

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

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

Date of Report (Date of earliest event reported) May 16, 2023

KORU Medical Systems, Inc.

(Exact name of registrant as specified in its charter)

<u>Delaware</u> (State or other jurisdiction of incorporation)	<u>0-12305</u> (Commission File Number)	<u>13-3044880</u> (IRS Employer Identification No.)
<u>100 Corporate Drive, Mahwah, NJ</u> (Address of principal executive offices)	<u>07430</u> (Zip Code)	

Registrant's telephone number, including area code **(845) 469-2042**

not applicable
(Former name or former address, if changed since last report)

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

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

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

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
common stock, \$0.01 par value	KRMD	The Nasdaq Stock Market

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Reincorporation Merger

On May 16, 2023 (the "Effective Date"), KORU Medical Systems, Inc., a New York corporation ("KORU Medical NY" or, prior to the Reincorporation (as defined below), the "Company"), effected the change of the Company's jurisdiction of incorporation from New York to Delaware (the "Reincorporation") by merging (the "Reincorporation Merger") with a direct wholly owned subsidiary, KORU Medical Systems, Inc., a Delaware corporation ("KORU Medical DE" or, following the Reincorporation, the "Company"), pursuant to an Agreement and Plan of Merger (the "Reincorporation Merger Agreement"), dated as of May 12, 2023, by and between KORU Medical NY and KORU Medical DE, which is attached hereto as Exhibit 2.1 and incorporated by reference herein. KORU Medical NY shareholders approved the Reincorporation Merger to effect the Reincorporation at the Annual Meeting of Shareholders held on May 6, 2022 (the "2022 Annual Meeting"). As a result of the Reincorporation, (i) KORU Medical NY has ceased to exist, (ii) KORU Medical DE automatically inherited the reporting obligations of KORU Medical NY under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and (iii) KORU Medical DE is deemed to be the successor issuer to KORU Medical NY.

The common stock, par value \$0.01 per share, of KORU Medical NY (the "KORU Medical NY Common Stock") was listed for trading on the NASDAQ Capital Market and traded under the symbol "KRMD." As of the Effective Date, this symbol, without interruption, represents shares of common stock, par value \$0.01 per share, of KORU Medical DE (the "KORU Medical DE Common Stock"). There was no change in the Exchange Act File Number assigned by the Securities and Exchange Commission (the "Commission") as a result of the Reincorporation.

As of the Effective Date, the rights of the Company's stockholders began to be governed by the General Corporation Law of the State of Delaware (the "DGCL"), the Certificate of Incorporation of KORU Medical DE attached hereto as Exhibit 3.1, which is

incorporated by reference herein (the “Delaware Certificate”) and the Bylaws of KORU Medical DE attached hereto as Exhibit 3.2, which is incorporated by reference herein (the “Delaware Bylaws”).

Other than the change in corporate domicile, the Reincorporation did not result in any change in the business, physical location, management or the financial condition of the Company, nor did it result in any change in location of its current employees, including management. On the Effective Date, (i) the board of directors of KORU Medical DE was reconstituted as described in Item 5.02 of this Current Report on Form 8-K, and the officers of KORU Medical NY prior to the Reincorporation continued as the officers of KORU Medical DE after the Reincorporation, (ii) each outstanding share of KORU Medical NY Common Stock was automatically converted into one share of KORU Medical DE Common Stock, and (iii) all of KORU Medical NY’s employee benefit and compensation plans immediately prior to the Reincorporation were continued by KORU Medical DE, and each outstanding equity award relating to shares of KORU Medical NY Common Stock was converted into an equity award relating to an equivalent number of shares of KORU Medical DE Common Stock on the same terms and subject to the same conditions. Beginning at the effective time of the Reincorporation, unless surrendered and exchanged for certificates representing shares of KORU Medical DE Common Stock, each certificate representing KORU Medical NY Common Stock was deemed for all corporate purposes to evidence ownership of KORU Medical DE Common Stock.

With respect to the rights of holders of KORU Medical DE Common Stock, the Delaware Certificate, the Delaware Bylaws and the DGCL provide for many of the same rights and obligations as did the Restated Certificate of Incorporation, as amended, of KORU Medical NY, the Amended and Restated By-laws of KORU Medical NY and the New York Business Corporation Law for the holders of KORU Medical NY Common Stock, although there are differences in certain important respects. For a description of those differences, see the Company’s Definitive Proxy Statement for the 2022 Annual Meeting, filed with the Commission on March 18, 2022 (as supplemented or amended, the “Proxy Statement”). The sections entitled “Significant Changes in the Company’s Charter and By-Laws to be Implemented by the Reincorporation” and “Comparative Summary of Rights and Obligations Under New York and Delaware Law” set forth in the Proxy Statement are hereby incorporated by reference. The foregoing descriptions of the KORU Medical DE Common Stock, the Delaware Certificate and the Delaware Bylaws are qualified in their entirety by the full text of the Delaware Certificate and the Delaware Bylaws, which are attached hereto as Exhibits 3.1 and 3.2. The foregoing description of the Reincorporation Merger Agreement is qualified in its entirety by the full text of the Reincorporation Merger Agreement, which is attached hereto as Exhibit 2.1.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

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

Directors and Officers of KORU Medical DE

At the Effective Date, the members of the board of directors of KORU Medical DE were the same as the members of the board of directors of KORU Medical NY immediately prior to the Reincorporation Merger. In addition, the standing committees of the board of directors of KORU Medical DE (Audit, Compensation and Nominating and Corporate Governance) will consist of the same standing committees of the board of directors of KORU Medical NY.

The executive officers of KORU Medical NY immediately prior to the Reincorporation Merger became the executive officers of KORU Medical DE immediately following the Reincorporation Merger, and each executive officer has continued his or her employment with the Company under the same terms and position or positions as his or her directorship or employment with KORU Medical NY immediately prior to the Effective Date.

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

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

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

Set forth below are the voting results from the 2023 Annual Meeting of Shareholders held on May 17, 2023:

Total shares voted: 37,462,560

Proposal 1: Election of Directors

The nominees for director set forth under “Nominees” below were elected to the Company’s board of directors.

Nominees	Number of Shares		
	For	Withheld	Broker Non-Vote
R. John Fletcher	23,280,983	2,802,820	11,378,757
Robert A. Cascella	23,391,600	2,692,203	11,378,757
Donna French	26,032,722	51,081	11,378,757
Joseph M. Manko, Jr.	23,009,051	3,074,752	11,378,757
Shahriar (Shar) Matin	26,032,222	51,581	11,378,757
Linda Tharby	26,021,747	62,056	11,378,757

Proposal 2: Approval, on an advisory basis, of the compensation of the Company’s executive officers.

The Company’s shareholders, on an advisory basis, approved the compensation of the company’s executive officers.

	For	Against	Abstain	Broker Non-Vote
Number of Shares	25,941,889	113,998	27,916	11,378,757

Proposal 3: Ratification of the appointment of independent registered accountants for the 2023 fiscal year.

The Company's shareholders ratified the appointment of McGrail Merkel Quinn & Associates, P.C. as the company's independent registered public accountants for the 2023 fiscal year.

	For	Against	Abstain
Number of Shares	34,150,506	3,284,652	27,402

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Item 8.01. Other Events.

On May 17, 2023, KORU Medical DE filed a universal shelf registration statement on Form S-3 with the Commission (the "2023 Registration Statement"). The 2023 Registration Statement was filed as routine course of business due to the impending expiration of KORU Medical DE's existing universal shelf registration statement that, under SEC rules, would have expired on May 20, 2023 (the "2020 Registration Statement"). Upon effectiveness, KORU Medical may use the 2023 Registration Statement to offer and sell common and preferred stock, debt securities and other securities having an aggregate offering amount of no more than \$71,250,000, which is the amount that was registered but not previously sold under the 2020 Registration Statement. The 2023 Registration Statement, once it becomes effective, will continue to provide KORU Medical DE with flexibility to access the public capital markets in response to financing and business opportunities that may arise from time to time over its expected three-year term.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. The following Exhibits are filed herewith as part of this report:

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger by and between KORU Medical Systems, Inc., a New York corporation, and KORU Medical Systems, Inc., a Delaware corporation.
3.1	Certificate of Incorporation of KORU Medical Systems, Inc., a Delaware corporation.
3.2	Bylaws of KORU Medical Systems, Inc., a Delaware corporation.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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SIGNATURES

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

Koru Medical Systems, Inc.

(Registrant)

Date: May 17, 2023

By: /s/ Thomas Adams
Thomas Adams

Interim Chief Financial Officer

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “*Merger Agreement*”) is made and entered into as of the 12th day of May, 2023, by and between Koru Medical Systems, Inc., a New York corporation (“*KORU (NY)*”), and Koru Medical Systems, Inc., a Delaware corporation (“*KORU (DE)*”).

BACKGROUND

WHEREAS, the Board of Directors of KORU (NY) and the Board of Directors of KORU (DE) deem it advisable and in the best interests of KORU (NY) and KORU (DE) (each of which are sometimes referred to herein as a “*Constituent Company*” or together as the “*Constituent Companies*”) and the requisite shareholders of each Constituent Company have approved, that KORU (NY) merge with and into KORU (DE) (the “*Merger*”), pursuant to this Merger Agreement and the applicable provisions of the State of New York Business Corporation Law, as amended (the “*NYBCL*”), and the Delaware General Corporation Law, as amended (the “*DGCL*”);

WHEREAS, immediately prior to the Merger, the designation, number, and voting rights of each outstanding class and series of shares for each of the Constituent Companies is as set forth on Schedule 1 attached hereto; and

WHEREAS, immediately prior to the Merger, KORU (DE) has one (1) share of Common Stock, \$0.01 par value per share, issued and outstanding and held in the name of KORU (NY).

NOW, THEREFORE, in consideration of the foregoing premises, and in reliance on the respective representations, warranties and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Merger. The Constituent Companies shall effect the Merger upon the terms and subject to the conditions set forth in this Merger Agreement.

(a) The Merger. At the Effective Time (as hereinafter defined), KORU (NY) shall be merged with and into KORU (DE) pursuant to this Merger Agreement, the separate corporate existence of KORU (NY) shall cease and KORU (DE) shall continue as the surviving company under its corporate name, all upon the terms and subject to the conditions provided for in this Merger Agreement and pursuant to the NYBCL and the DGCL. KORU (DE), as it exists from and after the Effective Time, is sometimes hereinafter referred to as the “*Surviving Corporation*”.

(b) Effect of Merger. The Merger shall have the effect provided therefor by the NYBCL and the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, (i) all of the rights, privileges, powers and franchises, of a public as well as of a private nature, and all property, real, personal and mixed, and all debts due on whatever account, including without limitation subscriptions to shares, and all other choses in

action, and all and every other interest of or belonging to or due to KORU (NY) shall be taken and deemed to be transferred to, and vested in, the Surviving Corporation without further act or deed; and all property, rights and privileges, powers and franchises and all and every other interest shall be thereafter the property of the Surviving Corporation, as they were of KORU (NY), and (ii) all debts, liabilities, duties and obligations of KORU (NY) shall become the debts, liabilities, duties and obligations of the Surviving Corporation, and the Surviving Corporation shall thenceforth be responsible and liable for all of the debts, liabilities, duties and obligations of KORU (NY), and neither the rights of creditors nor any liens upon the property of KORU (NY) shall be impaired by the Merger, and such rights of creditors and liens upon the property of KORU (NY) may be enforced against the Surviving Corporation.

(c) Consummation of the Merger. On the date hereof, a Certificate of Merger shall be filed with the Department of State of the State of New York (the “*NYDOS*”) in accordance with the provisions of the NYBCL and a Certificate of Merger shall be filed with the Secretary of State of the State of Delaware (the “*DESOS*”) in accordance with the provisions of the DGCL, and the Merger shall become effective upon such filings or at such later time as may be specified in the filings with the NYDOS and DESOS (the “*Effective Time*”). The Surviving Corporation, which shall continue to be governed by the laws of the State of Delaware, hereby

agrees that it may be served with process in the State of New York in any proceeding for enforcement of any obligation of KORU (NY), as well as for enforcement of any obligation of the Surviving Corporation arising from the Merger.

2. Certificate of Incorporation; Bylaws; Directors and Officers. The Certificate of Incorporation of the Surviving Corporation from and after the Effective Time shall be the Certificate of Incorporation of KORU (DE), as set forth on Exhibit A attached hereto, which shall remain in effect until thereafter amended in accordance with the provisions therein and as provided by the DGCL. The Bylaws of the Surviving Corporation from and after the Effective Time shall be the Bylaws of KORU (DE), as in effect immediately prior to the Effective Time, as set forth on Exhibit B attached hereto, continuing until thereafter amended in accordance with their terms and the Certificate of Incorporation of the Surviving Corporation and as provided by the DGCL. The directors of the Surviving Corporation shall be the directors of KORU (DE) immediately prior to the Effective Time until the earlier of their respective death, resignation or removal or their respective successors are duly elected or appointed and qualified in the manner provided for in the Certificate of Incorporation of the Surviving Corporation or as otherwise provided by the DGCL, and the officers of the Surviving Corporation shall be the officers of KORU (DE) immediately prior to the Effective Time, and each shall hold office until the earlier of their respective death, resignation or removal or their respective successors are duly elected or appointed and qualified in the manner provided for in the By-laws of the Surviving Corporation or as otherwise provided by the DGCL.

3. Conversion and Cancellation of Securities. At the Effective Time, by virtue of the Merger and without any further action on the part of KORU (NY), KORU (DE) or any holder of any equity interests of KORU (NY) or KORU (DE):

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(a) all outstanding common stock of KORU (NY) will automatically be canceled and will cease to exist, in consideration for common stock of the Surviving Corporation on a 1:1 basis; and

(b) each option, restricted stock unit or other security of KORU (NY) issued and outstanding immediately prior to the Effective Time shall be converted into and shall be an identical security of the KORU (DE) and shares of common stock KORU (DE) shall be reserved for purposes of the exercise of such options, restricted stock units or other securities for each share of common stock of KORU (NY) so reserved prior to the Effective Time.;

all of the outstanding certificates or other documents that immediately prior to the Effective Time evidenced ownership of securities of KORU (NY) shall be deemed for all purposes to evidence ownership of and to represent the securities of the KORU (DE) into which such securities of KORU (NY) have been converted, as herein provided, and shall be so registered on the books and records of the KORU (DE) or its transfer agent. The registered owner of any such outstanding certificate or other document evidencing ownership of securities of KORU (NY) shall, until such certificate or other document shall have been surrendered for transfer or otherwise accounted for to KORU (DE) or its transfer agent, have and be entitled to exercise any voting and other rights with respect to, and to receive any dividends and other distributions upon, the securities evidenced by such certificate or other document, as above provided; and

(c) each share of KORU (DE) common stock that is issued and outstanding immediately prior to the Effective Time shall be automatically cancelled and will cease to exist.

At the Effective Time, other than those enumerated above, there shall not be any securities, rights, warrants, options or other instruments of KORU (NY) which, after consummation of the Merger, would be convertible into or exercisable for securities of the Surviving Corporation.

4. Termination. This Merger Agreement may be terminated at any time on or before the Effective Time by agreement of the Board of Directors of KORU (NY) and the Board of Directors of KORU (DE).

5. Amendment. This Merger Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

6. Waiver. Any agreement on the part of a party hereto to any extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such party by a duly authorized officer.

7. Further Assurances. If at any time the Surviving Corporation, or its successors or assigns, shall reasonably consider or be advised that any further assignments or assurances in law or any other acts are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of the Constituent Companies acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger, or (b) otherwise carry out the purposes of this

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Agreement, each Constituent Company and its proper officers, managers and directors shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such rights, properties or assets in the Surviving Corporation and otherwise to carry out the purposes of this Agreement; and the proper officers and directors of the Surviving Corporation are fully authorized in the name of each Constituent Company or otherwise to take any and all such action.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Merger Agreement as of the date first above written.

KORU MEDICAL SYSTEMS, INC.,
a New York corporation

By: /s/ Linda Tharby
Name: Linda Tharby
Title: President

KORU MEDICAL SYSTEMS, INC.,
a Delaware corporation

By: /s/ Linda Tharby
Name: Linda Tharby
Title: President

[Signature Page to Agreement and Plan of Merger – KORU (NY) into KORU (DE)]

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SCHEDULE 1

Koru Medical Systems, Inc., a New York corporation

Designation of each outstanding class and series of shares	Number of outstanding shares	Class and series of shares entitled to vote	Class and series of shares entitled to vote as a class
Common Stock	75,000,000	Voting	Voting
Preferred Stock	2,000,000	N/A	N/A

Koru Medical Systems, Inc., a Delaware corporation

Designation of each outstanding class and series of shares	Number of outstanding shares	Class and series of shares entitled to vote	Class and series of shares entitled to vote as a class
Common Stock	75,000,000	Voting	Voting
Preferred Stock	2,000,000	N/A	N/A

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EXHIBIT A

CERTIFICATE OF INCORPORATION

OF

KORU MEDICAL SYSTEMS, INC.

ARTICLE I
NAME OF THE CORPORATION

The name of the corporation is Koru Medical Systems, Inc. (the “**Corporation**”).

ARTICLE II
REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1675 South State Street, Suite B, Dover, Kent County, Delaware, 19901. The name of the registered agent of the Corporation at such address is Capitol Services, Inc.

ARTICLE III
BUSINESS PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**DGCL**”).

ARTICLE IV
CAPITAL STOCK

Section 4.01 Authorized Classes of Stock. The total number of shares of stock of all classes of capital stock that the Corporation is authorized to issue is SEVENTY SEVEN MILLION (77,000,000), of which SEVENTY FIVE MILLION (75,000,000) shares shall be shares of common stock having a par value of \$0.01 per share (“**Common Stock**”) and TWO MILLION (2,000,000) shares shall be shares of preferred stock having a par value of \$0.01 per share (“**Preferred Stock**”).

Section 4.02 Common Stock. Except as otherwise required by law, as provided in this Certificate of Incorporation, and as otherwise provided in the resolution or resolutions, if any, adopted by the board of directors of the Corporation (the “**Board of Directors**”) with respect to any series of the Preferred Stock, the holders of the Common Stock shall exclusively possess all voting power. Each holder of shares of Common Stock shall be entitled to one vote for each share held by them. Subject to the rights of holders of any series of outstanding Preferred Stock, holders of shares of Common Stock shall have equal rights of participation in the dividends and other distributions in cash, stock, or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall have equal rights to receive the assets and funds of the Corporation available for distribution to stockholders in the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary.

Section 4.03 Preferred Stock, Preferences and Limitations. Shares of the Preferred Stock may be issued from time to time in one or more series as may, from time to time, be

determined by the Board of Directors of the Corporation. Each series shall be distinctly designated. All shares of any one series of the Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends (if any) thereon shall be cumulative, if made cumulative. The relative preferences, participating, optional and other special rights in each such series, and limitations thereof, if any, may differ from those of any and all other series at any time outstanding. The Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of each particular series of the Preferred Stock, the designation, relative preferences, participating, optional, and other special rights and limitations thereof, if any, of such series, including, but without limiting the generality of the foregoing, the following:

(a) the distinctive designation of, and the number of shares of, the Preferred Stock which shall constitute the series, which number may be increased (except as otherwise fixed by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors;

(b) the rate and times at which, and the terms and conditions upon which, dividends, if any, on shares of the series may be paid, the extent of preferences or relation, if any, on such dividend to the dividends payable on any other class or classes of stock of the Corporation, or on any series of the Preferred Stock or of any other class or classes of stock of the Corporation, and whether such dividends shall be cumulative, partially cumulative, or non-cumulative;

(c) the right, if any, of the holders of shares of the series to convert the same into, or exchange the same for, shares of any other class or classes of stock of the Corporation, or of any series of the Preferred Stock or of any other class or classes of stock of the Corporation, and the terms and conditions of such conversion or exchange;

(d) whether shares of the series shall be subject to redemption and the redemption price or prices and the time or times at which, and the terms and conditions upon which, shares of the series may be redeemed;

(e) the rights, if any, of the holders of shares of the series upon voluntary or involuntary liquidation, merger, consolidation, distribution, or sale of assets, dissolution, or winding up of the Corporation;

(f) the terms of the sinking fund or redemption or purchase account, if any, to be provided for shares of the series; and

(g) the voting powers, if any, of the holders of shares of the series which may, without limiting the generality of the foregoing, including the right, voting as a series by itself or together with other series of the Preferred Stock as a class, (i) to vote more or less than one vote per share on any or all matters voted upon by the shareholders, (ii) to elect one or more Directors of the Corporation in the event there shall have been a default in the payment of dividends on any one or more series of the Preferred Stock or upon such other circumstances and upon such conditions as the Board of Directors may fix.;

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Section 4.04 Other Provisions.

(a) The relative preferences, rights, and limitations of each series of Preferred Stock in relation to the preferences, rights and limitations of each other series of Preferred Stock shall, in each case, be as fixed, from time to time, by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in this Article IV, and the consent by class or series vote or otherwise, of the holders of the Preferred Stock of such of the series of the Preferred Stock as are, from time to time, outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether the preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in such resolution or resolutions adopted with respect to any series of Preferred Stock that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(b) Subject to the provisions of paragraph (a) of this Section 4.04, shares of any series of Preferred Stock may be issued, from time to time, as the Board of Directors

shall determine and on such terms and for such consideration, as shall be fixed by the Board of Directors.

Section 4.05 Preferential or Preemptive Rights. No holder of shares of the Corporation of any class, now or hereafter authorized, shall have any preferential or preemptive right to subscribe for, purchase or receive any shares of the corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any securities convertible to or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the corporation.

Section 4.06 General Rights and Powers. Except as may otherwise be specifically provided in this Certificate of Incorporation, no provision of this Certificate of Incorporation is intended by the corporation to be construed as limiting, prohibiting, denying, or abrogating any of the general or specific powers or rights conferred under the DGCL upon the Corporation, upon its shareholders, bondholders, and security holders, and upon its directors, officers, and other corporate personnel, including, in particular, the power of the corporation to furnish indemnification to directors and officers in the capacities defined and prescribed rights of said persons to indemnification as the same are conferred by the DGCL.

ARTICLE V BOARD OF DIRECTORS

Section 5.01 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.02 Number. Subject to any rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation which shall constitute the entire Board of Directors shall be the number of directors as fixed by, or in the manner provided in, the by-laws of the Corporation (the “By-Laws”).

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Section 5.03 Written Ballot. Unless and except to the extent that the By-Laws shall so require, the election of directors of the Corporation need not be by written ballot.

Section 5.04 Voting. Subject to the following sentence and unless otherwise required by the by law or this Certificate of Incorporation, each director shall have one vote on all matters presented to the Board of Directors for its consideration. If the Board of Directors considers any action that results in an equal number of the directors at the meeting voting for and against the action and such action would be effective if taken by a majority vote, then in such case the chairman of the board shall be entitled to cast a tie-breaking vote with respect to such action. With respect to any committees established by the Board of Directors, subject to the following sentence and unless otherwise required by law or this Certificate of Incorporation, each director serving on such committee shall have one vote on all matters presented to such committee for its consideration. If such committee considers any action that results in an equal number of the directors at the committee meeting voting for and against the action and such action would be effective if taken by a majority vote, then in such case the chairman of such committee shall be entitled to cast a tie-breaking vote with respect to such action.

ARTICLE VI LIMITATION OF LIABILITY; INDEMNIFICATION

Section 6.01 Limitation of Liability. To the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to, modification of, or repeal of this Section 6.01 shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

Section 6.02 Indemnification. The corporation shall indemnify to the fullest extent permitted by law as it presently exists or may hereafter be amended any person made or threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that they, their testator, or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation. Any amendment, repeal, or modification of this Section 6.02 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

**ARTICLE VII
STOCKHOLDER ACTION**

Section 7.01 Stockholder Consent Prohibition. Any action required or permitted to be taken by the stockholders of the Corporation may be taken without a meeting by written consent, setting forth the action so taken, signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

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**ARTICLE VIII
BY-LAWS**

Section 8.01 Board of Directors. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized and empowered to adopt, amend, alter, or repeal the By-Laws without any action on the part of the stockholders.

Section 8.02 Stockholders. The stockholders shall also have the power to adopt, amend, alter, or repeal the By-Laws.

**ARTICLE IX
SECTION 203 OF THE DGCL OPT-OUT**

The corporation shall not be governed or subject to Section 203 of the DGCL.

**ARTICLE X
AMENDMENTS**

The Corporation reserves the right to amend, alter, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation.

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**EXHIBIT B
BY-LAWS OF
KORU MEDICAL SYSTEMS, INC.**

**ARTICLE I
OFFICES**

Section 1.01 Registered Office. The registered office of Koru Medical Systems, Inc. (the “Corporation”) will be fixed in the Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”).

Section 1.02 Other Offices. The Corporation may have other offices, either within or without the State of Delaware, as the board of directors of the Corporation (the “Board of Directors”) from time to time shall determine or the business of the Corporation may require.

**ARTICLE II
MEETINGS OF THE STOCKHOLDERS**

Section 2.01 Place of Meetings. All meetings of the stockholders shall be held at such place, if any, either within or without the State of Delaware, or by means of remote communication, as shall be designated from time to time by resolution of the Board of Directors and stated in the notice of meeting.

Section 2.02 Annual Meeting. The annual meeting of the stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting in accordance with these by-laws shall be held at such date, time, and place, if any, as shall be determined by the Board of Directors and stated in the notice of the meeting.

Section 2.03 Special Meetings.

(a) **Purpose.** Special meetings of stockholders for any purpose or purposes shall be called only:

(i) by the Board of Directors, or the Chairman of the Board or Lead Director (each, a “**Notified Officer**”); or

(ii) by any Notified Officer, following receipt of one or more written demands to call a special meeting of the stockholders in accordance with, and subject to, this Section 2.03 from stockholders of record who own, in the aggregate, at least 10% of the voting power of the outstanding shares of the Corporation then entitled to vote on the matter or matters to be brought before the proposed special meeting.

(b) **Notice.** A request pursuant to Section 2.03(a)(ii) shall be delivered to the Corporation’s principal executive offices and signed by each stockholder, or a duly authorized agent of such stockholder, requesting the special meeting and shall set forth:

(i) a brief description of each matter of business desired to be brought before the special meeting;

(ii) the reasons for conducting such business at the special meeting;

(iii) the text of any proposal or business to be considered at the special meeting (including the text of any resolutions proposed to be considered and in the event that such business includes a proposal to amend these by-laws, the language of the proposed amendment); and

(iv) the information required in Section 2.12 of these by-laws for stockholder nomination demands or for all other stockholder proposal demands, as applicable.

(c) **Business.** Business transacted at a special meeting requested by stockholders shall be limited to the matters described in the special meeting request; *provided, however*, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any special meeting requested by stockholders.

(d) **Time and Date.** A special meeting requested by stockholders shall be held at such date and time as may be fixed by the Board of Directors; *provided, however*, that the date of any such special meeting shall be not more than 90 days after the request to call the special meeting is received by the Notified Officer. Notwithstanding the foregoing, a special meeting requested by stockholders shall not be held if:

(i) the Board of Directors has called or calls for an annual or special meeting of the stockholders to be held within 90 days after the Notified Officer receives the request for the special meeting and the Board of Directors determines in good faith that the business of such meeting includes (among any other matters properly brought before the meeting) the business specified in the request;

(ii) the stated business to be brought before the special meeting is not a proper subject for stockholder action under applicable law;

(iii) an identical or substantially similar item (a “**Similar Item**”) was presented at any meeting of stockholders held within 120 days prior to the receipt by the Notified Officer of the request for the special meeting (and, for purposes of this Section 2.03(d)(iii), the election of directors shall be deemed a Similar Item with respect to all items of business involving the election or removal of directors); or

(iv) the special meeting request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the “**Exchange Act**”).

(e) **Revocation.** A stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Notified Officer at the Corporation’s

principal executive offices, and if, following such revocation, there are unrevoked requests from stockholders holding in the aggregate less than the requisite number of shares entitling the stockholders to request the calling of a special meeting, the Board of Directors, in its discretion, may cancel the special meeting.

Section 2.04 Adjournments. Any meeting of the stockholders, annual or special, may be adjourned from time to time to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the time, place, if any, thereof and the means of remote communication, if any, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date is fixed for stockholders entitled to vote at the adjourned meeting, the Board of Directors shall fix a new record date for notice of the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

Section 2.05 Notice of Meetings. Notice of the place (if any), date, hour, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), and means of remote communication, if any, of every meeting of stockholders shall be given by the Corporation not less than ten days nor more than 60 days before the meeting (unless a different time is specified by law) to every stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. Notices of special meetings shall also specify the purpose or purposes for which the meeting has been called. Notices of meetings to stockholders may be given by mailing the same, addressed to the stockholder entitled thereto, at such stockholder's mailing address as it appears on the records of the corporation and such notice shall be deemed to be given when deposited in the U.S. mail, postage prepaid. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law. Notice of any meeting need not be given to any stockholder who shall, either before or after the meeting, submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given.

Section 2.06 List of Stockholders. The Corporation shall prepare a complete list of the stockholders entitled to vote at any meeting of stockholders (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares of capital stock of the Corporation registered in the name of each stockholder at least ten days before any meeting of the stockholders. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days before the meeting: (a) on a reasonably accessible electronic network, provided

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that the information required to gain access to such list was provided with the notice of the meeting; or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting the whole time thereof and may be inspected by any stockholder who is present. If the meeting is held solely by means of remote communication, the list shall also be open for inspection by any stockholder during the whole time of the meeting as provided by applicable law. Except as provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger and the list of stockholders or to vote in person or by proxy at any meeting of stockholders.

Section 2.07 Quorum. Unless otherwise required by law, the Certificate of Incorporation or these By-laws, at each meeting of the stockholders, a majority in voting power of the shares of the Corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chair of the meeting or the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power, by the affirmative vote of a majority in voting power thereof, to adjourn the meeting from time to time, in the manner provided in Section 2.04, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the subsequent withdrawal of enough votes to leave less than

a quorum. At any such adjourned meeting at which there is a quorum, any business may be transacted that might have been transacted at the meeting originally called.

Section 2.08 Organization. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. At every meeting of the stockholders, the Chairman of the Board or Lead Director, as applicable, or in their absence or inability to act, the Chief Executive Officer, or, in their absence or inability to act, the officer or director whom the Board of Directors shall appoint, shall act as chair of, and preside at, the meeting. The person whom the chair of the meeting shall appoint secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chair of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board of Directors or prescribed by the chair of the meeting, may include, without limitation, the following:

- (a) the establishment of an agenda or order of business for the meeting;
- (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting;
- (c) rules and procedures for maintaining order at the meeting and the safety of those present;
- (d) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies, or such other persons as the chair of the meeting shall determine;

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- (e) restrictions on entry to the meeting after the time fixed for the commencement thereof; and
- (f) limitations on the time allotted to questions or comments by participants.

Section 2.09 Voting; Proxies.

(a) **General.** Unless otherwise required by law or provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held by such stockholder.

(b) **Election of Directors.** Unless otherwise required by the Certificate of Incorporation, the election of directors shall not be by ballot unless the person presiding at such meeting shall so direct or any shareholder, present in person or by proxy and entitled to vote thereon, shall so demand. If authorized by the Board of Directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder. Unless otherwise required by law, the Certificate of Incorporation, or these by-laws, the election of directors shall be decided by a majority of the votes cast at a meeting of the stockholders by the holders of stock entitled to vote in the election; *provided, however,* that, if the Chairman of the Board determines that the number of nominees for director exceeds the number of directors to be elected, directors shall be elected by a plurality of the votes of the shares represented in person or by proxy at any meeting of stockholders held to elect directors and entitled to vote on such election of directors. For purposes of this Section 2.09(b), a majority of the votes cast means that the number of shares voted “for” a nominee must exceed the votes cast “against” such nominee’s election. If a nominee for director who is not an incumbent director does not receive a majority of the votes cast, the nominee shall not be elected. The Board of Directors has established procedures under which a director standing for reelection in an uncontested election must tender a resignation conditioned on the incumbent director’s failure to receive a majority of the votes cast. In the event of an uncontested election of directors, if an incumbent director who is standing for re-election does not receive a majority of the votes cast, the independent members of the Board of Directors, in accordance with the procedures established by the Board of Directors, shall decide whether or not to accept such resignation within ninety (90) days after the date the results of the election are certified and the Corporation shall promptly disclose and explain such decision in a document

furnished or filed with the United States Securities and Exchange Commission (“SEC”).

The independent members of the Board of Directors in making their decision, may consider any factors or other information that they consider appropriate and relevant, including the recommendation of a committee established for the purposes thereof. The director who tenders their resignation shall not participate in the decision of the Board of Directors or the recommendation of any committee with respect to their resignation. If such director’s resignation is rejected by the Board of Directors, such director shall continue to serve until the next annual meeting and until their successor is duly elected, or their earlier resignation or removal. If a director’s resignation is accepted by the Board

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of Directors pursuant to this Article II, Section 9(b), then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Article III, Section 3.03 or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 3.02.

(c) Other Matters. Unless otherwise required by law, the Certificate of Incorporation, or these by-laws, any matter, other than the election of directors, brought before any meeting of stockholders shall be decided by the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter.

(d) Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Such authorization may be a document executed by the stockholder or their authorized officer, director, employee, or agent. To the extent permitted by law, a stockholder may authorize another person or persons to act for them as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that the electronic transmission either sets forth or is submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. A copy, facsimile transmission, or other reliable reproduction (including any electronic transmission) of the proxy authorized by this Section 2.09(d) may be substituted for or used in lieu of the original document for any and all purposes for which the original document could be used, provided that such copy, facsimile transmission, or other reproduction shall be a complete reproduction of the entire original document. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Chairman of the Board a revocation of the proxy or a new proxy bearing a later date.

Section 2.10 Inspectors at Meetings of Stockholders. In advance of any meeting of the stockholders, the Board of Directors shall, appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and make a written report thereof. The Board of Directors may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of their duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of their ability. The inspector or inspectors may appoint or retain other persons or entities to assist the inspector or inspectors in the performance of their duties. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspector or inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election. When executing the duties of inspector, the inspector or inspectors shall:

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- (a)** ascertain the number of shares outstanding and the voting power of each;
- (b)** determine the shares represented at the meeting and the validity of proxies and ballots;

(c) count all votes and ballots;

(d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and

(e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots.

Section 2.11 Fixing the Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the determination of stockholders entitled to notice of or to vote at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 2.12 Advance Notice of Stockholder Nominations and Proposals. At an annual or special meeting of the shareholders, only such business shall be conducted as shall have been properly brought before the meeting.

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(a) **Matters Properly Brought.** To be properly brought before a meeting, business must be: (i) specified in the notice of the meeting, (ii) brought by or at the direction of the Board of Directors, or (iii) brought by a shareholder of the Corporation who was a shareholder of record at the time the notice provided for in this Article II, Section 2.12 is delivered to the Chairman of the Board, who is entitled to vote at the meeting and who complied with the notice and other procedures set forth in this Article II, Section 2.12.

(b) **Advance Notice Requirements.** For business to be properly brought before a meeting of shareholders pursuant to clause (iii) of Section 2.12(a) above, the shareholder must have given timely notice of such business and provided timely updates and supplements to such notice, in writing, to the Chairman of the Board of Directors and such business must be a proper matter for shareholder action.

(i) To be timely, a shareholder's notice shall:

(A) (1) with respect to the annual meeting of shareholders, be delivered to the Chairman of the Board at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the one hundred twentieth (120th) day prior to the one (1)-year anniversary of the preceding year's annual meeting of shareholders; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made; and (2) with

respect to any special meeting of shareholders, be delivered not later than the close of business on the tenth (10th) day following the date such special meeting is first publicly announced or disclosed. In no event shall the announcement of an adjournment of an annual meeting or special meeting of shareholders commence a new time period for the giving of a shareholder's notice as described above; and

(B) be further updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof. The update and supplement shall be delivered to the Chairman of the Board at the principal executive offices of the Corporation not later than the following dates: (1) five (5) business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and (2) eight (8) business days prior to the date for the meeting or any adjournment or postponement thereof in the case of the update and supplement to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

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(ii) To be in proper form, such shareholder's notice must include the following, as applicable:

(A) As to the shareholder giving the notice, the notice shall set forth:

(1) the name and business address of the shareholder;

(2) the name and address of the shareholder, as they appear on the Corporation's books (if they so appear); and

(3) the class and number of shares of the Corporation beneficially owned by the shareholder; and

(4) any other information relating to such shareholder and beneficial owners, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

(B) If the notice relates to any business other than a nomination of a director or directors that the shareholder proposes to bring before the meeting, the notice must, in addition to matters set forth in Section 2.12(b)(ii)(A) above, also set forth: (1) a brief description of the business desired to be brought before the meeting; (2) the reasons for conducting such business at the meeting; (3) any material interest of the shareholder in such business; (4) the text of the proposal or business (including the text of any resolutions proposed for consideration); (5) a description of all agreements, arrangements and understandings between such shareholder and the beneficial owner, if any, and any other person or persons (including their names) in connection with the matters set forth in the notice by such shareholder; and (6) such other information as the Board of Directors reasonably determines is necessary or appropriate to enable the Board of Directors and shareholders of the Corporation to consider the proposal.

(C) As to each person whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the matters set forth in Section 2.12(b)(ii)(A) above, also set forth: (1) all information relating to such

proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including the nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (2) a description of all direct and indirect compensation and other monetary agreements, arrangements and understandings during the past three (3) years, and any other relationships, between or among such shareholder and beneficial owners, if any, and their respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 (or any successor rule) promulgated under SEC Regulation S-K if the shareholder making the nomination and any beneficial owner, if any, on whose behalf the nomination is made, or any affiliate or associate thereof, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant.

(D) With respect to each person whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the matters set forth in Sections 2.12(b)(ii)(A) and (C) above, also include a completed and signed questionnaire, representation and agreement required by Section 2.12(b)(ii)(E) below. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee, or to determine whether any of the matters contemplated by Section 2.12(b)(ii)(E) of this Article II apply to such proposed nominee.

(E) To be eligible to be a nominee of any shareholder for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 2.12 of these By-laws) to the Chairman of the Board at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such individual and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made (which questionnaire shall be provided by the Chairman of the Board upon written request), and a written representation and agreement (in the form provided by the Chairman of the Board upon written request) that such individual (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a

"Voting Commitment") that has not been disclosed to the Corporation and (2) any Voting Commitment that could limit or interfere with such individual's ability to comply, if elected as a director of the Corporation, with such individual's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (C) in such individual's personal capacity and on behalf of any person or entity on whose behalf, directly or indirectly, the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading

policies and guidelines of the Corporation publicly disclosed from time to time, and (D) agrees to serve if elected as a director.

The person presiding at the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Article II, Section 2.12 and, he or she shall declare to the meeting that any business not properly brought before the meeting shall not be transacted.

(c) **Rule 14a-8.** This Section 2.12 shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of the stockholder's intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

Section 2.13 Action by Stockholder Consent in Lieu of a Meeting. Unless otherwise provided in the Certificate of Incorporation or by law, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to (a) its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 2.13 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to (a) its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. 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.

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ARTICLE III BOARD OF DIRECTORS

Section 3.01 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these by-laws, or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

Section 3.02 Number; Term of Office. The Board of Directors shall consist of not less than five (5) and not more than nine (9) directors as fixed from time to time by resolution of a majority of the total number of directors that the Corporation would have if there were no vacancies. The number of directors may be increased to more than nine (9) or decreased to less than five (5) only by action of the shareholders. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. Each director shall hold office until a successor is duly elected and qualified or until the director's earlier death, resignation, disqualification, or removal. A director need not be a shareholder of the Corporation.

Section 3.03 Newly Created Directorships and Vacancies. Unless otherwise provided in the Certificate of Incorporation or in Section 3.05, vacancies occurring in the membership of the Board of Directors, from whatever cause arising (including vacancies occurring by reason of the removal of directors without cause and newly created directorships resulting from any increase in the authorized number of directors), may be filled by a majority vote of the remaining directors, though less than a quorum, or such vacancies may be filled by the shareholders.

Section 3.04 Resignation. Any director may resign at any time by notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation or at such later effective date or upon the happening of an event or events as is therein specified. A resignation that is conditioned on a

director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. A verbal resignation shall not be deemed effective until confirmed by the director in writing or by electronic transmission to the Corporation.

Section 3.05 Removal. Unless the Certificate of Incorporation provides for cumulative voting or the election of one or more directors by class or their election by holders of bonds, or requires all action by shareholders to be by a greater vote, any one or more of the directors may be removed, (a) with or without cause, at any time, by vote of the shareholders holding a majority of the outstanding shares entitled to vote at any special meeting of the shareholders, present in person or by proxy, or, (b) for cause, by action of the Board of Directors at any regular or special meeting of the Board. A vacancy or vacancies occurring from such removal may be filled at the special meeting of shareholders or at a regular or special meeting of the Board of Directors.

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Section 3.06 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such times and at such places as may be determined from time to time by the Board of Directors. The Board of Directors may hold an annual meeting, without notice, immediately after the annual meeting of shareholders.

Section 3.07 Special Meetings. Special meetings of the Board of Directors may be held at such times and at such places as may be determined by the Chairman of the Board or Lead Director on at least two days' notice to each director given by one of the means specified in Section 3.10 hereof other than by mail or on at least five days' notice if given by mail. Special meetings shall be called by the Chairman of the Board, Lead Director or Chief Executive Officer in like manner and on like notice on the written request of any two or more directors. The notice need not state the purposes of the special meeting and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.08 Telephone Meetings. Board of Directors or Board of Directors committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other and be heard. Participation by a director in a meeting pursuant to this Section 3.08 shall constitute presence in person at such meeting.

Section 3.09 Adjourned Meetings. A majority of the directors present at any meeting of the Board of Directors, including an adjourned meeting, whether or not a quorum is present, may adjourn and reconvene such meeting to another time and place. At least 24 hours' notice of any adjourned meeting of the Board of Directors shall be given to each director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 3.10 hereof other than by mail, or at least five days' notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

Section 3.10 Notices. Subject to Section 3.07, Section 3.09, and Section 3.11 hereof, whenever notice is required to be given to any director by applicable law, the Certificate of Incorporation, or these by-laws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such director at such director's address as it appears on the records of the Corporation, facsimile, e-mail, or by other means of electronic transmission.

Section 3.11 Waiver of Notice. Whenever notice to directors is required by applicable law, the Certificate of Incorporation, or these by-laws, a waiver thereof, in writing signed by, or by electronic transmission by, the director entitled to the notice, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a director at a meeting shall constitute a waiver of notice of such meeting except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board of Directors or committee meeting need be specified in any waiver of notice.

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Section 3.12 Organization. At each regular or special meeting of the Board of Directors, the Chairman of the Board or, in their absence, Lead Director or, in their absence, Chief Executive Officer or, in their absence, another director or officer selected by the Board of Directors shall preside. The person presiding over the meeting shall appoint a secretary of the

meeting, who shall act as secretary of the meeting and keep the minutes thereof and shall perform all of the other duties of secretary at such meeting.

Section 3.13 Quorum of Directors. Except as otherwise provided by these by-laws, the Certificate of Incorporation, or required by applicable law, the presence of a majority of the total number of directors on the Board of Directors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 3.14 Action by Majority Vote. Except as otherwise provided by these by-laws, the Certificate of Incorporation, or required by applicable law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.15 Directors' Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission and evidence of the same is filed with the minutes of the meeting of the Board of Directors or such committee.

Section 3.16 Lead Director. If the offices of the Chief Executive Officer and Chairman of the Board are not separate, or if the Chairman of the Board is not considered by the Board of Directors to be an independent director, the independent directors will elect one of their number to serve as Lead Director. The Lead Director, if any, will chair meetings of independent directors, will facilitate communications between other members of the Board of Directors and the Chief Executive Officer and the Chairman of the Board, and will assume other duties which the independent directors as a whole may designate from time to time.

Section 3.17 Committees of the Board of Directors. The Board of Directors may, by resolution passed by a majority of the entire Board, designate one or more committees, each committee to consist of three 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 to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the Delaware General Corporation Law (or any successor statute) to be submitted to stockholders for approval, or (ii) adopting, amending or repealing these bylaws.

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Section 3.18 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in all other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to this Article III of these bylaws.

Section 3.19 Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board of Directors shall have the authority to fix the compensation of directors.

ARTICLE IV OFFICERS

Section 4.01 Positions and Election. As soon as practicable after the annual meeting of stockholders in each year, the Board of Directors shall elect a chairman of the Board (the “**Chairman of the Board**”), chief executive officer (the “**Chief Executive Officer**”) and a treasurer (the “**Treasurer**”). The Board of Directors, in its discretion, may also elect one or more vice presidents, assistant treasurers, assistant secretaries, and other officers in accordance with these by-laws. Any two or more offices may be held by the same person.

Section 4.02 Term. Each officer of the Corporation shall hold office until such officer's successor is elected and qualified or until such officer's earlier death, resignation, or removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors at any time with or without cause by the majority vote (unless the Certificate of Incorporation provides otherwise) of the directors present at a regular meeting of directors or at a special meeting of directors called for that purpose. The election or appointment of an officer shall not of itself create contract rights. Any officer of the Corporation may resign at any time by giving notice of their resignation in writing, or by electronic transmission, to the Board of Directors. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Should any vacancy occur among the officers, the position shall be filled for the unexpired portion of the term by appointment made by the Board of Directors.

Section 4.03 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and shareholders, when present, and perform other such duties as the Board may designate. In the absence or inability to act of the Chief Executive Officer, the Chairman of the Board shall perform the duties and may exercise the powers of the Chief Executive Officer.

Section 4.04 Chief Executive Officer. The Chief Executive Officer shall, subject to the provisions of these by-laws and the control of the Board of Directors, have general supervision, direction, and control over the business of the Corporation and over its officers. The Chief Executive Officer shall perform all duties incident to the office of the Chief Executive Officer,

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and any other duties as may be from time to time assigned to the Chief Executive Officer by the Board of Directors, in each case subject to the control of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect, and shall have the power to execute in the name of the Corporation all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Corporation.

Section 4.05 Treasurer. The treasurer of the Corporation shall have the custody of the Corporation's funds and securities, except as otherwise provided by the Board of Directors, and shall keep full and accurate accounts of receipts and disbursements in records belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all their transactions as treasurer and of the financial condition of the Corporation.

Section 4.06 Compensation of Officers. The compensation of all officers shall be fixed by the Board of Directors, and the fact that any officer is a director shall not preclude him/her from receiving compensation as an officer, or from voting upon the resolution so providing.

ARTICLE V INDEMNIFICATION

Section 5.01 Indemnification. The Corporation shall indemnify and hold harmless to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), by reason of the fact that they, or a person for whom they are the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) actually and reasonably incurred by such person. Notwithstanding the preceding sentence, the Corporation shall be required to indemnify a person in connection with a Proceeding (or part thereof) commenced by such person only if the commencement of such Proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors.

Section 5.02 Advancement of Expenses. The Corporation shall pay the expenses (including attorneys' fees) actually and reasonably incurred by a director or officer of the Corporation in defending any Proceeding in advance of its final disposition, upon receipt of an undertaking by or on behalf of such person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified for such expenses under this Section 5.02 or otherwise

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Section 5.03 Non-Exclusivity of Rights. The rights conferred on any person by this Article V will not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these by-laws, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in their official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees, or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL.

Section 5.04 Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director or officer of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise, or nonprofit entity.

Section 5.05 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or is or was serving at the request of Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the Corporation would have the power to indemnify them against such liability under the provisions of the DGCL.

Section 5.06 Repeal, Amendment, or Modification. Any amendment, repeal, or modification of this Article V shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VI STOCK CERTIFICATES AND THEIR TRANSFER

Section 6.01 Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock. If shares are represented by certificates, such certificates shall be in the form, other than bearer form, approved by the Board of Directors. The certificates representing shares of stock shall be signed by, or in the name of, the Corporation by any two authorized officers of the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent, or registrar who has signed such a certificate ceases to be an officer, transfer agent, or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if the signatory were still such at the date of its issue.

Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

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Section 6.02 Transfers of Stock. Stock of the Corporation shall be transferable in the manner prescribed by law and in these by-laws. Transfers of stock shall be made on the books administered by or on behalf of the Corporation only by the direction of the registered holder thereof or such person's attorney, lawfully constituted in writing, and, in the case of certificated shares, upon the surrender to the Corporation or its transfer agent or other designated agent of the certificate thereof, which shall be cancelled before a new certificate or uncertificated shares shall be issued.

Section 6.03 Transfer Agents and Registrars. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more

registrars.

Section 6.04 Lost, Stolen, or Destroyed Certificates. The Board of Directors may direct a new certificate or uncertificated shares to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed upon the making of an affidavit of that fact by the owner of the allegedly lost, stolen, or destroyed certificate. When authorizing such issue of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen, or destroyed certificate, or the owner's legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed or the issuance of such new certificate or uncertificated shares.

ARTICLE VII GENERAL PROVISIONS

Section 7.01 Seal. The Corporation may adopt a seal of the Corporation in such form as shall be approved by the Board of Directors. If adopted, the seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise, as may be prescribed by law or custom or by the Board of Directors.

Section 7.02 Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors and, in the absence of such determination, shall be the calendar year.

Section 7.03 Checks, Notes, Drafts, Etc. All checks, notes, drafts, or other orders for the payment of money of the Corporation shall be signed, endorsed, or accepted in the name of the Corporation by such officer, officers, person, or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

Section 7.04 Conflict with Applicable Law or Certificate of Incorporation. These by-laws are adopted subject to any applicable law and the Certificate of Incorporation. Whenever these by-laws may conflict with any applicable law or the Certificate of Incorporation, such conflict shall be resolved in favor of such law or the Certificate of Incorporation.

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Section 7.05 Books and Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be maintained on any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases); provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, the records so kept comply with Section 224 of the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to applicable law.

Section 7.06 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because their or their votes are counted for such purpose, if: (1) the material facts as to their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 7.07 Forum for Adjudication of Disputes.

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of

Chancery does not have jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for:

- (i) any derivative action or proceeding brought on behalf of the Corporation;
- (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, or agent of the Corporation to the Corporation or the Corporation's stockholders;
- (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation, or these by-laws; or
- (iv) any action asserting a claim governed by the internal affairs doctrine;

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in each case, 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 this Section 7.06 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 this Section 7.06 (an "**Enforcement Action**"); and (ii) having service of process made upon such stockholder in any such Enforcement 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 7.06(a).

(b) Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933. 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 7.06(b).

ARTICLE VIII AMENDMENTS

Section 8.01 By Shareholders. These By-laws may be amended at any shareholders' meeting by vote of the shareholders holding a majority (unless the Certificate of Incorporation requires a larger vote) of the outstanding shares entitled to vote thereat, present either in person or by proxy, provided notice of the amendment is included in the notice or waiver of notice of such meeting.

Section 8.02 By Directors. The Board of Directors may also amend these By-laws at any regular or special meeting of the Board by a majority (unless the Certificate of Incorporation requires a larger vote) vote of the entire Board, but any By-laws so made by the Board may be altered or repealed by the shareholders.

Adopted on _____

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CERTIFICATE OF INCORPORATION

OF

KORU MEDICAL SYSTEMS, INC.

ARTICLE I NAME OF THE CORPORATION

The name of the corporation is Koru Medical Systems, Inc. (the “Corporation”).

ARTICLE II REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1675 South State Street, Suite B, Dover, Kent County, Delaware, 19901. The name of the registered agent of the Corporation at such address is Capitol Services, Inc.

ARTICLE III BUSINESS PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE IV CAPITAL STOCK

Section 4.01 Authorized Classes of Stock. The total number of shares of stock of all classes of capital stock that the Corporation is authorized to issue is SEVENTY SEVEN MILLION (77,000,000), of which SEVENTY FIVE MILLION (75,000,000) shares shall be shares of common stock having a par value of \$0.01 per share (“Common Stock”) and TWO MILLION (2,000,000) shares shall be shares of preferred stock having a par value of \$0.01 per share (“Preferred Stock”).

Section 4.02 Common Stock. Except as otherwise required by law, as provided in this Certificate of Incorporation, and as otherwise provided in the resolution or resolutions, if any, adopted by the board of directors of the Corporation (the “Board of Directors”) with respect to any series of the Preferred Stock, the holders of the Common Stock shall exclusively possess all voting power. Each holder of shares of Common Stock shall be entitled to one vote for each share held by them. Subject to the rights of holders of any series of outstanding Preferred Stock, holders of shares of Common Stock shall have equal rights of participation in the dividends and other distributions in cash, stock, or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall have equal rights to receive the assets and funds of the Corporation available for distribution to stockholders in the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary.

Section 4.03 Preferred Stock, Preferences and Limitations. Shares of the Preferred Stock may be issued from time to time in one or more series as may, from time to time, be determined by the Board of Directors of the Corporation. Each series shall be distinctly designated. All shares of any one series of the Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends (if any) thereon shall be cumulative, if made cumulative. The relative preferences, participating, optional and other special rights in each such series, and limitations thereof, if any, may differ from those of any and all other series at any time outstanding. The Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of each particular series of the Preferred Stock, the designation, relative preferences, participating, optional, and other special rights and limitations thereof, if any, of such series, including, but without limiting the generality of the foregoing, the following:

(a) the distinctive designation of, and the number of shares of, the Preferred Stock which shall constitute the series, which number may be increased (except as

otherwise fixed by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors;

(b) the rate and times at which, and the terms and conditions upon which, dividends, if any, on shares of the series may be paid, the extent of preferences or relation, if any, on such dividend to the dividends payable on any other class or classes of stock of the Corporation, or on any series of the Preferred Stock or of any other class or classes of stock of the Corporation, and whether such dividends shall be cumulative, partially cumulative, or non-cumulative;

(c) the right, if any, of the holders of shares of the series to convert the same into, or exchange the same for, shares of any other class or classes of stock of the Corporation, or of any series of the Preferred Stock or of any other class or classes of stock of the Corporation, and the terms and conditions of such conversion or exchange;

(d) whether shares of the series shall be subject to redemption and the redemption price or prices and the time or times at which, and the terms and conditions upon which, shares of the series may be redeemed;

(e) the rights, if any, of the holders of shares of the series upon voluntary or involuntary liquidation, merger, consolidation, distribution, or sale of assets, dissolution, or winding up of the Corporation;

(f) the terms of the sinking fund or redemption or purchase account, if any, to be provided for shares of the series; and

(g) the voting powers, if any, of the holders of shares of the series which may, without limiting the generality of the foregoing, including the right, voting as a series by itself or together with other series of the Preferred Stock as a class, (i) to vote more or less than one vote per share on any or all matters voted upon by the shareholders, (ii) to elect one or more Directors of the Corporation in the event there shall have been a default in the payment of dividends on any one or more series of the Preferred Stock or upon such other circumstances and upon such conditions as the Board of Directors may fix.;

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Section 4.04 Other Provisions.

(a) The relative preferences, rights, and limitations of each series of Preferred Stock in relation to the preferences, rights and limitations of each other series of Preferred Stock shall, in each case, be as fixed, from time to time, by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in this Article IV, and the consent by class or series vote or otherwise, of the holders of the Preferred Stock of such of the series of the Preferred Stock as are, from time to time, outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether the preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in such resolution or resolutions adopted with respect to any series of Preferred Stock that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(b) Subject to the provisions of paragraph (a) of this Section 4.04, shares of any series of Preferred Stock may be issued, from time to time, as the Board of Directors shall determine and on such terms and for such consideration, as shall be fixed by the Board of Directors.

Section 4.05 Preferential or Preemptive Rights. No holder of shares of the Corporation of any class, now or hereafter authorized, shall have any preferential or preemptive right to subscribe for, purchase or receive any shares of the corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any securities convertible to or exchangeable for such shares, which may at any time be issued, sold or offered for sale by the corporation.

Section 4.06 General Rights and Powers. Except as may otherwise be specifically provided in this Certificate of Incorporation, no provision of this Certificate of Incorporation is intended by the corporation to be construed as limiting, prohibiting, denying, or abrogating any of the general or specific powers or rights conferred under the DGCL upon the Corporation,

upon its shareholders, bondholders, and security holders, and upon its directors, officers, and other corporate personnel, including, in particular, the power of the corporation to furnish indemnification to directors and officers in the capacities defined and prescribed rights of said persons to indemnification as the same are conferred by the DGCL.

ARTICLE V BOARD OF DIRECTORS

Section 5.01 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.02 Number. Subject to any rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation which shall constitute the entire Board of Directors shall be the number of directors as fixed by, or in the manner provided in, the by-laws of the Corporation (the “By-Laws”).

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Section 5.03 Written Ballot. Unless and except to the extent that the By-Laws shall so require, the election of directors of the Corporation need not be by written ballot.

Section 5.04 Voting. Subject to the following sentence and unless otherwise required by the by law or this Certificate of Incorporation, each director shall have one vote on all matters presented to the Board of Directors for its consideration. If the Board of Directors considers any action that results in an equal number of the directors at the meeting voting for and against the action and such action would be effective if taken by a majority vote, then in such case the chairman of the board shall be entitled to cast a tie-breaking vote with respect to such action. With respect to any committees established by the Board of Directors, subject to the following sentence and unless otherwise required by law or this Certificate of Incorporation, each director serving on such committee shall have one vote on all matters presented to such committee for its consideration. If such committee considers any action that results in an equal number of the directors at the committee meeting voting for and against the action and such action would be effective if taken by a majority vote, then in such case the chairman of such committee shall be entitled to cast a tie-breaking vote with respect to such action.

ARTICLE VI LIMITATION OF LIABILITY; INDEMNIFICATION

Section 6.01 Limitation of Liability. To the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to, modification of, or repeal of this Section 6.01 shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

Section 6.02 Indemnification. The corporation shall indemnify to the fullest extent permitted by law as it presently exists or may hereafter be amended any person made or threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that they, their testator, or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation. Any amendment, repeal, or modification of this Section 6.02 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VII STOCKHOLDER ACTION

Section 7.01 Stockholder Consent Prohibition. Any action required or permitted to be taken by the stockholders of the Corporation may be taken without a meeting by written consent, setting forth the action so taken, signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

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ARTICLE VIII

BY-LAWS

Section 8.01 Board of Directors. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized and empowered to adopt, amend, alter, or repeal the By-Laws without any action on the part of the stockholders.

Section 8.02 Stockholders. The stockholders shall also have the power to adopt, amend, alter, or repeal the By-Laws.

ARTICLE IX SECTION 203 OF THE DGCL OPT-OUT

The corporation shall not be governed or subject to Section 203 of the DGCL.

ARTICLE X AMENDMENTS

The Corporation reserves the right to amend, alter, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation.

BY-LAWS OF
KORU MEDICAL SYSTEMS, INC.

ARTICLE I
OFFICES

Section 1.01 Registered Office. The registered office of Koru Medical Systems, Inc. (the “Corporation”) will be fixed in the Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”).

Section 1.02 Other Offices. The Corporation may have other offices, either within or without the State of Delaware, as the board of directors of the Corporation (the “Board of Directors”) from time to time shall determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF THE STOCKHOLDERS

Section 2.01 Place of Meetings. All meetings of the stockholders shall be held at such place, if any, either within or without the State of Delaware, or by means of remote communication, as shall be designated from time to time by resolution of the Board of Directors and stated in the notice of meeting.

Section 2.02 Annual Meeting. The annual meeting of the stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting in accordance with these by-laws shall be held at such date, time, and place, if any, as shall be determined by the Board of Directors and stated in the notice of the meeting.

Section 2.03 Special Meetings.

(a) **Purpose.** Special meetings of stockholders for any purpose or purposes shall be called only:

(i) by the Board of Directors, or the Chairman of the Board or Lead Director (each, a “Notified Officer”); or

(ii) by any Notified Officer, following receipt of one or more written demands to call a special meeting of the stockholders in accordance with, and subject to, this Section 2.03 from stockholders of record who own, in the aggregate, at least 10% of the voting power of the outstanding shares of the Corporation then entitled to vote on the matter or matters to be brought before the proposed special meeting.

(b) **Notice.** A request pursuant to Section 2.03(a)(ii) shall be delivered to the Corporation’s principal executive offices and signed by each stockholder, or a duly authorized agent of such stockholder, requesting the special meeting and shall set forth:

(i) a brief description of each matter of business desired to be brought before the special meeting;

(ii) the reasons for conducting such business at the special meeting;

(iii) the text of any proposal or business to be considered at the special meeting (including the text of any resolutions proposed to be considered and in the event that such business includes a proposal to amend these by-laws, the language of the proposed amendment); and

(iv) the information required in Section 2.12 of these by-laws for stockholder nomination demands or for all other stockholder proposal demands, as applicable.

(c) **Business.** Business transacted at a special meeting requested by stockholders shall be limited to the matters described in the special meeting request; *provided, however*, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any special meeting requested by stockholders.

(d) **Time and Date.** A special meeting requested by stockholders shall be held at such date and time as may be fixed by the Board of Directors; *provided, however*, that the date of any such special meeting shall be not more than 90 days after the request to call the special meeting is received by the Notified Officer. Notwithstanding the foregoing, a special meeting requested by stockholders shall not be held if:

(i) the Board of Directors has called or calls for an annual or special meeting of the stockholders to be held within 90 days after the Notified Officer receives the request for the special meeting and the Board of Directors determines in good faith that the business of such meeting includes (among any other matters properly brought before the meeting) the business specified in the request;

(ii) the stated business to be brought before the special meeting is not a proper subject for stockholder action under applicable law;

(iii) an identical or substantially similar item (a “**Similar Item**”) was presented at any meeting of stockholders held within 120 days prior to the receipt by the Notified Officer of the request for the special meeting (and, for purposes of this Section 2.03(d)(iii), the election of directors shall be deemed a Similar Item with respect to all items of business involving the election or removal of directors); or

(iv) the special meeting request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the “**Exchange Act**”).

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(e) **Revocation.** A stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Notified Officer at the Corporation’s principal executive offices, and if, following such revocation, there are unrevoked requests from stockholders holding in the aggregate less than the requisite number of shares entitling the stockholders to request the calling of a special meeting, the Board of Directors, in its discretion, may cancel the special meeting.

Section 2.04 Adjournments. Any meeting of the stockholders, annual or special, may be adjourned from time to time to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the time, place, if any, thereof and the means of remote communication, if any, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date is fixed for stockholders entitled to vote at the adjourned meeting, the Board of Directors shall fix a new record date for notice of the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

Section 2.05 Notice of Meetings. Notice of the place (if any), date, hour, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), and means of remote communication, if any, of every meeting of stockholders shall be given by the Corporation not less than ten days nor more than 60 days before the meeting (unless a different time is specified by law) to every stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. Notices of special meetings shall also specify the purpose or purposes for which the meeting has been called. Notices of meetings to stockholders may be given by mailing the same, addressed to the stockholder entitled thereto, at such stockholder’s mailing address as it appears on the records of the corporation and such notice shall be deemed to be given when deposited in the U.S. mail, postage prepaid. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law. Notice of any meeting need not be given to any stockholder who shall, either before or after the meeting, submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given.

Section 2.06 List of Stockholders. The Corporation shall prepare a complete list of the stockholders entitled to vote at any meeting of stockholders (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares of capital stock of the Corporation registered in the name of each stockholder at least ten days before any meeting of the stockholders. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days before the meeting: (a) on a reasonably accessible electronic network, provided

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that the information required to gain access to such list was provided with the notice of the meeting; or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting the whole time thereof and may be inspected by any stockholder who is present. If the meeting is held solely by means of remote communication, the list shall also be open for inspection by any stockholder during the whole time of the meeting as provided by applicable law. Except as provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger and the list of stockholders or to vote in person or by proxy at any meeting of stockholders.

Section 2.07 Quorum. Unless otherwise required by law, the Certificate of Incorporation or these by-laws, at each meeting of the stockholders, a majority in voting power of the shares of the Corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chair of the meeting or the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power, by the affirmative vote of a majority in voting power thereof, to adjourn the meeting from time to time, in the manner provided in Section 2.04, until a quorum shall be present or represented. A quorum, once established, shall not be broken by the subsequent withdrawal of enough votes to leave less than a quorum. At any such adjourned meeting at which there is a quorum, any business may be transacted that might have been transacted at the meeting originally called.

Section 2.08 Organization. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. At every meeting of the stockholders, the Chairman of the Board or Lead Director, as applicable, or in their absence or inability to act, the Chief Executive Officer, or, in their absence or inability to act, the officer or director whom the Board of Directors shall appoint, shall act as chair of, and preside at, the meeting. The person whom the chair of the meeting shall appoint secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chair of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board of Directors or prescribed by the chair of the meeting, may include, without limitation, the following:

- (a) the establishment of an agenda or order of business for the meeting;
- (b) the determination of when the polls shall open and close for any given matter to be voted on at the meeting;
- (c) rules and procedures for maintaining order at the meeting and the safety of those present;
- (d) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies, or such other persons as the chair of the meeting shall determine;

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- (e) restrictions on entry to the meeting after the time fixed for the commencement thereof; and
- (f) limitations on the time allotted to questions or comments by participants.

Section 2.09 Voting; Proxies.

(a) **General.** Unless otherwise required by law or provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held by such stockholder.

(b) **Election of Directors.** Unless otherwise required by the Certificate of Incorporation, the election of directors shall not be by ballot unless the person presiding at such meeting shall so direct or any shareholder, present in person or by proxy and entitled to vote thereon, shall so demand. If authorized by the Board of Directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder. Unless otherwise required by law, the Certificate of Incorporation, or these by-laws, the election of directors shall be decided by a majority of the votes cast at a meeting of the stockholders by the holders of stock entitled to vote in the election; *provided, however*, that, if the Chairman of the Board determines that the number of nominees for director exceeds the number of directors to be elected, directors shall be elected by a plurality of the votes of the shares represented in person or by proxy at any meeting of stockholders held to elect directors and entitled to vote on such election of directors. For purposes of this Section 2.09(b), a majority of the votes cast means that the number of shares voted “for” a nominee must exceed the votes cast “against” such nominee’s election. If a nominee for director who is not an incumbent director does not receive a majority of the votes cast, the nominee shall not be elected. The Board of Directors has established procedures under which a director standing for reelection in an uncontested election must tender a resignation conditioned on the incumbent director’s failure to receive a majority of the votes cast. In the event of an uncontested election of directors, if an incumbent director who is standing for re-election does not receive a majority of the votes cast, the independent members of the Board of Directors, in accordance with the procedures established by the Board of Directors, shall decide whether or not to accept such resignation within ninety (90) days after the date the results of the election are certified and the Corporation shall promptly disclose and explain such decision in a document furnished or filed with the United States Securities and Exchange Commission (“SEC”).

The independent members of the Board of Directors in making their decision, may consider any factors or other information that they consider appropriate and relevant, including the recommendation of a committee established for the purposes thereof. The director who tenders their resignation shall not participate in the decision of the Board of Directors or the recommendation of any committee with respect to their resignation. If such director’s resignation is rejected by the Board of Directors, such director shall continue to serve until the next annual meeting and until their successor is duly elected, or their earlier resignation or removal. If a director’s resignation is accepted by the Board

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of Directors pursuant to this Article II, Section 9(b), then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Article III, Section 3.03 or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 3.02.

(c) **Other Matters.** Unless otherwise required by law, the Certificate of Incorporation, or these by-laws, any matter, other than the election of directors, brought before any meeting of stockholders shall be decided by the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter.

(d) **Proxies.** Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Such authorization may be a document executed by the stockholder or their authorized officer, director, employee, or agent. To the extent permitted by law, a stockholder may authorize another person or persons to act for them as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that the electronic transmission either sets forth or is submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. A copy, facsimile transmission, or other reliable reproduction (including any electronic

transmission) of the proxy authorized by this Section 2.09(d) may be substituted for or used in lieu of the original document for any and all purposes for which the original document could be used, provided that such copy, facsimile transmission, or other reproduction shall be a complete reproduction of the entire original document. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Chairman of the Board a revocation of the proxy or a new proxy bearing a later date.

Section 2.10 Inspectors at Meetings of Stockholders. In advance of any meeting of the stockholders, the Board of Directors shall, appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and make a written report thereof. The Board of Directors may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of their duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of their ability. The inspector or inspectors may appoint or retain other persons or entities to assist the inspector or inspectors in the performance of their duties. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspector or inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election. When executing the duties of inspector, the inspector or inspectors shall:

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- (a) ascertain the number of shares outstanding and the voting power of each;
- (b) determine the shares represented at the meeting and the validity of proxies and ballots;
- (c) count all votes and ballots;
- (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and
- (e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots.

Section 2.11 Fixing the Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the determination of stockholders entitled to notice of or to vote at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 2.12 Advance Notice of Stockholder Nominations and Proposals. At an annual or special meeting of the shareholders, only such business shall be conducted as shall have been properly brought before the meeting.

(a) Matters Properly Brought. To be properly brought before a meeting, business must be: (i) specified in the notice of the meeting, (ii) brought by or at the direction of the Board of Directors, or (iii) brought by a shareholder of the Corporation who was a shareholder of record at the time the notice provided for in this Article II, Section 2.12 is delivered to the Chairman of the Board, who is entitled to vote at the meeting and who complied with the notice and other procedures set forth in this Article II, Section 2.12.

(b) Advance Notice Requirements. For business to be properly brought before a meeting of shareholders pursuant to clause (iii) of Section 2.12(a) above, the shareholder must have given timely notice of such business and provided timely updates and supplements to such notice, in writing, to the Chairman of the Board of Directors and such business must be a proper matter for shareholder action.

(i) To be timely, a shareholder's notice shall:

(A) (1) with respect to the annual meeting of shareholders, be delivered to the Chairman of the Board at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the one hundred twentieth (120th) day prior to the one (1)-year anniversary of the preceding year's annual meeting of shareholders; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made; and (2) with respect to any special meeting of shareholders, be delivered not later than the close of business on the tenth (10th) day following the date such special meeting is first publicly announced or disclosed. In no event shall the announcement of an adjournment of an annual meeting or special meeting of shareholders commence a new time period for the giving of a shareholder's notice as described above; and

(B) be further updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof. The update and supplement shall be delivered to the Chairman of the Board at the principal executive offices of the Corporation not later than the following dates: (1) five (5) business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and (2) eight (8) business days prior to the date for the meeting or any adjournment or postponement thereof in the case of the update and supplement to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

(ii) To be in proper form, such shareholder's notice must include the following, as applicable:

(A) As to the shareholder giving the notice, the notice shall set forth:

(1) the name and business address of the shareholder;

(2) the name and address of the shareholder, as they appear on the Corporation's books (if they so appear); and

(3) the class and number of shares of the Corporation beneficially owned by the shareholder; and

(4) any other information relating to such shareholder and beneficial owners, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

(B) If the notice relates to any business other than a nomination of a director or directors that the shareholder proposes to bring before the meeting, the notice must, in addition to matters set forth in Section 2.12(b)(ii)(A) above, also set forth: (1) a brief description of the business desired to be brought before the meeting; (2) the reasons for conducting such business at the meeting; (3) any material interest of the shareholder in such business; (4) the text of the proposal or business (including the text of any resolutions proposed for consideration); (5) a description of all agreements, arrangements and understandings between such shareholder and the beneficial owner, if any, and any other person or persons (including their names) in connection with the matters set forth in the notice by such shareholder; and (6) such other information as the Board of Directors reasonably determines is necessary or appropriate to enable the Board of Directors and shareholders of the Corporation to consider the proposal.

(C) As to each person whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the matters set forth in Section 2.12(b)(ii)(A) above, also set forth: (1) all information relating to such nominee that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of

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proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including the nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (2) a description of all direct and indirect compensation and other monetary agreements, arrangements and understandings during the past three (3) years, and any other relationships, between or among such shareholder and beneficial owners, if any, and their respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 (or any successor rule) promulgated under SEC Regulation S-K if the shareholder making the nomination and any beneficial owner, if any, on whose behalf the nomination is made, or any affiliate or associate thereof, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant.

(D) With respect to each person whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the matters set forth in Sections 2.12(b)(ii)(A) and (C) above, also include a completed and signed questionnaire, representation and agreement required by Section 2.12(b)(ii)(E) below. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee, or to determine whether any of the matters contemplated by Section 2.12(b)(ii)(E) of this Article II apply to such proposed nominee.

(E) To be eligible to be a nominee of any shareholder for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 2.12 of these By-laws) to the Chairman of the Board at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such individual and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made (which questionnaire shall be provided by the Chairman of the Board upon written request), and a written representation and agreement (in the form provided by the Chairman of the Board upon written request) that such individual (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a

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“**Voting Commitment**”) that has not been disclosed to the Corporation and (2) any Voting Commitment that could limit or interfere with such individual’s ability to comply, if elected as a director of the Corporation, with such individual’s fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (C) in such individual’s personal capacity and on behalf of any person or entity on whose behalf, directly or indirectly, the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time, and (D) agrees to serve if elected as a director.

The person presiding at the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Article II, Section 2.12 and, he or she shall declare to the meeting that any business not properly brought before the meeting shall not be transacted.

(c) **Rule 14a-8.** This Section 2.12 shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of the stockholder’s intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

Section 2.13 Action by Stockholder Consent in Lieu of a Meeting. Unless otherwise provided in the Certificate of Incorporation or by law, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to (a) its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 2.13 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to (a) its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. 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.

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**ARTICLE III
BOARD OF DIRECTORS**

Section 3.01 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these by-laws, or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

Section 3.02 Number; Term of Office. The Board of Directors shall consist of not less than five (5) and not more than nine (9) directors as fixed from time to time by resolution of a majority of the total number of directors that the Corporation would have if there were no vacancies. The number of directors may be increased to more than nine (9) or decreased to less than five (5) only by action of the shareholders. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. Each director shall hold office until a successor is duly elected and qualified or until the director's earlier death, resignation, disqualification, or removal. A director need not be a shareholder of the Corporation.

Section 3.03 Newly Created Directorships and Vacancies. Unless otherwise provided in the Certificate of Incorporation or in Section 3.05, vacancies occurring in the membership of the Board of Directors, from whatever cause arising (including vacancies occurring by reason of the removal of directors without cause and newly created directorships resulting from any increase in the authorized number of directors), may be filled by a majority vote of the remaining directors, though less than a quorum, or such vacancies may be filled by the shareholders.

Section 3.04 Resignation. Any director may resign at any time by notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation or at such later effective date or upon the happening of an event or events as is therein specified. A resignation that is conditioned on a director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. A verbal resignation shall not be deemed effective until confirmed by the director in writing or by electronic transmission to the Corporation.

Section 3.05 Removal. Unless the Certificate of Incorporation provides for cumulative voting or the election of one or more directors by class or their election by holders of bonds, or requires all action by shareholders to be by a greater vote, any one or more of the directors may be removed, (a) with or without cause, at any time, by vote of the shareholders holding a majority of the outstanding shares entitled to vote at any special meeting of the shareholders, present in person or by proxy, or, (b) for cause, by action of the Board of Directors at any regular or special meeting of the Board. A vacancy or vacancies occurring from such removal may be filled at the special meeting of shareholders or at a regular or special meeting of the Board of Directors.

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Section 3.06 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such times and at such places as may be determined from time to time by the Board of Directors. The Board of Directors may hold an annual meeting, without notice, immediately after the annual meeting of shareholders.

Section 3.07 Special Meetings. Special meetings of the Board of Directors may be held at such times and at such places as may be determined by the Chairman of the Board or Lead Director on at least two days' notice to each director given by one of the means specified in Section 3.10 hereof other than by mail or on at least five days' notice if given by mail. Special meetings shall be called by the Chairman of the Board, Lead Director or Chief Executive Officer in like manner and on like notice on the written request of any two or more directors. The notice need not state the purposes of the special meeting and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.08 Telephone Meetings. Board of Directors or Board of Directors committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other and be heard. Participation by a director in a meeting pursuant to this Section 3.08 shall constitute presence in person at such meeting.

Section 3.09 Adjourned Meetings. A majority of the directors present at any meeting of the Board of Directors, including an adjourned meeting, whether or not a quorum is present,

may adjourn and reconvene such meeting to another time and place. At least 24 hours' notice of any adjourned meeting of the Board of Directors shall be given to each director whether or not present at the time of the adjournment, if such notice shall be given by one of the means specified in Section 3.10 hereof other than by mail, or at least five days' notice if by mail. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

Section 3.10 Notices. Subject to Section 3.07, Section 3.09, and Section 3.11 hereof, whenever notice is required to be given to any director by applicable law, the Certificate of Incorporation, or these by-laws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such director at such director's address as it appears on the records of the Corporation, facsimile, e-mail, or by other means of electronic transmission.

Section 3.11 Waiver of Notice. Whenever notice to directors is required by applicable law, the Certificate of Incorporation, or these by-laws, a waiver thereof, in writing signed by, or by electronic transmission by, the director entitled to the notice, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a director at a meeting shall constitute a waiver of notice of such meeting except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board of Directors or committee meeting need be specified in any waiver of notice.

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Section 3.12 Organization. At each regular or special meeting of the Board of Directors, the Chairman of the Board or, in their absence, Lead Director or, in their absence, Chief Executive Officer or, in their absence, another director or officer selected by the Board of Directors shall preside. The person presiding over the meeting shall appoint a secretary of the meeting, who shall act as secretary of the meeting and keep the minutes thereof and shall perform all of the other duties of secretary at such meeting.

Section 3.13 Quorum of Directors. Except as otherwise provided by these by-laws, the Certificate of Incorporation, or required by applicable law, the presence of a majority of the total number of directors on the Board of Directors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 3.14 Action by Majority Vote. Except as otherwise provided by these by-laws, the Certificate of Incorporation, or required by applicable law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.15 Directors' Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission and evidence of the same is filed with the minutes of the meeting of the Board of Directors or such committee.

Section 3.16 Lead Director. If the offices of the Chief Executive Officer and Chairman of the Board are not separate, or if the Chairman of the Board is not considered by the Board of Directors to be an independent director, the independent directors will elect one of their number to serve as Lead Director. The Lead Director, if any, will chair meetings of independent directors, will facilitate communications between other members of the Board of Directors and the Chief Executive Officer and the Chairman of the Board, and will assume other duties which the independent directors as a whole may designate from time to time.

Section 3.17 Committees of the Board of Directors. The Board of Directors may, by resolution passed by a majority of the entire Board, designate one or more committees, each committee to consist of three 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 to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation; but no such committee shall have the power or authority in reference to (i)

approving or adopting, or recommending to the stockholders, any action or matter expressly required by the Delaware General Corporation Law (or any successor statute) to be submitted to stockholders for approval, or (ii) adopting, amending or repealing these bylaws.

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Section 3.18 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in all other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to this Article III of these bylaws.

Section 3.19 Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board of Directors shall have the authority to fix the compensation of directors.

ARTICLE IV OFFICERS

Section 4.01 Positions and Election. As soon as practicable after the annual meeting of stockholders in each year, the Board of Directors shall elect a chairman of the Board (the “**Chairman of the Board**”), chief executive officer (the “**Chief Executive Officer**”) and a treasurer (the “**Treasurer**”). The Board of Directors, in its discretion, may also elect one or more vice presidents, assistant treasurers, assistant secretaries, and other officers in accordance with these by-laws. Any two or more offices may be held by the same person.

Section 4.02 Term. Each officer of the Corporation shall hold office until such officer’s successor is elected and qualified or until such officer’s earlier death, resignation, or removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors at any time with or without cause by the majority vote (unless the Certificate of Incorporation provides otherwise) of the directors present at a regular meeting of directors or at a special meeting of directors called for that purpose. The election or appointment of an officer shall not of itself create contract rights. Any officer of the Corporation may resign at any time by giving notice of their resignation in writing, or by electronic transmission, to the Board of Directors. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Should any vacancy occur among the officers, the position shall be filled for the unexpired portion of the term by appointment made by the Board of Directors.

Section 4.03 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and shareholders, when present, and perform other such duties as the Board may designate. In the absence or inability to act of the Chief Executive Officer, the Chairman of the Board shall perform the duties and may exercise the powers of the Chief Executive Officer.

Section 4.04 Chief Executive Officer. The Chief Executive Officer shall, subject to the provisions of these by-laws and the control of the Board of Directors, have general supervision, direction, and control over the business of the Corporation and over its officers. The Chief Executive Officer shall perform all duties incident to the office of the Chief Executive Officer,

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and any other duties as may be from time to time assigned to the Chief Executive Officer by the Board of Directors, in each case subject to the control of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect, and shall have the power to execute in the name of the Corporation all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Corporation.

Section 4.05 Treasurer. The treasurer of the Corporation shall have the custody of the Corporation’s funds and securities, except as otherwise provided by the Board of Directors, and shall keep full and accurate accounts of receipts and disbursements in records belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The

treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all their transactions as treasurer and of the financial condition of the Corporation.

Section 4.06 Compensation of Officers. The compensation of all officers shall be fixed by the Board of Directors, and the fact that any officer is a director shall not preclude him/her from receiving compensation as an officer, or from voting upon the resolution so providing.

ARTICLE V INDEMNIFICATION

Section 5.01 Indemnification. The Corporation shall indemnify and hold harmless to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a “**Proceeding**”), by reason of the fact that they, or a person for whom they are the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) actually and reasonably incurred by such person. Notwithstanding the preceding sentence, the Corporation shall be required to indemnify a person in connection with a Proceeding (or part thereof) commenced by such person only if the commencement of such Proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors.

Section 5.02 Advancement of Expenses. The Corporation shall pay the expenses (including attorneys’ fees) actually and reasonably incurred by a director or officer of the Corporation in defending any Proceeding in advance of its final disposition, upon receipt of an undertaking by or on behalf of such person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified for such expenses under this Section 5.02 or otherwise

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Section 5.03 Non-Exclusivity of Rights. The rights conferred on any person by this Article V will not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these by-laws, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in their official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees, or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL.

Section 5.04 Other Indemnification. The Corporation’s obligation, if any, to indemnify any person who was or is serving at its request as a director or officer of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise, or nonprofit entity.

Section 5.05 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or is or was serving at the request of Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the Corporation would have the power to indemnify them against such liability under the provisions of the DGCL.

Section 5.06 Repeal, Amendment, or Modification. Any amendment, repeal, or modification of this Article V shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VI STOCK CERTIFICATES AND THEIR TRANSFER

Section 6.01 Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock. If shares are represented by certificates, such certificates shall be in the form, other than bearer form, approved by the Board of Directors. The certificates representing shares of stock shall be signed by, or in the name of, the Corporation by any two authorized officers of the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent, or registrar who has signed such a certificate ceases to be an officer, transfer agent, or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if the signatory were still such at the date of its issue.

Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

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Section 6.02 Transfers of Stock. Stock of the Corporation shall be transferable in the manner prescribed by law and in these by-laws. Transfers of stock shall be made on the books administered by or on behalf of the Corporation only by the direction of the registered holder thereof or such person's attorney, lawfully constituted in writing, and, in the case of certificated shares, upon the surrender to the Corporation or its transfer agent or other designated agent of the certificate thereof, which shall be cancelled before a new certificate or uncertificated shares shall be issued.

Section 6.03 Transfer Agents and Registrars. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

Section 6.04 Lost, Stolen, or Destroyed Certificates. The Board of Directors may direct a new certificate or uncertificated shares to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed upon the making of an affidavit of that fact by the owner of the allegedly lost, stolen, or destroyed certificate. When authorizing such issue of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen, or destroyed certificate, or the owner's legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed or the issuance of such new certificate or uncertificated shares.

ARTICLE VII GENERAL PROVISIONS

Section 7.01 Seal. The Corporation may adopt a seal of the Corporation in such form as shall be approved by the Board of Directors. If adopted, the seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise, as may be prescribed by law or custom or by the Board of Directors.

Section 7.02 Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors and, in the absence of such determination, shall be the calendar year.

Section 7.03 Checks, Notes, Drafts, Etc. All checks, notes, drafts, or other orders for the payment of money of the Corporation shall be signed, endorsed, or accepted in the name of the Corporation by such officer, officers, person, or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

Section 7.04 Conflict with Applicable Law or Certificate of Incorporation. These by-laws are adopted subject to any applicable law and the Certificate of Incorporation. Whenever these by-laws may conflict with any applicable law or the Certificate of Incorporation, such conflict shall be resolved in favor of such law or the Certificate of Incorporation.

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Section 7.05 Books and Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be maintained on any information storage device, method, or one or

more electronic networks or databases (including one or more distributed electronic networks or databases); provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, the records so kept comply with Section 224 of the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to applicable law.

Section 7.06 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because their or their votes are counted for such purpose, if: (1) the material facts as to their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 7.07 Forum for Adjudication of Disputes.

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for:

(i) any derivative action or proceeding brought on behalf of the Corporation;

(ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, or agent of the Corporation to the Corporation or the Corporation's stockholders;

(iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation, or these by-laws; or

(iv) any action asserting a claim governed by the internal affairs doctrine;

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in each case, 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 this Section 7.06 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 this Section 7.06 (an "**Enforcement Action**"); and (ii) having service of process made upon such stockholder in any such Enforcement 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 7.06(a).

(b) Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933. 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 7.06(b).

AMENDMENTS

Section 8.01 By Shareholders. These By-laws may be amended at any shareholders' meeting by vote of the shareholders holding a majority (unless the Certificate of Incorporation requires a larger vote) of the outstanding shares entitled to vote thereat, present either in person or by proxy, provided notice of the amendment is included in the notice or waiver of notice of such meeting.

Section 8.02 By Directors. The Board of Directors may also amend these By-laws at any regular or special meeting of the Board by a majority (unless the Certificate of Incorporation requires a larger vote) vote of the entire Board, but any By-laws so made by the Board may be altered or repealed by the shareholders.

Adopted on May 12, 2023