other law, or any inquiry, hearing or investigation (including any internal investigation), whether formal or informal, whether instituted by or in the right of the Corporation, a governmental agency, the Board, any committee thereof, a class of its security holders, or any other party that Indemnitee believes might lead to the institution of any such proceeding.

Section 2. Services by Indemnitee. Indemnitee agrees to serve as a director or officer of the Corporation. Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation imposed by operation of law).

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Section 3. Indemnification – General.

(a) The Corporation shall indemnify, and advance Expenses to, Indemnitee as provided in this Agreement to the fullest extent permitted by applicable law (as the same exists or may hereafter be amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment). The rights of Indemnitee provided under the preceding sentence shall include, but shall not be limited to, the rights set forth in the other Sections of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, the Corporation shall not be obligated to provide Indemnitee with indemnification pursuant to this Agreement (i) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee (other than any cross-claim, counterclaim or affirmative defense asserted by Indemnitee in an action brought against Indemnitee), including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation, any entity that the Corporation controls, any of the directors, officers, or employees thereof, other indemnitees or any third party, unless (A) the Corporation has joined in or the Board of Directors of the Corporation has authorized or consented to the initiation of such Proceeding, (B) it is a Proceeding referenced in Section 11 below, (C) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, or (D) otherwise required by applicable law, (ii) if a final adjudication by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law, (iii) on account of any Proceeding for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law, (iv) on account of any Proceeding for any reimbursement of the Corporation by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Corporation, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Corporation of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), or (v) as limited by Section 12 of this Agreement.

Section 4. Proceedings Other than Proceedings by or in the right of the Corporation. Indemnitee shall be entitled to the rights of indemnification provided in this Section if, by reason of (or arising in part out of) Indemnitee's Corporate Status, Indemnitee is, or is threatened to be made, a party or witness to or other participant in, any threatened, pending, or completed Proceeding, other than a Proceeding by or in the right of the Corporation. Pursuant to this Section, Indemnitee shall be indemnified against Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred (or, in the event a Change in Control has occurred, actually incurred) by Indemnitee or on

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Indemnitee's behalf in connection with any Proceeding or any claim, issue or matter therein, unless Indemnitee acted in bad faith, if Indemnitee acted in a manner Indemnitee believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

Section 5. Proceedings by or in the Right of the Corporation. Indemnitee shall be entitled to the rights of indemnification provided in this Section if, by reason of (or arising in part out of) Indemnitee's Corporate Status, Indemnitee is, or is threatened to be made, a party or witness to or other participant in, any threatened, pending, or completed Proceeding brought by or in the right of the Corporation to procure a judgment in its favor. Pursuant to this Section, Indemnitee shall be indemnified against Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonable incurred by Indemnitee or on Indemnitee's behalf in connection with any such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation. Notwithstanding the foregoing, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in any such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Corporation if applicable law prohibits such indemnification unless the Chancery Court of the State of Delaware or the court in which such Proceeding shall have been brought or is pending, shall determine that indemnification against Expenses may nevertheless be made by the Corporation.

Section 6. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonable incurred (or, in the event a Change in Control has occurred, all Expenses actually incurred) by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Agreement, the term "successful on the merits or otherwise" shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of any Proceeding against Indemnitee without any express finding of liability or guilt against Indemnitee, (ii) the expiration of one-hundred twenty (120) days after the making of any claim or threat of a Proceeding without the institution of the same and without any promise or payment made to induce a settlement, and (iii) the settlement of any Proceeding pursuant to which Indemnitee pays less than \$100,000.

Section 7. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness in any Proceeding, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred (or, in the event a Change in Control has occurred, all Expenses actually incurred) by Indemnitee or on Indemnitee's behalf in connection therewith.

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Section 8. Advancement of Expenses.

(a) The Corporation shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within ten (10) calendar days after the receipt by the Corporation of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding, provided, however, in the case of a retainer or similar advance payable by or on behalf of Indemnitee to a lawyer or firm of lawyers at or prior to such lawyer or firm of lawyers undertaking the representation of Indemnitee, the Corporation shall advance such Expense within three (3) calendar days after the receipt by the Corporation of a statement from Indemnitee requesting such advance. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by an undertaking in writing by or on behalf of Indemnitee in which Indemnitee undertakes and agrees to repay any Expenses advanced if it shall ultimately be determined (in accordance with the procedures and other provisions contained in Section 9 hereof or by final judicial determination from which there is no further right to appeal, as applicable) that Indemnitee is not entitled to be indemnified by the Corporation against such Expenses. The Corporation shall make the advances contemplated by this Section 8 regardless of Indemnitee's financial ability to make repayment, and regardless of whether indemnification of Indemnitee by the Corporation will ultimately be required. Any advances pursuant to this Section 8 shall be unsecured and interest-free. Except as set forth in this Section 8, the Corporation shall not impose on Indemnitee additional conditions to the advancement of Expenses or require from Indemnitee additional undertakings regarding repayment. Advancements shall include any and all reasonable Expenses incurred pursuing an action to enforce Indemnitee's right of advancement of Expenses pursuant to this Agreement or any provision of the Certificate, the Bylaws, the DGCL or other applicable law, including Expenses incurred preparing and forwarding statements to the Corporation to support the advancements claimed.

(b) Notwithstanding anything in this Agreement to the contrary, the right to advancement of Expenses shall not apply to (i) any Proceeding against an officer, director or other agent of the Corporation brought by the Corporation and approved by a majority of the members of the Board which alleges willful misappropriation of corporate assets by such officer, director or other agent, wrongful disclosure of confidential information, or any other willful and deliberate breach in bad faith of such officer's, director's or other agent's duty to the Corporation or its stockholders, or (ii) any claim for which indemnification is excluded pursuant to this Agreement, but shall apply to any Proceeding referenced in Section 3(b)(iii) or Section 3(b)(iv) of this Agreement prior to a determination that the person is not entitled to be indemnified by the Corporation.

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Section 9. Procedure for Determination of Entitlement to Indemnification.

(a) To obtain indemnification under this Agreement in connection with any Proceeding, and for the duration thereof, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Corporation shall promptly upon receipt of any such request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in such case: (i) if a Change in Control shall have occurred, by Independent Counsel (unless Indemnitee shall request that such determination be made by the Board or the stockholders, in which case in the manner provided for in clauses (ii) or (iii) of this Section 9(b) in a written opinion to the Board, a copy of which shall be delivered to Indemnitee); (ii) if a Change of Control shall not have occurred, (A) by the Board by a majority vote of a quorum consisting of Disinterested Directors, or (B) if a quorum of the Board consisting of Disinterested Directors is not obtainable, or even if such quorum is obtainable, if such quorum of Disinterested Directors so directs, either (x) by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (y) by the stockholders of the Corporation, as determined by such quorum of Disinterested Directors, or a quorum of the Board, as the case may be; or (iii) as provided in Section 10(c) of this Agreement. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonably advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(c) If required, Independent Counsel shall be selected as follows: (i) if a Change of Control shall not have occurred, Independent Counsel shall be selected by the Board, and the Corporation shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected; or (ii) if a Change of Control shall have occurred, Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event (i) shall apply), and Indemnitee shall give written notice to the Corporation advising it of the identity of Independent Counsel so selected. In either event, Indemnitee or the Corporation, as the case may be, may within seven (7) calendar days after such written notice of selection shall have been given, deliver to the Corporation or to Indemnitee, as the case may be, a written objection to such selection. Such objection may be asserted only on the grounds that

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Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. If such written objection is made, Independent Counsel so selected may not serve as Independent Counsel unless and until a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 9(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Corporation or Indemnitee may petition the Chancery Court of the State of Delaware or other court of competent jurisdiction, for resolution of any objection which shall have been made by the Corporation or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom an objection is so resolved or the person so appointed shall act as Independent Counsel under Section 9(b) hereof. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with its actions pursuant to this Agreement, and the Corporation shall pay all reasonable fees and expenses incident to the procedures of this Section 9(c), regardless of the manner in which such Independent Counsel was selected or appointed. Upon the due commencement date of any judicial proceeding or arbitration pursuant to Section 11(a)(iii) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 10. Presumption and Effects of Certain Proceedings.

(a) In connection with any determination concerning Indemnitee's entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and, except where any required undertaking under Section 8 has not been delivered to the Corporation, anyone seeking to overcome this presumption shall have the burden of proof and burden of persuasion, by clear and convincing evidence.

(b) Indemnitee shall be deemed to have met the applicable standard of conduct and to be entitled to indemnification under the DGCL for any action or omission to act undertaken (i) in good faith reliance upon the records of the Corporation, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by the officers or employees of the Corporation or any of its subsidiaries in the course of their duties, or by committees of the Board of Directors, or by any other Person as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence, or (ii) on behalf of the Corporation in furtherance of the interests of the Corporation in good faith in reliance upon, and in accordance with, the advice of legal counsel or accountants, provided such legal counsel or accountants were selected with reasonable care by or on behalf of the Corporation. In addition, the knowledge and/or actions, or failures to act, of any director, officer, agent or employee of the Corporation or an Other Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this

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Section 10(b) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence.

(c) If the person, persons or entity empowered or selected under Section 9 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) prohibition of such indemnification under applicable law; provided, however, that such thirty (30) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith require(s) such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 10(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 9(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Corporation of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 9(b) of this Agreement.

(d) The termination of any Proceeding or any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

#### Section 11. Remedies of Indemnitee.

(a) In the event that (i) a determination is not made pursuant to Section 9 of this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 of this Agreement, (iii) the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 9(b) of this Agreement and such determination shall not have been made and delivered in a written opinion within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 7 of this Agreement within ten (10) days



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after receipt by the Corporation of a written request therefore, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 9 or 10 of this Agreement, Indemnitee shall be entitled to an adjudication in the Chancery Court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator in Delaware. Indemnitee shall commence such proceeding seeking adjudication or an award in arbitration within one hundred eighty (180) calendar days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this section 11(a). The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 9 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section shall be conducted in all respects as a de novo trial or arbitration on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section, the Corporation shall have the burden of proof and burden of persuasion, by clear and convincing evidence, that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made or deemed to have been made pursuant to Section 9 or 10 of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) prohibition of such indemnification under applicable law.

(d) The Corporation shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement.

(e) In the event that Indemnitee, pursuant to this Section, seeks a judicial adjudication of, or an award in arbitration to enforce, Indemnitee's rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all expenses (of the kinds described in the definition of Expenses) actually and reasonably incurred by Indemnitee in such judicial adjudication or arbitration, but only if Indemnitee prevails therein. If it shall be determined in such judicial adjudication or arbitration that Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

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Section 12. Non-Exclusivity; Survival of Rights; Insurance; Subrogation; No Duplication of Payments.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate or the Bylaws of the Corporation, any agreement, a vote of stockholders for a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or any provision hereof shall be effective as to any Indemnitee with respect to any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal and no amendment, alteration or repeal of the Corporation's Certificate or Bylaws shall adversely affect or limit the rights of any Indemnitee under this Agreement.

(b) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, agents or fiduciaries of the Corporation or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Corporation, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee, agent or fiduciary under such policy or policies.

(c) In the event of any payment under this Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of contribution or recovery of Indemnitee against other persons, and Indemnitee shall execute all papers reasonably required and take all actions that may be reasonably necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(d) The Corporation shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

Section 13. Duration of Agreement. This Agreement shall continue and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a director, officer, employee, agent or fiduciary of the Corporation or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which Indemnitee served at the request of the Corporation; or (b) the final termination of all pending Proceedings in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 11 of this Agreement.

Section 14. Severability. If any provision or provisions of this Agreement 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 Agreement (including, without limitation, each portion of any Section of this Agreement containing any

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such provision held to be invalid, illegal or unenforceable, that is not itself 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 Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 15. Exception to Right of Indemnification or Advancement of Expenses. Except as provided in Section 11(e), Indemnitee shall not be entitled to indemnification or advancement of Expenses under this Agreement with respect to any Proceeding, or any claim therein, brought or made by such Indemnitee against the Corporation.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Modification and Waiver. Except as provided in Section 34 with respect to changes in the DGCL that broaden the right of Indemnitee to be indemnified by the Corporation and Section 31 which provides for Indemnitee to be afforded the benefit of a more favorable term or terms included in other indemnification agreements, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, or shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

Section 19. Notice by Indemnitee and Defense of Proceedings.

(a) Indemnitee agrees promptly to notify the Corporation in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder.

(b) The Corporation shall be entitled, at its option and expense, either to participate in the defense of any Proceeding relating a matter for which indemnification is sought or, upon written notice to Indemnitee, to assume the defense thereof with counsel reasonably satisfactory to Indemnitee and after delivery of such notice, the Corporation shall not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; provided that (i) Indemnitee shall have the right to retain separate counsel in respect of such Proceeding at

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Indemnitee's expense or, if previously authorized in writing by the Corporation, at the Corporation's expense, and (ii) if Indemnitee believes, after consultation with counsel selected by Indemnitee, that (A) the use of counsel chosen by the Corporation to represent Indemnitee would present such counsel with an actual or potential conflict of interest, (B) the named parties in any such Proceeding (including any impleaded parties) include the Corporation or any subsidiary of the Corporation and Indemnitee, and Indemnitee concludes that there may be one or more legal defenses available to him or her that are different from or in addition to those available to the Corporation or any subsidiary of the Corporation, or (C) any such representation by such counsel would be precluded under the applicable standards of professional conduct then prevailing, then Indemnitee shall be entitled to retain separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any particular Proceeding) at the Corporation's expense.

(c) The Corporation shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding relating to any matter for which indemnification is sought that is effected without the Corporation's prior written consent and the Corporation shall not, without the prior written consent of Indemnitee, effect any settlement of any Proceeding relating to any matter for which indemnification is sought which Indemnitee is or could have been a party unless such settlement solely involves the payment of money and includes a complete and unconditional release of Indemnitee from all liability on all claims that are the subject matter of such Proceeding; provided that neither the Corporation nor Indemnitee shall unreasonably withhold its or his or her consent to any proposed settlement; and provided that Indemnitee may withhold consent to any settlement or compromise which (i) includes an admission of fault of Indemnitee or (ii) does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of the Proceeding, which release shall be in form and substance reasonably satisfactory to Indemnitee.

Section 20. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom such notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee, to:

\_\_\_\_\_  
\_\_\_\_\_

(b) If to the Corporation, to:

Lifetime Brands, Inc.  
1000 Stewart Avenue  
Garden City, NY 11530

or to such other address as may have been furnished to Indemnitee by the Corporation or to the Corporation by Indemnitee, as the case may be.

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Section 21. Contribution.

(a) Whether or not the indemnification provided for in this Agreement is available, in respect of any Proceeding in which the Corporation is jointly liable with Indemnitee (or would be if joined in the Proceeding that is the basis for the Proceeding), the Corporation shall pay, in the first instance, the entire amount of any judgment or settlement of such Proceeding without requiring Indemnitee to contribute to such payment and the Corporation hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Corporation shall not enter into any settlement of any Proceeding in which the Corporation is jointly liable with Indemnitee (or would be if joined in the Proceeding that is the basis for the Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee, which release shall be in form and substance reasonably satisfactory to Indemnitee.

(b) Without diminishing or impairing the obligations of the Corporation set forth in Section 21(a), if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement relating to any Proceeding in which the Corporation is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Corporation shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Corporation and all officers, directors or employees of the Corporation other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such Proceeding arose; *provided, however*, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Corporation and all officers, directors or employees of the Corporation other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the law may require to be considered. The relative fault of the Corporation and all officers, directors or employees of the Corporation other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary, and the degree to which their conduct is active or passive.

(c) The Corporation hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Corporation other than Indemnitee who may be jointly liable with Indemnitee.

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Section 22. Services of Indemnitee. This Agreement shall not be deemed to constitute an agreement of employment nor shall it impose any obligation on Indemnitee or the Corporation to continue Indemnitee's service to the Corporation beyond any period otherwise required by law or by other agreements or commitments of the parties, if any. Indemnitee, if a member of the Board of Directors, hereby agrees to serve or continue to serve as a director of the Corporation, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed.

Section 23. Binding Effect, Successors. This Agreement shall be (a) binding upon all successors and assigns of the Corporation (including any transferee of all or a substantial portion of the business, stock and/or assets of the Corporation and any direct or indirect successor by merger or consolidation or otherwise by operation of law) and (b) binding on and shall inure to the benefit of the personal and legal representatives, spouses, heirs, executors and administrators of Indemnitee. This Agreement shall continue in effect for the benefit of Indemnitee and such personal and legal representatives, assigns, spouses, heirs, executors and administrators regardless of whether Indemnitee continues to serve as an officer, director or other representative or agent of the Corporation or any other Person at the request of the Corporation. The Corporation shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a significant portion, of the business and/or assets of the Corporation and/or its subsidiaries, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place. Except as otherwise provided in this Section 23, neither this Agreement nor any duties or responsibilities pursuant hereto may be assigned by the Corporation to any other Person without the express prior written consent of Indemnitee.

Section 24. Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement between the parties hereto with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby are expressly superseded by this Agreement, including, but not limited to, any previous forms of director's and officer's indemnification agreements adopted by the Board and/or entered into by the Corporation with Indemnitee; *provided, however*, that this Agreement is supplemental to and in furtherance of the rights provided to, or for the benefit of Indemnitee, by the Certificate, the Bylaws, the DGCL and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

Section 25. Conflict With Governing Documents. To the fullest extent permitted by applicable law, in the event of a conflict between the terms of this Agreement and the terms of the Certificate or the Bylaws, the terms of this Agreement shall prevail.

Section 26. Cooperation and Intent. The Corporation shall cooperate in good faith with Indemnitee and use its best efforts to ensure that, to the fullest extent permitted by applicable law, Indemnitee is indemnified and/or reimbursed for Expenses described herein and receives advancement of Expenses.

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Section 27. Noninterference. The Corporation shall not seek or agree to any order of any court or other governmental authority that would prohibit or otherwise interfere, and shall not take or fail to take any other action if such action or failure would reasonably be expected to have the effect of prohibiting or otherwise interfering, with the performance of the Corporation's indemnification, advancement of Expenses or other obligations under this Agreement.

Section 28. No Third Party Beneficiaries. No parties other than Indemnitee or the Corporation (and their successors and assigns as provided in Section 23 above) are entitled to rely upon this Agreement and enforce the Corporation's or Indemnitee's obligations hereunder.

Section 29. Specific Performance. The Corporation and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult to prove, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that, by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Corporation and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertakings in connection therewith. The Corporation acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the court, and the Corporation hereby waives any such requirement of a bond or undertaking.

Section 30. Covenant Not To Sue, Limitation of Actions and Release of Claims. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Corporation (or any of its subsidiaries) against Indemnitee, Indemnitee's spouse, heirs, executors, or personal or legal representatives, administrators or estate after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Corporation shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; *provided, however,* that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

Section 31. More Favorable Indemnification Agreements. In the event the Corporation or any of its subsidiaries enters into an indemnification agreement with another director, officer, agent, fiduciary or manager of the Corporation or any of its subsidiaries containing a term or terms more favorable to Indemnitee than the terms contained herein (as determined by Indemnitee), Indemnitee shall be afforded the benefit of such more favorable term or terms and such more favorable term or terms shall be deemed incorporated by reference herein as if set forth in full herein.

Section 32. Failure to Act Not a Defense. The failure of the Corporation (including its Board of Directors or any committee thereof, Independent Legal Counsel, or stockholders) to make a determination concerning the permissibility of the payment or advancement of Expenses under this Agreement shall not be a defense in any action brought under Section 11(a) hereof, and shall not create a presumption that such payment or advancement is not permissible.

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Section 33. Access to Information. Indemnitee shall be entitled to access such information in the possession of the Corporation as may be reasonably necessary to enforce Indemnitee's rights under this Agreement.

Section 34. Change in Law. To the extent that a change in the DGCL or the interpretation thereof (whether by statute or judicial decision) permits broader indemnification or advancement of Expenses than is provided under the terms of the Certificate, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change in law. In the event of any change in the DGCL (whether by statute or judicial decision) which narrows the right of a Delaware corporation to indemnify a member of its Board of Directors, an officer, or other agent, such changes, to the extent not required by applicable law to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder.

Section 35. Representations and Warranties of the Corporation. The Corporation hereby represents and warrants to Indemnitee as follows:

- (a) Authority. The Corporation has all necessary power and authority to enter into, and be bound by the terms of, this Agreement, and the execution, delivery and performance of the undertakings contemplated by this Agreement have been duly authorized by the Corporation.
- (b) Enforceability. This Agreement, when executed and delivered by the Corporation in accordance with the provisions hereof, shall be a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally.

Section 36. Validity of Agreement. The Corporation shall be precluded from asserting in any Proceeding, including, without limitation, an action under Section 11(a) above, that the provisions of this Agreement are not valid, binding and enforceable or that there is insufficient consideration for this Agreement and shall stipulate in court that the Corporation is bound by all the provisions of this Agreement.

Section 37. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within such state without giving effect to the principles of conflicts of choice of laws of such state or any other jurisdiction.



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Section 38. Consent to Jurisdiction. The Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 39. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CORPORATION

LIFETIME BRANDS, INC.

By: \_\_\_\_\_

INDEMNITEE

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