

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BALLY TOTAL FITNESS HOLDING CORPORATION**

BALLY TOTAL FITNESS HOLDING CORPORATION (the “Corporation”), a corporation organized and existing under the General Corporation Law of the State of Delaware (as amended, the “DGCL”), hereby certifies as follows:

A. That this corporation was originally incorporated on March 29, 1983 under the name Bally’s Health & Tennis Corporation. A Restated Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on December 19, 1995. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 1, 2007 and a further Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 5, 2007 (collectively, as amended, the “Certificate of Incorporation”).

B. This Second Amended and Restated Certificate of Incorporation (this “Certificate”) restates and integrates and further amends the provisions of the Certificate of Incorporation. This Certificate was proposed by the Board of Directors and duly adopted by the stockholders of the Corporation in the manner and by the vote prescribed by Sections 228, 242 and 245 of the DGCL. The text of the Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

**ARTICLE ONE
*Name of Corporation***

FIRST: The name of the Corporation is BALLY TOTAL FITNESS HOLDING CORPORATION.

**ARTICLE TWO
*Address of Registered Agent***

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

**ARTICLE THREE
*Purpose***

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

ARTICLE FOUR
Definitions

A. The following capitalized terms have the following meanings when used in this Certificate.

1. “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; provided that no Shareholder shall be deemed an Affiliate of any other Shareholder solely by reason of any investment in the Corporation. For the purpose of this definition, the term “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

2. “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by law to close.

3. “Change of Control” means (a) the sale, exclusive license or other disposition of all or substantially all of the assets of the Corporation in any single transaction or series of related transactions, other than to an Affiliate, (b) the sale of all of the Shares held by the Drag-Along Initiator(s) pursuant to a Drag-Along Sale (as such term is defined in Article Seven), or (c) any merger, reorganization, consolidation or other transaction or series of transactions (other than with an Affiliate) involving the Corporation which results in the holders of Common Stock outstanding immediately prior to such transaction(s) failing to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Corporation or the surviving entity outstanding immediately after such transaction(s).

4. “Corporation Securities” means (a) Common Stock, (b) securities convertible into or exchangeable for Common Stock and (c) options (including the Management Options and RSUs), warrants (including the Warrants) or other rights to acquire Common Stock.

5. “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder from time to time.

6. “First Public Offering” means the first public offering of Common Stock after the date hereof pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form.

7. “Management Incentive Plan” shall have the meaning given to such term in the Plan.

8. “Management Options” shall have the meaning given to such term in the Plan.

9. “Participant” means an institution that has an account with the depository, with respect to a warrant in its account.

10. “Person” means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, and shall include any successor of such entity.

11. “Plan” means the Amended Joint Plan of Reorganization of the Debtors under Chapter 11 of the Bankruptcy Code filed by the Corporation on July 7, 2009 (as may be amended).

12. “Prohibited Transfer” means any purported Transfer of Capital Stock made in violation of the provisions of Article Six (A).

13. “Public Offering” means a public offering of Common Stock pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form.

14. “Purported Transferee” means, with respect to any Prohibited Transfer, the intended Transferee in such Prohibited Transfer.

15. “Restriction Release Date” means the date on which the Corporation has a class of equity securities registered under Section 12(b) or Section 12(g) of the Exchange Act or is otherwise required to file reports under Section 13 or Section 15(d) of the Exchange Act.

16. “RSUs” means the restricted stock units to be granted under the Management Incentive Plan.

17. “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder from time to time.

18. “Shareholder” means each Person (other than the Corporation) who “beneficially owns” (as such term is defined in Rule 13d-3 of the Exchange Act) any Common Stock.

19. “Shareholders’ Agreement” means the Shareholders’ Agreement, dated _____, 2009 (as amended and/or restated), by and among the Corporation and the Shareholders of the Corporation.

20. “Transfer” means, with respect to any Corporation Securities, (i) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Corporation Securities or any participation or interest therein,

whether directly or indirectly, or agree or commit to do any of the foregoing and (ii) when used as a noun, a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation or other transfer of such Corporation Securities or any participation or interest therein or any agreement or commitment to do any of the foregoing.

21. “Transfer Agent” means a trust company, bank or other custodian assigned by the Corporation to maintain books and records with respect to the ownership of record of shares of any class of Capital Stock.

22. “Transferee” means the recipient of a Transfer.

23. “Warrants” means the New Bally Warrants (as such term is defined in the Plan).

ARTICLE FIVE

Capital Stock

A. Authorized Stock. The total number of shares of stock which the Corporation shall have authority to issue is 17,000,000 shares of stock (the “Capital Stock”) consisting of 15,000,000 shares of Common Stock, par value \$0.01 per share (the “Common Stock”), and 2,000,000 shares of Preferred Stock, par value \$0.01 per share (the “Preferred Stock”).

B. Right to Designate Preferred Stock. Subject to Section D of this Article Five, the Board of Directors of the Corporation (the “Board”) is hereby expressly authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of the shares of Preferred Stock in one or more series and, by filing a certificate of designations pursuant to the DGCL setting forth a copy of such resolution or resolutions, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers (including voting powers, if any), preferences, and rights of the shares of each series and the qualifications, limitations, and restrictions thereof. The authority of the Board with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

1. the number of shares constituting such series and the distinctive designation of that series;

2. the dividend rate, if any, on the shares of such series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

3. whether such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

4. whether such series shall have conversion privileges and, if so, the terms and conditions of conversion, including provision for adjustment of the conversion rate in such events as the Board shall determine;

5. whether or not the shares of such series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

6. whether such series shall have a sinking fund for the redemption or purchase of shares of the series, and, if so, the terms and amount of such sinking fund;

7. the rights of the shares of such series in the event of voluntary or involuntary dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

8. any other powers, preferences, rights, qualifications, limitations, and restrictions of such series.

C. Common Stock. Except as otherwise provided in this Certificate or by applicable law, the voting, dividend and liquidation rights of the holders of Common Stock are as follows:

1. Voting. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held by such holder on all matters submitted to stockholders for a vote.

2. Dividends and Distributions. Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock of the Corporation as may be declared thereon by the Board from time to time out of assets or funds of the Corporation legally available therefor.

3. Liquidation Rights. In the event of any dissolution, liquidation or winding-up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the remaining assets and funds of the Corporation, if any, shall be divided among and paid ratably to the holders of Common Stock in proportion to the number of shares held by them.

D. Bankruptcy Code Limitations. To the extent prohibited by Section 1123 of Chapter 11 of the Bankruptcy Code, as amended, the Corporation shall not issue non-voting equity securities; provided, however, that the foregoing (i) will have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (ii) will have such force and effect, if any, only for so long as such Section 1123 is in effect and applicable to the Corporation and (iii) may be amended or eliminated in accordance with applicable law as from time to time in effect.

ARTICLE SIX

Certain Restrictions on Transfer

A. Unless otherwise expressly approved by the Board, prior to the Restriction

Release Date, no shares of Capital Stock shall be Transferred, if such Transfer would (i) constitute a violation of applicable laws, (ii) result in there being more than 275 holders of record of such class of Capital Stock as determined pursuant to Section 12(g) of the Exchange Act, with each Participant being a single holder of record for these purposes, or (iii) otherwise require the Corporation to register any class of Capital Stock under the Exchange Act or any other applicable federal or state securities laws.

B. No employee or agent of the Corporation, including any Transfer Agent on the books maintained by such Transfer Agent for that purpose, will record any Prohibited Transfer, and a Prohibited Transfer will be null and void, and will not be recognized by the Corporation, for any or all purposes. Without limitation, the Purported Transferee in any Prohibited Transfer of Capital Stock will not be recognized as a stockholder of the Corporation for any purpose whatsoever and will not be entitled with respect to such Capital Stock to any rights of stockholders of the Corporation, including without limitation the rights to vote such Capital Stock and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any.

C. The Board will have the sole power to make determinations regarding compliance with this Article Six and any matters related thereto; and the good faith determination of the Board on such matters will be conclusive and binding for all purposes of this Article Six; provided, however, the Board may designate a sub-committee of the Board or an officer of the Corporation to make any determination or approval required by this Article Six.

D. Each certificate representing Capital Stock issued prior to the Restriction Release Date will contain the legend that refers to the restrictions set forth in this Article Six as follows:

“THE TRANSFER OF THE SECURITIES REPRESENTED HEREBY IS SUBJECT TO RESTRICTIONS PURSUANT TO ARTICLE SIX OF THE SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF BALLY TOTAL FITNESS HOLDING CORPORATION. BALLY TOTAL FITNESS HOLDING CORPORATION WILL FURNISH A COPY OF ITS SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO THE HOLDER OF RECORD OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST ADDRESSED TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.”

ARTICLE SEVEN
Drag-Along Rights

A. Drag-Along Rights

1. Subject to Sections B and C of this Article Seven, if any Person (or group of Persons) that is not a Shareholder or an Affiliate thereof makes a *bona fide* offer to engage in any transaction or series of transactions that would result in a Change of Control, and such transaction or transactions are approved by Shareholders holding a majority of the issued and outstanding Common Stock, (such transaction or transactions, a “Drag-Along Sale” and the Shareholder(s) approving such Drag-Along Sale, a “Drag-Along Initiator”), the Drag-Along Initiator shall have the right (a “Drag-Along Right”), but not the obligation, to require each other Shareholder (a “Dragged Person”) to tender for purchase to the proposed Transferee, on the same terms and conditions as apply to the Drag-Along Initiator, the same proportionate share of Corporation Securities held by such Dragged Person being sold by the Drag-Along Initiator; provided, each Dragged Person, in its capacity as a Shareholder, shall also vote in favor of any Drag-Along Sale to the extent such transaction(s) requires the approval of the Shareholders, provided the terms of the Drag-Along Sale are consistent with this Article Seven.

2. If a Drag-Along Initiator elects to exercise its Drag-Along Right under this Article Seven, such Drag-Along Initiator shall give each Dragged Person, at least ten (10) Business Days prior to the proposed Drag-Along Sale, a written notice (a “Drag-Along Notice”) containing (i) the number of Corporation Securities proposed to be Transferred in such Drag-Along Sale (with warrants, options, convertible securities and other common equivalents counted on an as-converted or as-exercised basis) (the “Drag-Along Terms”), (ii) the name and address of the proposed Transferee and (iii) the consideration for which the Transfer is proposed to be made, and all other material terms and conditions of the Drag-Along Terms, including the form of the proposed agreement, if any. Upon the receipt of a Drag-Along Notice, the Dragged Person shall be obligated to sell the Corporation Securities held by such Dragged Person.

3. No later than five (5) Business Days prior to the proposed closing for the Drag-Along Sale, each Dragged Person shall deliver to the Corporation (or its designated agent) (i) the certificate or certificates, if any, representing the Corporation Securities of such Dragged Person to be included in the Drag-Along Sale, together with a limited power-of-attorney authorizing the Drag-Along Initiator to Transfer such Corporation Securities on the terms set forth in the Drag-Along Notice or, in the case of Corporation Securities held in book-entry form or through direct registration, shall make other delivery arrangements reasonably satisfactory to the Corporation and (ii) wire transfer instructions for payment of the purchase price for the Corporation Securities to be sold in such Drag-Along Sale.

4. If any Dragged Person fails to make the deliveries described in the previous paragraph within the prescribed time, the Corporation shall have the right, but

not the obligation, to redeem, immediately prior to the consummation of the Drag-Along Sale, the Corporation Securities of such Dragged Person at a redemption price equal to the consideration set forth in the Drag-Along Notice, payable upon the terms and subject to the conditions contained in the Drag-Along Notice. Such Dragged Person shall surrender the Corporation Securities, including the certificates, if any, for any shares to be redeemed, properly endorsed or assigned for transfer, if the Corporation shall so require, and such Corporation Securities shall be redeemed by the Corporation at the redemption price. Such Corporation Securities shall no longer be deemed to be outstanding and shall not have the status of shares of Corporation Securities, and all rights of the Dragged Persons thereof as Shareholders (except the right to receive from the Corporation the redemption price, without interest) shall cease; provided, that, regardless of whether the certificates for any shares so redeemed are surrendered to the Corporation, all rights of such Dragged Persons as Shareholders shall cease.

5. The Drag-Along Initiator shall Transfer, on behalf of itself and all Dragged Persons, the Corporation Securities subject to the Drag-Along Sale at the same time and on the same terms and conditions as set forth in the Drag-Along Notice. Concurrently with the consummation of the Drag-Along Sale, (i) the Drag-Along Initiator shall notify the Dragged Persons thereof (including identifying the manner of delivery for any non-cash consideration) and (ii) the total consideration due to each Dragged Person shall be remitted to such party, with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions of such Dragged Person. Promptly after the consummation of such Drag-Along Sale, the Drag-Along Initiator shall furnish such other evidence of the completion and the date of completion of such Transfer as may be reasonably requested by such Dragged Person.

6. If the Drag-Along Initiator has not completed the Transfer of all such Corporation Securities on the same terms and conditions as set forth in the Drag-Along Notice within 90 calendar days of the date of the Drag-Along Notice (which 90 calendar day period shall be extended if any of the transactions contemplated by the Drag-Along Sale are subject to regulatory approval until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 calendar days from the date of the Drag-Along Notice), (i) the Corporation (or its designated agent) shall return to each Dragged Person, to the extent previously provided, the limited power-of-attorney (and all copies thereof) together with all Corporation Securities, including the certificates representing the Corporation Securities, if any, that such Dragged Person delivered for Transfer pursuant to this Article Seven and any other documents executed by the Dragged Persons in connection with the proposed Drag-Along Sale and (ii) the Drag-Along Initiator shall not conduct any Transfer of Corporation Securities prior to the return to each Dragged Person of all documents referred to in clause (i) and without again complying with this Article Seven.

7. The Corporation shall, and shall cause its employees, accountants and other advisors, representatives and agents to, use its and their commercially reasonable efforts to take all reasonable and necessary action to assist a Drag-Along Initiator in its efforts to effect a Drag-Along Sale, including permitting *bona fide* prospective purchasers to conduct customary due diligence of the Corporation in a reasonable manner, during

regular business hours and upon reasonable advance notice, subject to (a) the execution and delivery of a customary confidentiality agreement with the Corporation and (b) the Corporation's and its board of director's compliance with applicable laws, rules, regulations and orders and any restrictions or commitments in any contracts or agreements to which the Corporation or any of its subsidiaries is a party or by which it or any of them is bound.

B. Additional Conditions to Drag-Along Sales. Notwithstanding anything contained in Section A of this Article Seven, the obligations of Shareholders to participate in a Drag-Along Sale are subject to the following conditions:

1. upon the consummation of such Drag-Along Sale, all of the Shareholders participating therein will receive the same form and amount of consideration per share as the Drag-Along Initiator, or, if any Shareholder is given an option as to the form and amount of consideration to be received, all Shareholders participating therein will be given the same option;

2. no Person shall be obligated, pursuant to this Certificate to pay any expenses incurred in connection with any unconsummated Drag-Along Sale and each Shareholder shall be obligated to pay only its *pro rata* share (based on the number of shares of Corporation Securities Transferred) of expenses incurred in connection with a consummated Drag-Along Sale; and

3. each Dragged Person shall (i) make such representations, warranties and covenants and enter into such definitive agreements as are customary for transactions of the nature of the proposed Transfer and as are the same as those applicable to the Drag-Along Initiator; provided that, if such Dragged Persons are required to provide any representations or indemnities in connection with such Transfer (other than representations and indemnities concerning each such Dragged Person's title to the Corporation Securities and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement), liability for misrepresentation or indemnity shall (as to such Dragged Persons) be expressly stated to be several but not joint and each such Dragged Person shall not be liable for more than the net proceeds received by such Shareholder in connection with such Transfer; provided, further that, no Dragged Person shall be required to provide any representations or warranties other than with respect to each such Dragged Person's title to the Corporation Securities and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement, but each Shareholder may be required to bear its proportionate share of any indemnity, escrow, holdback or adjustment in purchase price in connection with any such representations or warranties; provided, further that, no Shareholder will be required or deemed to have agreed to any noncompete, nonsolicitation or any other nonfinancial terms without its express written consent, (ii) be subject to and benefit from all of the same provisions of the definitive agreements as the Drag-Along Initiator, and (iii) be required to bear their proportionate share of any escrows, holdbacks or adjustments in purchase price.

C. Termination of Drag-Along Rights. The rights and obligations under this Article

Seven shall terminate upon the First Public Offering.

ARTICLE EIGHT

Shareholders' Agreement

Each Shareholder who (i) acquires Common Stock prior to the consummation of the First Public Offering, (ii) acquires, by Transfer, Common Stock that was issued prior to the consummation of the First Public Offering, regardless of whether such Transfer occurs before or after the First Public Offering (other than, and with respect to, any shares of Common Stock that are acquired in the open market following the First Public Offering) or (iii) acquires Common Stock pursuant to the exercise of any Management Options or Warrants or pursuant to a distribution with respect to any RSU, regardless of whether such exercise or distribution occurs before or after the First Public Offering, shall be deemed to be a party to, and each such share of Common Stock shall be subject to, the Shareholders' Agreement until such Agreement shall cease to be in effect according to its terms.

ARTICLE NINE

Shareholder Approvals

A. Shareholder Approvals. Without the prior written approval of holders of a majority of the issued and outstanding Common Stock, the Corporation shall not, and shall not permit any of its subsidiaries to:

1. enter into a new line of business or materially change its existing business;
2. incur, amend or waive or enter into any agreement providing for the incurrence, amendment or waiver of any (i) obligations for borrowed money, (ii) obligations representing the deferred purchase price of property or services other than accounts payable arising in the ordinary course of business, (iii) capitalized lease obligations, or (iv) obligations with respect to guarantees (direct or indirect and however named) of any obligations of any Person, in each case, greater than \$25 million individually or in the aggregate (other than in connection with the refinancing of the Corporation's Exit Term Loan Facility (as such term is defined in the Plan)), or accelerate or enter into any agreement providing for the acceleration of the repayment of any of the foregoing;
3. authorize, issue or sell or enter into any agreement providing for the issuance or sale (contingent or otherwise) of any equity securities or debt securities with equity features or any other security directly or indirectly convertible, exercisable or exchangeable for any of the foregoing;
4. authorize, declare or approve or enter into any agreement providing for the authorization, declaration or approval of any direct or indirect dividend on any class of equity securities or debt securities with equity features or any other security directly or indirectly convertible, exercisable or exchangeable for any of the foregoing, or any redemption or repurchase thereof (other than mandatory redemption obligations and/or repurchase rights with regard to terminated employees);

5. authorize, approve or enter into any agreement providing for any material transaction with an Affiliate or with an Affiliate of any member of management or a family member thereof, except for salary, benefits, advances and expense reimbursement to employees in the ordinary course of business;

6. amend or waive or enter into any agreement providing for the amendment or waiver of any provision of its certificate of incorporation (by merger or otherwise), bylaws or other organizational documents, including an adoption of or amendment to a certificate of designation;

7. authorize, approve or enter into any agreement providing for any acquisition of any interest in any other business or entity (whether such transaction is structured as an asset purchase, an equity purchase, a merger or otherwise), any entry into (or material amendment of the terms of) any joint venture, strategic alliance, partnership or similar arrangement involving consideration (including any contingent consideration and any consideration tied to subsequent related acquisitions or other transactions) in excess of \$5 million;

8. authorize, engage or enter into any sales, leases, spin-offs and other dispositions of businesses or assets involving consideration (including any contingent consideration and any consideration tied to subsequent related dispositions or other transactions) in excess of \$5 million, individually, and \$25 million, in the aggregate;

9. undertake the First Public Offering;

10. authorize, approve or enter into any agreement providing for a Change of Control or other recapitalization or reorganization;

11. authorize, approve or enter into any merger, consolidation or similar transaction; and

12. authorize, approve or enter into agreement or commitment to take any of the foregoing actions.

B. Termination of Shareholder Approvals. The rights and obligations under this Article Nine shall terminate upon the First Public Offering.

ARTICLE TEN

Bylaws

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to make, alter, amend and repeal the Bylaws of the Corporation.

ARTICLE ELEVEN

Election of Directors

The business and affairs of the Corporation shall be managed by or under the direction of the Board. The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the Bylaws of the Corporation. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors need not be by written ballot.

ARTICLE TWELVE

Business Combinations with Interested Stockholders

The Corporation shall not be governed by the provisions of Section 203 of the DGCL.

ARTICLE THIRTEEN

Indemnification of Directors and Officers

To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, the Corporation shall indemnify and hold harmless any person serving as a director or officer of the Corporation on or after August [], 2009 (a “Covered 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, at any time before, on or after August [], 2009, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was, at any time before, on or after August [], 2009, a director or officer of the Corporation or, while a director or officer of the Corporation, is or was, at any time before, on or after August [], 2009, serving at the request of the Corporation as a director, officer, employee, agent, fiduciary or in any other capacity of another corporation or of a partnership, joint venture, limited liability company, trust, unincorporated organization, association, estate, nonprofit entity, or other entity or enterprise, governmental or otherwise, including service with respect to employee benefit plans maintained or sponsored by the Corporation (each, a “Covered Proceeding”), against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Covered Person in connection with such Covered Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in the Bylaws (as the same may provide from time to time), the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or a part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized by the Bylaws, in any written agreement with the Corporation, or in the specific case by the Board. If a claim for indemnification (following the final disposition of an action, suit or proceeding) is not paid in full within 30 days after a written demand therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim, and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. Nothing contained in this Article Thirteen shall affect any rights to indemnification to which directors, officers, employees or agents of the Corporation otherwise may be entitled under the Bylaws, any written agreement with the Corporation or otherwise. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification to any employee or agent of the Corporation to the fullest extent of the provisions of this Article Thirteen with respect to the indemnification of directors and officers of the Corporation. Any amendment, modification or repeal of this Article Thirteen shall be prospective only, and shall not adversely affect any right or protection of a Covered Person existing at the time of, or increase the liability of any Covered Person with

respect to any acts or omissions of such Covered Person occurring prior to, such amendment, modification or repeal. The rights provided hereunder shall inure to the benefit of any Covered Person and such person's heirs, executors and administrators.

ARTICLE FOURTEEN
Advancement of Expenses

To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, the Corporation shall advance expenses reasonably incurred by any Covered Person (which shall include attorneys' fees) to such Covered Person who was or is made or is threatened to be made a party or is otherwise involved in any Covered Proceeding. Nothing contained in this Article Fourteen shall affect any rights to advancement of expenses to which directors or officers of the Corporation otherwise may be entitled under the Bylaws, any written agreement with the Corporation or otherwise. If a claim for advancement of expenses is not paid in full within 30 days after a written demand therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim, and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. The Corporation may, to the extent authorized from time to time by the Board, grant rights to advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article Fourteen with respect to the advancement of expenses to directors and officers of the Corporation. Any amendment, modification or repeal of this Article Fourteen shall be prospective only, and shall not adversely affect any right or protection of a Covered Person existing at the time of such amendment, modification or repeal. Expenses shall be advanced only upon delivery to the Corporation of an undertaking, by or on behalf of a Covered Person, to repay such expenses if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as set forth in Article Thirteen or otherwise. The rights provided hereunder shall inure to the benefit of any Covered Person and such person's heirs, executors and administrators.

ARTICLE FIFTEEN
Limitation on Director Liability

The personal liability of directors to the Corporation and its stockholders shall be eliminated to the fullest extent permitted by Section 102(b)(7) of the DGCL, as may be amended and supplemented from time to time. Any amendment, modification or repeal of this Article Fifteen shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such amendment, modification or repeal.

ARTICLE SIXTEEN
Corporate Opportunities

In recognition and anticipation that (i) certain holders of Common Stock, their Affiliates (as defined below), and their respective directors, principals, officers, members, partners, shareholders, employees and/or other representatives may now engage, may continue to engage,

or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may, now or in the future, engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may, now or in the future, engage, and (ii) members of the Board who are not officers or employees of the Corporation (“Non-Employee Directors,” and together with their Affiliates and the persons identified in clause (i) above, collectively, the “Identified Persons”) and their respective Affiliates may now engage, may continue to engage, or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may, now or in the future, engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may, now or in the future, engage, the provisions of this Article Sixteen are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve the Identified Persons and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

A. None of the Identified Persons shall have any duty to refrain, directly or indirectly, from (x) engaging in a Corporate Opportunity or (y) otherwise competing with the Corporation, and, to the fullest extent permitted by the DGCL, no Identified Person shall be liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. The Corporation hereby renounces any interest or expectancy in, or in being offered an opportunity to participate in, any Corporate Opportunity for both an Identified Person and the Corporation or any of its Affiliates, except as specifically provided in Section C. A “Corporate Opportunity” is any matter, transaction or interest in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of any Identified Person, unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, an Identified Person expressly and solely in such Identified Person’s capacity as a director of the Corporation.

B. In the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a Corporate Opportunity both for itself or himself and the Corporation or any of its Affiliates, such Identified Person shall have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by the DGCL, shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such Corporate Opportunity for itself or himself, or offers or directs such Corporate Opportunity to another person.

C. The Corporation does not renounce its interest in any Corporate Opportunity offered to any Non-Employee Director if such Opportunity is expressly offered to such person expressly and solely in his or her capacity as a director of the Corporation and the provisions of Section A and Section B shall not apply to any such Corporate Opportunity.

D. In addition to and notwithstanding the foregoing provisions of this Article

Sixteen, a Corporate Opportunity shall be deemed not to be a potential Corporate Opportunity for the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

E. Solely for purposes of this Article Sixteen, "Affiliate" shall mean (A) in respect of any specified person (other than the Corporation), any other person that, directly or indirectly, is controlled by, controls or is under common control with such specified person and shall include any principal, member, director, partner, shareholder, officer, employee or other representative of any of the foregoing, (B) in respect of a Non-Employee Director, any person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (C) in respect of the Corporation, any person that, directly or indirectly, is controlled by the Corporation.

* * * * *

The UNDERSIGNED, being the Secretary of the Corporation, does hereby certify that the Corporation has restated its Certificate of Incorporation as set forth above, does hereby certify that this second amendment and restatement of the Certificate of Incorporation has been duly adopted in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, as amended, and does hereby make and file this Certificate.

Dated: _____

[Name]
[Title]

AMENDED AND RESTATED BYLAWS
OF
BALLY TOTAL FITNESS HOLDING CORPORATION

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**AMENDED AND RESTATED BYLAWS
OF
BALLY TOTAL FITNESS HOLDING CORPORATION**

**ADOPTED ON
_____, 2009**

**ARTICLE I.
IDENTIFICATION; OFFICES**

Section 1. NAME. The name of the corporation is BALLY TOTAL FITNESS HOLDING CORPORATION (the "Corporation").

Section 2. REGISTERED AGENT AND REGISTERED OFFICE. The registered office of the Corporation shall be 1209 Orange Street, in the City of Wilmington, County of New Castle, State of Delaware. The name of the Corporation's registered agent is The Corporation Trust Company.

Section 3. OTHER OFFICES. The Corporation may also have offices at such other places, within or outside the State of Delaware, as the Board of Directors of the Corporation (the "Board") may from time to time determine or the business of the Corporation may require.

Section 4. PLACE OF KEEPING CORPORATE RECORDS. The records and documents required by law to be kept by the Corporation permanently shall be kept at the Corporation's principal office.

**ARTICLE II.
MEETINGS OF STOCKHOLDERS**

Section 1. PLACE OF MEETINGS. Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211 (a)(2) of the General Corporation Law of the State of Delaware (as amended from time to time, the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the principal executive office of the Corporation.

Section 2. ANNUAL MEETINGS OF STOCKHOLDERS. Unless directors are elected by written consent in lieu of an annual meeting as permitted by Section 10 of this Article II, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in these Bylaws. Stockholders may, unless the

Corporation's Second Amended and Restated Certificate of Incorporation (as amended and/or restated from time to time, the "Certificate of Incorporation") provides otherwise, act by written consent to elect directors. Any other proper business may be transacted at the annual meeting.

Section 3. QUORUM; ADJOURNED MEETINGS AND NOTICE THEREOF. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the shares of stock of the Corporation issued and outstanding and entitled to vote at the meeting, whether present in person, by means of remote communication or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment in accordance with Section 5 of this Article II. Any meeting of stockholders may be adjourned from time to time by the chairperson presiding over the meeting or by a majority in voting power of the stockholders present, and may be reconvened at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that could have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or, if after the adjournment, a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting.

Section 4. CONDUCT OF BUSINESS. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations adopted by the Board, the chairperson presiding over any meeting of the stockholders shall have the right and authority to convene and to adjourn the meeting, to determine the order of business at the meeting, to prescribe such rules, regulations and procedures, including such regulation of the manner of voting and the conduct of business, and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairperson of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants; (vi) the date and time of the opening and closing of the polls for each matter upon which the stockholders will vote; and (vii) a determination and declaration, if the facts warrant, that a matter or business was not properly brought before the meeting and if such chairperson should so determine, such chairperson shall so declare and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 5. VOTING. When a quorum is present at any meeting of stockholders, in all matters other than the election of directors, the vote of the holders of a majority in voting power of the shares of stock of the Corporation issued and outstanding and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which a different vote is required by express provision of applicable law, the Certificate of Incorporation, these Bylaws or any regulation or law applicable to the Corporation or its securities, in which case such express provision shall govern and control the decision of such question. Unless otherwise provided in the Certificate of Incorporation, directors shall be elected by a plurality of the votes cast by shares present in person, by means of remote communication or represented by proxy at the meeting and entitled to vote on the election of directors. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall have one vote for each share of stock having voting power, registered in such stockholder's name on the books of the Corporation on the record date set by the Board as provided in Article V, Section 4 hereof. Voting at meetings of stockholders need not be by written ballot.

Section 6. PROXIES. Except as otherwise provided by law or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by an electronic transmission permitted by law that is filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Section 7. SPECIAL MEETINGS. Unless otherwise provided by law or the Certificate of Incorporation, special meetings of the stockholders, for any purpose or purposes, may be called by (i) the chairperson of the Board, (ii) the chief executive officer of the Corporation, (iii) a majority of the Board, or (iv) stockholders holding a majority of the issued and outstanding common stock of the Corporation, and shall be held on such date and time as the Board determines. Such special meetings may not be called by any other person or persons. The request for special meetings shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice.

Section 8. NOTICE OF STOCKHOLDERS' MEETINGS. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given to each stockholder entitled to vote at such meeting in accordance with Article VI, Section 4

hereof and not less than ten nor more than 60 days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. If electronically transmitted, notice is given as provided in Article VI, Section 4 of these Bylaws. An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein. Notice of any meeting may be waived by any stockholder before or after such meeting.

Section 9. MAINTENANCE AND INSPECTION OF STOCKHOLDER LIST. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to examination by any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place (instead of by remote communication), then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to which of the stockholders are entitled to examine the stock ledger, the list of stockholders, the books of the Corporation or to vote in person or by proxy at any meeting of the stockholders.

Section 10. STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted by the DGCL to be taken at any annual or special meeting of stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which minutes of proceedings 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 60 days of the earliest

dated consent delivered to the Corporation in the manner required by this Article II, Section 10, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which minutes of proceedings of stockholders are recorded. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder shall be deemed to be written, signed and dated for the purposes of this Article II, Section 10, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for a stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which the telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which minutes of proceedings of stockholders are recorded. Delivery made to a Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided above. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

ARTICLE III. DIRECTORS

Section 1. THE NUMBER OF DIRECTORS. The number of directors which shall constitute the whole Board of Directors shall be not less than three or more than eleven, with the exact number of directors to be determined from time to time by resolution of the Board. The number of directors constituting the entire Board may be increased or decreased only pursuant to a resolution adopted by the affirmative vote of a majority of the directors then in office or a majority in voting power of the shares of stock of the Corporation issued and outstanding and entitled to vote thereon. The directors need not be

stockholders. Except as otherwise provided in Section 2 of this Article III, directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until such director's successor is elected and qualified or until the earlier of such director's resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation as provided in Article VI, Section 4 of these Bylaws. When one or more directors so resigns, vacancies shall be filled as provided in Section 2 of this Article III.

Section 2. VACANCIES. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, vacancies on the Board by reason of death, resignation, retirement, disqualification, removal from office or otherwise, and newly created directorships resulting from any increase in the authorized number of directors, may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual election of directors and until such director's successor is duly elected and qualified, or until such director's earlier resignation or removal.

Section 3. PLACE OF DIRECTORS' MEETINGS. The Board may hold meetings, both regular and special, either within or outside the State of Delaware. The chairperson of the Board shall preside over all meetings of the Board.

Section 4. REGULAR MEETINGS. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 5. SPECIAL MEETINGS. Special meetings of the Board shall be called, on not less than twenty-four (24) hours' prior notice to each director, either personally or by mail, by facsimile, by electronic transmission or by telegram, by the chairperson of the Board, the chief executive officer of the Corporation or two directors unless the Board consists of only one director, in which case special meetings of the Board shall be called by the sole director.

Section 6. QUORUM. At all meetings of the Board a majority of the directors then serving shall be necessary and sufficient to constitute a quorum for the transaction of business unless applicable law, the Certificate of Incorporation or these Bylaws require a greater number. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by the DGCL, the Certificate of Incorporation or these Bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 7. ACTION WITHOUT MEETING. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote, if all members of the Board or committee,

as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 8. TELEPHONIC MEETINGS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 9. COMMITTEES OF DIRECTORS. The Board may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. Each committee member shall serve a term on such committee coexistent with such member's term on the Board. 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. Notwithstanding the foregoing, the composition and duties of any committee shall comply with the rules and regulation or law applicable to the Corporation or its securities. The delegation of any decision to a committee of the Board, and the votes required for the making of such decision by such committee, shall have the same approval requirements as the taking of such action by the Board. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board, any committee charter or in these Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 10. MINUTES OF COMMITTEE MEETINGS. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

Section 11. MEETINGS AND ACTION OF COMMITTEES. Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules, each committee shall conduct its business in the same manner as the Board conducts its business pursuant to the applicable sections of Article III of these Bylaws.

Section 12. COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as director. Except as required by the rules of any stock exchange or quotation system applicable to the Corporation or any regulation or law

applicable to the Corporation or its securities, no such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service on such committee and/or for attending committee meetings.

Section 13. REMOVAL OF A DIRECTOR. Unless otherwise restricted by or provided in the DGCL or the Certificate of Incorporation, any director or the entire Board may be removed, either with or without cause, by the holders of a majority in voting power of the shares of stock of the Corporation then entitled to vote at an election of directors.

ARTICLE IV. OFFICERS

Section 1. OFFICERS. The officers of the Corporation shall be chosen by the Board and may include a chairperson of the Board, chief executive officer and/or a president, chief financial officer or any or all of the foregoing, and a secretary. The Corporation may also have at the discretion of the Board such other officers as are desired, including a treasurer, one or more vice chairpersons of the Board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article IV. In the event there are two or more vice presidents, then one or more may be designated as executive vice president, senior vice president or other similar or dissimilar title. At the time of the election of officers, the directors may determine the order of their rank. Any number of offices may be held by the same person, unless the DGCL, the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. APPOINTMENT OF OFFICERS. The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article IV. The Corporation shall have such officers with such titles and duties as stated herein or as stated in a resolution of the Board that is not inconsistent with these Bylaws.

Section 3. SUBORDINATE OFFICERS. The Board and/or the chief executive officer of the Corporation, or in the absence of a chief executive officer, the president of the Corporation, may appoint such other “subordinate officers” as the business of the Corporation may require who shall hold their offices for such terms and shall exercise such powers and perform such duties as are provided in these Bylaws or as shall be determined from time to time by the Board and/or the chief executive officer, or in the absence of a chief executive officer, the president. For the avoidance of doubt, the term “subordinate officers” shall not include any officers of the Corporation with the title of vice president or above. The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president or a vice president, to appoint, such other officers and agents as the business of the Corporation may require who shall hold their offices for such terms and shall exercise such powers and perform such duties as are provided in these Bylaws or as shall be determined from time to time by the Board.

Section 4. TERM OF OFFICE; REMOVAL AND VACANCIES. Each officer of the Corporation shall hold office until such officer's successor is elected and qualified or until such officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. Any officer may be removed at any time by the affirmative vote of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the Board, or with respect to the office of any subordinate officers, by the Board or the chief executive officer of the Corporation, or in the absence of a chief executive officer, the president.

Section 5. CHAIRPERSON OF THE BOARD. The chairperson of the Board shall, if present, preside at all meetings of the stockholders and the Board, and, in general, shall exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board or prescribed by these Bylaws. The same individual may serve as both the chairperson of the Board and chief executive officer.

Section 6. VICE CHAIRPERSONS OF THE BOARD. In the absence or disability of the chairperson of the Board, any vice chairpersons designated by the Board, shall perform all the duties of the chairperson, and when so acting shall have all the powers of and be subject to all the restrictions upon the chairperson. Each vice chairperson shall have such other duties as from time to time may be prescribed for such vice chairperson by the Board.

Section 7. CHIEF EXECUTIVE OFFICER. The chief executive officer shall be the principal executive officer of the Corporation and, subject to the control and oversight of the Board, shall supervise the business and affairs of the Corporation. The chief executive officer shall, in the absence of the chairperson of the Board (or if the chief executive officer and chairperson of the Board be one and the same), preside at all meetings of the stockholders and the Board, and, in general, shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board from time to time. The chief executive officer may, from time to time, delegate such chief executive officer's powers and authority to such other officers, employees and other agents of the Corporation as the chief executive officer shall deem appropriate.

Section 8. PRESIDENT. Subject to the control of the Board and such supervisory powers, if any, as may be given by the Board to the chairperson of the Board and/or the chief executive officer, the president shall have general supervision, direction and control of the business and officers of the Corporation. In the absence of the chairperson of the Board and the chief executive officer, or if there be none, the president shall preside at all meetings of the stockholders and all meetings of the Board. The president shall have the general powers and duties of management usually vested in the office of president of

corporations and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 9. CHIEF FINANCIAL OFFICER. The chief financial officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board or the chief executive officer. The books of account shall at all reasonable times be open to inspection by any director. The chief financial officer, subject to the order of the Board, shall have custody of all funds and securities of the Corporation. The chief financial officer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Board, at its regular meetings or when the Board so requires, an account of all transactions effected by the chief financial officer and of the financial condition of the Corporation. The chief financial officer shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board or the chief executive officer shall designate from time to time. If required by the Board, the chief financial officer shall give the Corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board, for the faithful performance of the duties of such office and for the restoration to the Corporation, in case of death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his/her possession or under his/her control belonging to the Corporation. The chief executive officer may direct the treasurer or assistant treasurer to assume and perform the duties of the chief financial officer in the absence or disability of the chief financial officer.

Section 10. VICE PRESIDENTS. In the absence or disability of the president, any vice president designated by the Board, shall perform all the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president. Each vice president shall have such other duties as from time to time may be prescribed for such vice president by the Board.

Section 11. SECRETARY. The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors and stockholders. The secretary shall give, or cause to be given, notice of all meetings of the stockholders and the Board required to be given by law or by these Bylaws, and shall perform such other duties as may be prescribed by the Board or these Bylaws. The secretary shall keep in safe custody the seal of the Corporation, if one be adopted, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his/her signature or by the signature of an assistant secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his/her signature.

Section 12. ASSISTANT SECRETARY. The assistant secretary, or if there be more than one, any assistant secretary designated by the Board, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and

shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 13. TREASURER. The treasurer shall, in the absence of the chief financial officer, perform the duties and exercise the powers of the chief financial officer and shall perform such other duties and have such other powers as the Board may from time to time prescribe. If required by the Board, the treasurer shall give the Corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board, for the faithful performance of the duties of such office and for the restoration to the Corporation, in case of death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his/her possession or under his/her control belonging to the Corporation.

Section 14. ASSISTANT TREASURER. The assistant treasurer, or if there be more than one, any assistant treasurer designated by the Board, shall in the absence or disability of the chief financial officer and the treasurer, perform the duties and exercise the powers of the chief financial officer and the treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 15. REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The chairperson of the Board, the chief executive officer or the president of this Corporation, the secretary of this Corporation, or any other person authorized by the Board or the chief executive officer, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all securities of any other corporation or corporations standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

Section 16. AUTHORITY AND DUTIES OF OFFICERS. In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board.

ARTICLE V. CERTIFICATES OF STOCK

Section 1. CERTIFICATES. The Corporation's shares shall be represented by certificates in the form approved by the Board or shall be uncertificated. In the case of shares represented by certificates, each certificate shall be signed by the Chairman, Chief Executive Officer, President or a Vice President, and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and shall be sealed with the Corporation's seal or a facsimile of the seal. Any or all of the signatures on the certificate may be a facsimile. In case any officer or transfer agent who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer or transfer agent before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer or transfer agent at the date of issue. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, and if and to the extent that the stock is represented by

certificates, then the powers, designations, preferences and relative, participating, optional or other special rights of each such class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements for such certificated shares, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. LOST, STOLEN OR DESTROYED STOCK CERTIFICATES; ISSUANCE OF NEW CERTIFICATES. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the owner thereof may file in the office of the Corporation an affidavit setting forth, to the best of its knowledge and belief, the time, place, and circumstance of such loss, destruction or theft and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD. In order that the Corporation may determine the stockholders (a) entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, (b) to express consent to corporate action in writing without a meeting, (c) to receive payment of any dividend or other distribution or allotment of any rights, (d) to exercise any rights in respect of any change, conversion or exchange of stock or (e) for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than 60 nor less than ten days before the date of such meeting; (ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board; and (iii) in the case of any other action, shall not be more than 60 days prior to such other action. If no record date is fixed: (1) 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; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action;

and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 4. REGISTERED STOCKHOLDERS. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the DGCL.

ARTICLE VI. GENERAL PROVISIONS

Section 1. CHECKS. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board may from time to time designate.

Section 2. FISCAL YEAR. The fiscal year of the Corporation shall be from January 1 to December 31, or such other dates as shall be determined by resolution of the Board from time to time.

Section 3. CORPORATE SEAL. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 4. MANNER OF GIVING NOTICE. Whenever, under the provisions of applicable law, the Certificate of Incorporation or these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at such director's or stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by facsimile, by electronic transmission, telephone, telegram, overnight courier or by other means of electronic transmission.

Except as otherwise provided by applicable law, notice to stockholders may also be given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Notice given by a form of electronic transmission shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice, (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate

notice, and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary, the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein. “Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, which creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 5. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, which objection shall be made at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

Section 6. 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 or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if: (1) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board 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 his or her 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, 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 or of a committee which authorizes the contract or transaction.

ARTICLE VII. AMENDMENTS

Section 1. AMENDMENT BY DIRECTORS OR STOCKHOLDERS. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the Board, when such power is conferred upon the Board by the Certificate of Incorporation, or by the

stockholders upon the affirmative vote of at least a majority of all outstanding shares of stock of Corporation then entitled to vote, at any regular meeting of the Board or of the stockholders or at any special meeting of the Board or of the stockholders if notice of such alteration, amendment, repeal or adoption of new Bylaws is contained in the notice of such special meeting. If the power to alter, amend or repeal Bylaws is conferred upon the Board by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.