

Securities and Exchange Commission  
Washington, DC 20549

FORM 10-K/A  
AMENDMENT NO. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended January 30, 1999  
(Fiscal 1998)

Commission File  
Number 0-15898

DESIGNS, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation)

04-2623104  
(IRS Employer  
Identification No.)

66 B Street, Needham, MA  
(Address of principal executive office)

02494  
(Zip Code)

(781) 444-7222

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, \$0.01 par value  
Preferred Stock Purchase Rights  
(Title of each Class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the voting stock of the registrant held by non-affiliates of the registrant, based on the last sales price of such stock on April 28, 1999 was approximately \$30.5 million.

The registrant had 15,927,551 shares of Common Stock, \$0.01 par value, outstanding as of April 28, 1999.

Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, the registrant hereby amends its Annual Report on Form 10-K for the year ended January 30, 1999 (the "1998 Form 10-K") (i) to include Items 10, 11, 12 and 13 thereof and (ii) to include an additional exhibit. The Company's 1998 Form 10-K, as filed with the Securities and Exchange Commission (the "Commission") on April 30, 1999, incorporated into such form the information required by Items 10, 11, 12 and 13 of Form 10-K by reference to the Company's Definitive Proxy Statement for its 1999 Annual Meeting of Stockholders (the "Proxy Statement"). The Proxy Statement will not be filed with the Commission within 120 days after the end of the Company's fiscal year ended January 30, 1999. Accordingly, the 1998 Form 10-K is being amended hereby to include the information that was originally expected to be incorporated by reference to the Proxy Statement and to include such additional exhibit.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS

The current directors and executive officers of Designs, Inc. (the "Company"), their age and their positions with the Company are as follows:

NAME	AGE	POSITION	DIRECTOR SINCE
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Stanley I. Berger.....	69	Chairman of the Board and Director	1976
Joel H. Reichman.....	49	President, Chief Executive Officer and Director	1987
James G. Groninger.....	55	Director	1987
Bernard M. Manuel.....	51	Director	1990
Melvin I. Shapiro.....	84	Director	1990
Peter L. Thigpen.....	59	Director	1994
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Joel H. Reichman has been President and Chief Executive Officer of the Company since December 1994. Prior to that time, he served as the Company's President and Chief Operating Officer since January 1993. Mr. Reichman has been employed by the Company since 1976 and served as its Executive Vice President from 1985 until January 1993. Mr. Reichman has been a director of the Company since 1987. Mr. Reichman has worked in the retail clothing business for more than 25 years.

Scott N. Semel, 43, has been employed as General Counsel to the Company since 1986. Mr. Semel was elected Secretary and Vice President of the Company in March 1990, and Senior Vice President of the Company in March 1994. Mr. Semel was elected Executive Vice President of the Company in April 1996.

Carolyn R. Faulkner, 37, joined the Company as its Controller in June 1993. In March 1994, Mrs. Faulkner was elected as a Vice President of the Company. In July 1996, Mrs. Faulkner was elected Chief Financial Officer. On January 20, 1998, Mrs. Faulkner was elected Treasurer of the Company. Prior to joining the Company, from 1985 through May 1993, Mrs. Faulkner held various positions with Coopers & Lybrand L.L.P., an independent accounting firm, including the position of Business Assurance Manager.

Stanley I. Berger is a founder of the Company and has been its Chairman of the Board since January 1993. Mr. Berger also served as the Company's Chief Executive Officer from January 1993 until December 1994. Prior to January 1993, Mr. Berger served as the President and Chief Operating Officer of the Company since 1977. Mr. Berger has been a director of the Company since its inception.

James G. Groninger was elected a director of the Company in 1987. Mr. Groninger is the founder and president of The BaySouth Company, a financial advisory firm. Prior to becoming associated with The BaySouth Company, from 1988 through 1994, Mr. Groninger held various positions with PaineWebber Incorporated, an investment banking and brokerage firm, including the position of Managing Director. Mr. Groninger is a member of the Board of Directors of Cygne Designs, Inc., a private label designer and manufacturer of clothing for women, and NPS Pharmaceuticals, Inc., a research and development pharmaceutical company.

Bernard M. Manuel was elected a director of the Company in 1990. Mr. Manuel is the Chairman of the Board and Chief Executive Officer of Cygne Designs, Inc., and Chairman of the Board and Chief Executive Officer of Amvent, Inc., an international financial consulting company. Mr. Manuel has been associated with these companies since prior to 1990.

Melvin I. Shapiro was elected a director of the Company in 1990. Mr. Shapiro retired from the independent accounting firm of Tofias, Fleishman, Shapiro & Co., P.C. in April 1998. Until his retirement, Mr. Shapiro had been a partner in that firm for more than 25 years.

Peter L. Thigpen was elected a director of the Company in March 1994. Mr. Thigpen is a partner and a founder of Executive Reserves, a consulting firm specializing in marketing strategy, quality processes and the development of strategic business plans. Prior to becoming associated with Executive Reserves, Mr. Thigpen held various positions with Levi Strauss & Co. covering a period of more than 23 years, including the position of Senior Vice President, U.S. Operations. Mr. Thigpen has been a lecturer at the Haas School of Business at the University of California, Berkeley since 1992. Mr. Thigpen is a member of the Board of Directors of Radica Games Limited, a developer, manufacturer and distributor of electronic handheld and tabletop games.

All directors hold office until the next Annual Meeting of Stockholders or Special Meeting in lieu thereof. Executive officers, once elected, serve at the discretion of the Board of Directors.

The Board of Directors has an Audit Committee consisting of Messrs. Berger, Groninger, Shapiro and Thigpen, a Compensation Committee consisting of Messrs. Groninger, Manuel and Thigpen, and a Corporate Governance Committee consisting of Messrs. Berger, Groninger, Manuel, Shapiro and

Thigpen. The Audit Committee meets periodically with management and the Company's independent accountants to review matters relating to the Company's financial reporting, the adequacy of internal accounting controls and the scope and results of audit work. The Compensation Committee meets periodically to review executive and employee compensation and benefits (including stock-based compensation awards under the Company's 1992 Stock Incentive Plan, as amended (the "1992 Stock Incentive Plan")), supervise benefit plans and make recommendations regarding benefit plans to the Board of Directors. The Corporate Governance Committee is responsible for performing functions related to the governance of the Company, including, but not limited to, planning for the succession and promotion of executive officers of the Company, nominating individuals for election to the Board of Directors and establishing, coordinating and maintaining the Company's corporate compliance programs.

On December 11, 1998, the Company announced that the Board of Directors had formed a committee of independent outside directors (the "Special Committee") to consider the Company's strategic alternatives, including a possible sale of the Company, with a view towards maximizing stockholder value in the near term. The members of the Special Committee are Messrs. Groninger, Manuel and Thigpen.

#### DIRECTOR COMPENSATION

During the Company's fiscal year ended January 30, 1999 ("fiscal year 1998"), non-employee directors of the Company were, and during the fiscal year ending January 29, 2000 ("fiscal year 1999") such directors will continue to be, eligible to participate in the 1992 Stock Incentive Plan. The 1992 Stock Incentive Plan provides that each non-employee director of the Company who is elected by the stockholders to the Board initially will automatically be granted, upon such election, a stock option to purchase up to 10,000 shares of Common Stock at the then fair market value of Common Stock. Each non-employee director of the Company who is re-elected by the stockholders to the Board is granted, upon such re-election, a stock option to purchase up to 3,000 shares of Common Stock at the then fair market value of Common Stock. The 1992 Stock Incentive Plan further provides that each of such stock options becomes exercisable in three equal annual installments commencing twelve months following the date of grant and has a ten year term.

During fiscal year 1998, non-employee directors of the Company were entitled to receive, in addition to reimbursement of expenses, fees for each meeting of the Board of Directors or committees of the Board in which they participated, as follows: \$3,000 for each meeting of the Board of Directors; \$3,000 for each Compensation Committee meeting; \$1,500 for each Audit Committee meeting; \$1,500 for each Corporate Governance Committee meeting; and \$3,000 for each meeting of the Special Committee. The 1992 Stock Incentive Plan also provides that non-employee directors of the Company may elect to receive all or a portion of their directors' fees, on a current or deferred basis, in shares of Common Stock that are free of any restrictions under the 1992 Stock Incentive Plan ("Unrestricted Stock"). Non-employee directors who are members of the Audit Committee received cash payments as their full compensation for two Audit Committee meetings in fiscal year 1998 that occurred before April 13, 1998. On April 13, 1998 the Board of Directors amended the 1992 Stock Incentive Plan expressly to provide the Compensation Committee of the Board of Directors (the "Compensation Committee") with the authority to waive the requirement that such an irrevocable agreement be delivered prior to the beginning of the calendar year in which a non-employee director wishes to receive shares of Unrestricted Stock in lieu of directors' fees otherwise due. On April 13, 1998 the Compensation Committee waived, with respect to calendar year 1998, compliance with the requirement that such irrevocable agreements be delivered prior to the beginning of the calendar year. This waiver was applicable to meetings of the Board of Directors and its committees held on April 13, 1998 and thereafter through the end of calendar year 1998. All non-employee directors elected to receive one-half of their directors' fees (excluding reimbursement of expenses) in shares of Unrestricted Stock for meetings of the Board of Directors and its committees in which they participated in fiscal year 1998, beginning with the meetings held on April 13, 1998.

#### SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's officers and directors, and persons who own more than 10% of a registered class of the Company's equity securities, to file reports of ownership and changes in ownership with the Commission. Officers, directors and greater-than-10% stockholders are required by Commission regulations to furnish the Company with copies of all Section 16(a) forms they file. Based solely upon a review of Forms 3 and 4 and amendments thereto furnished to the Company during fiscal year 1998 and Forms 5 and amendments thereto

furnished to the Company with respect to fiscal year 1998, the Company believes that all Section 16(a) filing requirements applicable to its officers, directors and greater-than-10% stockholders were fulfilled in a timely manner.

ITEM 11. EXECUTIVE COMPENSATION

SUMMARY COMPENSATION TABLE

The following Summary Compensation Table sets forth certain information regarding compensation paid or accrued by the Company with respect to the Chief Executive Officer of the Company during fiscal year 1998 and the other two executive officers of the Company as of January 30, 1999 (collectively, the "Named Executive Officers"), for the fiscal years ended January 30, 1999, January 31, 1998 ("fiscal year 1997") and February 1, 1997 ("fiscal year 1996"):

NAME AND PRINCIPAL POSITION	FISCAL YEAR	ANNUAL COMPENSATION(1)		LONG-TERM COMPENSATION AWARDS	ALL OTHER COMPENSATION(\$)(2)
		SALARY(\$)	BONUS(\$)	SECURITIES UNDERLYING OPTIONS(#)	
Joel H. Reichman.....	1998	\$375,000	\$0	0	\$3,671
President and Chief	1997	375,000	0	270,000	3,621
Executive Officer	1996	375,000	0	40,000	2,451
Scott N. Semel.....	1998	\$290,000	\$0	0	\$3,610
Executive Vice President,	1997	290,000	0	150,000	3,566
General Counsel and	1996	290,000	0	40,000	3,472
Secretary(3)					
Carolyn R. Faulkner.....	1998	\$210,000	\$0	0	\$3,497
Vice President, Chief	1997	210,000	0	80,000	3,453
Financial Officer	1996	158,808	0	20,000	2,412
and Treasurer(4)					

- (1) Other than as described in this table or the footnotes to this table, the Company did not pay any Named Executive Officer any compensation, including incidental personal benefits, in excess of 10% of such Named Executive Officer's base salary.
- (2) The amounts disclosed in this column covering fiscal year 1998 represent: (i) payments by the Company of insurance premiums for term life insurance for the benefit of the executive officers (Mr. Reichman, \$471; Mr. Semel, \$410; and Mrs. Faulkner, \$297); and (ii) matching contributions equal to \$3,200 that were made by the Company for the benefit of each of the Named Executive Officers to the Company's retirement plan (the "401(k) Plan") established pursuant to Section 401(k) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code").
- (3) Mr. Semel was elected Executive Vice President of the Company on April 17, 1996.
- (4) Mrs. Faulkner was elected Chief Financial Officer of the Company on July 16, 1996 and was elected Treasurer of the Company on January 20, 1998.

OPTIONS/SAR GRANTS

The Company did not grant any stock options during fiscal year 1998 to any of the Named Executive Officers.

OPTION EXERCISES AND FISCAL YEAR-END VALUES

The following Fiscal Year-End Option Table sets forth certain information regarding stock options held as of January 30, 1999 by the Named Executive Officers. None of the Named Executive Officers exercised any stock options during fiscal 1998:

COMMON STOCK UNDERLYING UNEXERCISED OPTIONS HELD AT	VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS HELD
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FISCAL YEAR-END(1)      AT FISCAL YEAR-END(\$)(2)

NAME	EXERCISABLE	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE
Joel H. Reichman	303,166	229,334	\$0	\$0
Scott N. Semel	229,166	133,334	0	0
Carolyn R. Faulkner	42,333	73,667	0	0

- (1) Includes 270,000, 150,000 and 80,000 options for Mr. Reichman, Mr. Semel and Mrs. Faulkner, respectively, which are subject to forfeiture if the per share price of Common Stock does not close at or above \$12.00 for at least five trading days ending on or prior to April 28, 2002.
- (2) "Value" means the difference between the option exercise price and the market value, as of the fiscal year-end, of the shares of Common Stock acquired upon exercise. Based on the last sale price of Common Stock (\$2.81 per share) on January 29, 1999, as reported by The Nasdaq Stock Market, less the applicable option exercise price, no option held by a Named Executive Officer was "in the money" as of the end of fiscal year 1998.

EMPLOYMENT AGREEMENTS

The Company entered into employment agreements, effective as of October 16, 1995, with each of Joel H. Reichman and Scott N. Semel for three-year terms ending October 15, 1998, and an employment agreement, effective as of May 9, 1997, with Carolyn R. Faulkner for a three-year term ending May 8, 2000. Each of these employment agreements (collectively, the "Employment Agreements") provides for automatic renewal for successive one-year terms unless either party notifies the other to the contrary at least 90 days prior to expiration of the then current term. Each of Mr. Reichman's and Mr Semel's employment agreements renewed pursuant to this automatic renewal provision as of October 15, 1998.

The Employment Agreements require each executive officer to devote substantially all of the executive officer's time and attention to the business of the Company as necessary to fulfill his or her duties. Pursuant to the Employment Agreements, Messrs. Reichman and Semel and Mrs. Faulkner were each initially entitled to be paid base salary at an annual rate of \$375,000, \$255,000 and \$210,000, respectively. The Employment Agreements provide that the executive officers' annual rate of base salary for the remaining years of employment may be increased by the Compensation Committee in its sole discretion. The Employment Agreements further provide that, effective as of the first day of each fiscal year of the Company, each executive officer's annual rate of base salary will be increased by at least the percentage increase in the cost of living in Boston, Massachusetts. Each of Messrs. Reichman and Semel and Mrs. Faulkner waived their right to receive this increase for fiscal 1998. The Employment Agreements also provide for the payment of bonuses in such amounts as may be determined by the Compensation Committee. While an executive officer is employed by the Company, the Company provides the executive officer with a full-size automobile for the executive officer's personal use and for use in performance of his or her employment duties and obligations, including maintenance of and fuel for such automobile. Each executive officer is entitled to vacations and to participate in and receive any other benefits customarily provided by the Company to its senior executives (including any bonus, retirement, short and long-term disability insurance, major medical insurance and group life insurance plans in accordance with the terms of such plans), including stock option plans, all as determined from time to time by the Compensation Committee.

The Employment Agreements provide that in the event the executive officer's employment is terminated by the Company at any time for any reason other than "justifiable cause" (as defined in the Employment Agreements), disability or death, or in the event that the Company shall fail to renew the Employment Agreement at any time within two years following the date of a "Change in Control of the Company," the Company is required, upon such termination or failure to renew, immediately to pay to the executive officer, in a lump sum, a severance payment equal to the greater of (i) one-twelfth of the executive officer's then annual base salary multiplied by the number of months remaining in the term of the Employment Agreement or (ii) a sum equal to his or her annual base salary then in effect multiplied by two. In addition, in the event the executive officer's employment is terminated under such circumstances, the executive officer is also entitled to continue to participate, at the Company's expense, in the Company's health insurance and disability insurance programs to the extent permitted by such programs for a period of two

years. The Employment Agreements also provide that in the event the Company elects not to renew the Employment Agreement (other than within two years following a Change of Control of the Company), the Company will pay the executive officer a sum equal to the greater of (i) one year's annual base salary or (ii) two months' base salary plus one-sixth of the executive officer's bonus, if any, relating to the most recently completed fiscal year, for each year the executive officer has been employed by the Company. If an executive officer dies while he or she is on Company business, then the Company is required to pay such executive officer's estate one-half of his or her then annual base salary.

Each Employment Agreement contains confidentiality provisions pursuant to which each executive officer agrees not to disclose confidential information regarding the Company. Each Employment Agreement also contains covenants pursuant to which each executive officer agrees during the term of his or her employment and for a one-year period following the termination of his or her employment, not to have any connection with any business which competes with the business of the Company. Each Employment Agreement provides that in the event of termination of employment (unless such termination is because the Company fails to renew the Employment Agreement or the Company terminates the executive officer's employment within two years following a Change in Control of the Company), the executive officer will be available on a part-time basis to advise and consult with the Company, with respect to the affairs of the Company, for up to one year following termination of employment. In the event the Company elects not to renew an executive officer's Employment Agreement, or terminates the executive officer's employment within two years following a Change in Control of the Company, or fails to make the required severance payments described above, then the non-competition covenants contained in such executive officer's Employment Agreement will automatically terminate.

Under the Employment Agreements, the executive officer may terminate his or her employment at any time upon 30 days' prior notice. Upon the executive officer's termination of employment or election not to renew his or her Employment Agreement, the non-competition covenants contained in such executive officer's Employment Agreement will terminate unless the Company pays the executive officer the severance payments described above. In such event, the executive officer will be entitled to receive such portion of his or her annual base salary and bonus, if any, as had been accrued to date.

For purposes of the Employment Agreements, a "Change in Control of the Company" is deemed to occur if: (i) there is consummated (a) any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of the Company's Common Stock would be converted into cash, securities or other property, other than a merger of the Company in which the holders of the Company's Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (b) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Company; or (ii) the stockholders of the Company approve any plan or proposal for liquidation or dissolution of the Company; or (iii) any person (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 40% or more of the Company's outstanding Common Stock other than pursuant to a plan or arrangement entered into by such person and the Company; or (iv) during any period of two consecutive years, individuals who at the beginning of such period constitute the entire Board of Directors of the Company cease for any reason to constitute a majority thereof unless the election, or the nomination for election by the Company's stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period.

The Employment Agreements also provide that if, in connection with a change of ownership or control of the Company or a change in ownership of a substantial portion of the assets of the Company (all within the meaning of Section 280G(b)(2) of the Internal Revenue Code), an excise tax is payable by the executive officer under Section 4999 of the Internal Revenue Code, then the Company will pay to the executive officer additional compensation which will be sufficient to enable the executive officer to pay such excise tax as well as the income tax and excise tax on such additional compensation, such that, after the payment of income and excise taxes, the executive officer is in the same economic position in which he would have been if the provisions of Section 4999 of the Internal Revenue Code had not been applicable.

In May 1999, the Company established a trust (the "Trust") for the

purpose of securing already existing obligations of the Company to Messrs. Reichman and Semel and Mrs. Faulkner (the "Trust Executives") under the Employment Agreements, the "Indemnification Agreements" (as defined below) and the Company's By-Laws. The Company deposited \$2.3 million in the Trust for these obligations. The funds will be held in the Trust to pay the amounts due under the Employment Agreements to the Trust Executives in the event of a Change in Control of the Company and also to pay any amounts due to the Trust Executives pursuant to the Indemnification Agreements or the Company's By-Laws.

The Trust may be revoked by the Company, and the funds withdrawn, after (i) November 11, 1999, if no Change in Control of the Company has occurred or (ii) a period of twenty-eight months following a Change in Control of the Company. In addition, the Trust may terminate on the date on which the Trust Executives and their beneficiaries are no longer entitled to benefits under the terms of the Employment Agreements, the Indemnification Agreements or the Company's By-Laws, unless sooner revoked by the Company as described above. The Trust may not be amended by the Company in any manner adverse to the Trust Executives and their beneficiaries following a Change in Control of the Company.

The Trust Executives have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Employment Agreements, the Indemnification Agreements or the Company's By-Laws and the Trust are unsecured contractual rights of the Trust Executives against the Company. Any assets of the Trust are subject to the claims of the Company's creditors in the event the Company becomes insolvent or in certain circumstances if the Lenders (as defined herein) accelerate time for payment under the Amended and Restated Loan and Security Agreement dated as of June 4, 1998, by and among the Company and BankBoston Retail Finance Inc. and Norwest Business Credit Inc. now known as Wells Fargo Business Credit Inc. (collectively, the "Lenders").

#### COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

James G. Groninger, Bernard M. Manuel and Peter L. Thigpen served on the Compensation Committee during all of fiscal year 1998. Persons serving on the Compensation Committee had no relationships with the Company in fiscal year 1998 other than their relationship to the Company as directors entitled to the receipt of standard compensation as directors and members of certain committees of the Board and their relationship to the Company as beneficial owners of shares of Common Stock and options exercisable for shares of Common Stock. No person serving on the Compensation Committee or on the Board of Directors is an executive officer of another entity for which an executive officer of the Company serves on the board of directors or on that entity's compensation committee.

#### ADDITIONAL INFORMATION CONCERNING EXECUTIVE COMPENSATION

##### 401(K) PLAN

On January 27, 1993, the Board of Directors adopted the 401(k) Plan. All eligible employees of the Company are entitled to participate in the Plan. The 401(k) Plan permits each participant to defer up to fifteen percent of such participant's annual salary up to a maximum annual amount (\$9,500 in calendar year 1997 and \$10,000 in calendar year 1998). The Board of Directors of the Company may determine, from fiscal year to fiscal year, whether and to what extent the Company will contribute to the 401(k) Plan by matching contributions made to the Plan by eligible employees. During fiscal year 1998, the matching contribution by the Company continued to be 50% of contributions by eligible employees up to a maximum of six percent of salary.

##### SENIOR EXECUTIVE INCENTIVE PLAN

The SEIP was initially adopted by the Board of Directors of the Company during fiscal year 1996. The SEIP is an incentive compensation plan under which executive officers of the Company may be eligible to receive annual cash bonus payments. The Compensation Committee determined that none of the Named Executive Officers were eligible to participate, and did not designate any Named Executive Officers as participants, in the SEIP for fiscal 1998.

##### KEY MAN INSURANCE

The Company has obtained a key man life insurance policy in the amount of \$2,000,000 on the life of Mr. Reichman. The Company pays the premium for such policy and is the sole beneficiary thereof.

##### LIMITATION OF LIABILITY; INDEMNIFICATION

The Company's Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), provides that no director of the Company shall be personally liable to the Company or to any of its stockholders for monetary damages arising out of such director's breach of fiduciary duty, except to the extent that the elimination or limitation of liability is not permitted by the Delaware General Corporation Law. The Delaware General Corporation Law, as currently in effect, permits charter provisions eliminating the liability of directors for breach of fiduciary duty, except that directors remain liable for (i) any breach of the directors' duty of loyalty to a company or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) any payment of a dividend or approval of a stock repurchase that is illegal under Section 174 of the Delaware General Corporation Law, or (iv) any transaction from which the directors derived an improper personal benefit. The effect of this provision of the Certificate of Incorporation is that directors cannot be held liable for monetary damages arising from breaches of their duty of care, unless the breach involves one of the four exceptions described in the preceding sentence. The provision does not prevent stockholders from obtaining injunctive or other equitable relief against directors, nor does it shield directors from liability under federal or state securities laws.

The Certificate of Incorporation and the Company's by-laws further provide for indemnification of the Company's directors and officers to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, including circumstances in which indemnification is otherwise discretionary.

On December 10, 1998, the Company's Board of Directors authorized the Company to enter into indemnification arrangements (the "Indemnification Agreements") with each of the Company's directors and executive officers (collectively, the "Indemnitees"). The Indemnification Agreements provide for the indemnification of, and advancing of expenses incurred by, each Indemnitee, by reason of any event or occurrence (an "Indemnifiable Event") related to the fact that such Indemnitee is or was a director or officer of the Company. Such expenses include attorneys' fees and all other costs or obligations paid or incurred in connection with investigating, defending or being a witness in or preparing to defend, be a witness in or participate in, any claim relating to an Indemnifiable Event.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

(a) Security Ownership of Certain Beneficial Owners

The following named persons were the only individuals or entities believed by the Company to be the beneficial owners of more than five percent of the issued and outstanding shares of Common Stock as of April 20, 1999. The Company is informed that, except as indicated, all of them have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them, subject to community property laws where applicable.

NAME AND ADDRESS OF BENEFICIAL OWNER	NUMBER OF SHARES BENEFICIALLY OWNED	PERCENTAGE(1) OF COMMON STOCK
Grace & White, Inc. 515 Madison Avenue New York, New York 10022 .....	2,057,100(2)	12.9%
Franklin Resources, Inc. 777 Mariners Island Boulevard San Mateo, California 94403 .....	1,900,000(3)	11.9
Jewelcor Management Inc. 100 North Wilkes-Barre Boulevard Wilkes-Barre, PA 18702.....	1,570,200(4)	9.9
Stanley I. Berger 100 Essex Road Chestnut Hill, Massachusetts 02467.....	1,203,029(5)	7.4
Dimensional Fund Advisors Inc. 1299 Ocean Avenue, 11th Floor Santa Monica, California 90401.....	838,400(6)	5.3

(1) Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Except as indicated, each person possesses sole voting and investment power with respect



to all of the shares of Common Stock owned by such person, subject to community property laws where applicable. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of Common Stock subject to options held by that person that are currently exercisable, or become exercisable by June 19, 1999 (60 days after April 20, 1999), are deemed outstanding. Such shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person. Percentage ownership is based on 15,926,219 shares of Common Stock outstanding on April 20, 1999, plus securities deemed to be outstanding with respect to individual stockholders pursuant to Rule 13d-3(d)(1) under the Exchange Act. The information as to each person has been furnished by such person.

- (2) The Company received a report styled "Amendment No. 1 to Schedule 13G" dated February 8, 1999, stating that Grace & White, Inc. ("Grace & White") was the beneficial owner of the number of shares of Common Stock set forth opposite its name in the table above. The report indicates that at December 31, 1998 Grace & White had sole voting power with respect to 194,000 shares and that Grace & White may be deemed to beneficially own, within the meaning of Rule 13d-3 of the Exchange Act, 2,057,100 shares over which it had sole dispositive power. The report indicates that the shares were acquired in the ordinary course of Grace & White's investment advisory business and not with the purpose of changing or influencing the control of the Company.
- (3) The Company received a report on Schedule 13G/A dated May 8, 1999 and filed jointly by Franklin Resources, Inc. ("FRI"), Franklin Advisory Services, Inc. ("FASI"), Charles B. Johnson and Rupert H. Johnson, Jr. FASI is an investment adviser; FRI is the parent holding company of FASI; and Charles B. Johnson and Rupert H. Johnson, Jr. each own in excess of 10% of the outstanding stock, and are the principal stockholders, of FRI. The report states that FASI had sole voting power and sole dispositive power over 1,900,000 shares as of that date. The report further states that the shares were beneficially owned by one or more open or closed-end investment companies or other managed accounts which are advised by direct and indirect investment adviser subsidiaries of FRI. The report indicates that the shares were acquired in the ordinary course of business and not with the purpose of changing or influencing the control of the Company. The report describes the relationship among Franklin, FASI, Charles B. Johnson and Rupert H. Johnson, Jr., but it does not affirm the existence of a "group" as that term is used in Section 13(d)(3) of the Exchange Act; nevertheless, the Company believes that FRI, FASI, Charles B. Johnson and Rupert H. Johnson, Jr. may be deemed to constitute a group under Section 13(d)(3) of the Exchange Act and that such group may be deemed to be the beneficial owner of the shares described in this footnote.
- (4) The Company has received reports on Schedule 13D, initially dated as of November 27, 1998 and amended through May 12, 1999 and filed jointly on behalf of Jewelcor Management, Inc., ("Jewelcor"), Jewelcor, Inc., S.H. Holdings, Inc., Seymour Holtzman and Evelyn Holtzman. Jewelcor is a wholly-owned subsidiary of Jewelcor Inc. Jewelcor, Inc. is a wholly-owned subsidiary of S.H. Holdings, Inc. Seymour Holtzman and Evelyn Holtzman own, as tenants by the entirety, a controlling interest of S.H. Holdings, Inc. The last report filed before the date of this table, filed as of March 25, 1999, states that Jewelcor had sole voting power and sole dispositive power over 1,570,200 shares as of that date. The report describes the relationship among Jewelcor, Jewelcor, Inc., S.H. Holdings, Inc., Seymour Holtzman and Evelyn Holtzman, but it does not affirm the existence of a "group" as that term is used in Section 13(d)(3) of the Exchange Act; nevertheless, the Company believes that Jewelcor, Jewelcor, Inc., S.H. Holdings, Inc., Seymour Holtzman and Evelyn Holtzman may be deemed to constitute a group under Section 13(d)(3) of the Exchange Act and that such group may be deemed to be the beneficial owner of the shares described in this footnote. See "Changes in Control."
- (5) Includes 241,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999. Stanley I. Berger filed a Schedule 13D with the Securities and Exchange Commission as of December 29, 1998, stating that he had consented or would consent in his capacity as a shareholder to the proposals described in the Consent Solicitation Statement of Jewelcor. The Jewelcor Consent Solicitation Statement expired without the election of any new members to the Company's Board of Directors. See "Changes in Control."
- (6) The Company received a report on Schedule 13G dated February 12, 1999 stating that Dimensional Fund Advisors Inc. ("DFAI") was reporting the beneficial ownership of an aggregate of 838,400 shares by four investment companies to which DFAI furnishes investment advice and certain other investment vehicles to which DFAI serves as an

investment adviser. These investment companies and other investment vehicles are referred to as the "Portfolios" in the Schedule 13G filed by DFAI. The Schedule 13G states that all securities reported in the Schedule 13G are owned by advisory clients of DFAI, none of which, to DFAI's knowledge, owns more than five percent of the outstanding shares of Common Stock of the Company. The report on Schedule 13G indicates that at December 31, 1998 DFAI had sole voting power and with respect to all 838,400 shares reported and that DFAI may be deemed to beneficially own such shares within the meaning of Rule 13d-3 of the Exchange Act in that it had sole dispositive power over them. The report indicates that the shares were acquired in the ordinary course of business and not with the purpose of changing or influencing the control of the Company. The report describes the relationship among DFAI and its advisory clients but does not affirm the existence of a "group" as that term is used in Section 13(d)(3) of the Exchange Act. DFAI disclaims beneficial ownership of the shares; nevertheless, the Company believes that DFAI and its advisory clients may be deemed to constitute a group under Section 13(d)(3) of the Exchange Act and that such group may be deemed to be the beneficial owner of the shares described in this footnote.

(b) Security Ownership of Management

As of April 20, 1999, the following directors of the Company, the Named Executive Officers and the directors and Named Executive Officers as a group were the beneficial owners of the indicated amount of issued and outstanding shares of Common Stock. Except as indicated, all of them have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them, subject to community property laws where applicable.

NAME AND TITLE OF BENEFICIAL OWNER	NUMBER OF SHARES OF COMMON STOCK BENEFICIALLY OWNED	PERCENTAGE (1) OF COMMON STOCK OUTSTANDING
Stanley I. Berger Chairman of the Board and Director.....	1,203,029(2)	7.4%
Joel H. Reichman President, Chief Executive Officer and Director.....	416,455(3)	2.6
Scott N. Semel Executive Vice President, General Counsel and Secretary.....	310,537(4)	1.9
Carolyn R. Faulkner Vice President, Chief Financial Officer and Treasurer.....	60,333(5)	*
James G. Groninger Director.....	69,294(6)	*
Melvin I. Shapiro Director.....	62,779(7)	*
Bernard M. Manuel Director.....	80,375(8)	*
Peter L. Thigpen Director.....	47,994(9)	*
All directors and executive officers as a group 8 persons).....	2,250,796(10)	13.2%

\* Less than 1.0%.

(1) Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Except as indicated, each person possesses sole voting and investment power with respect to all of the shares of Common Stock owned by such person, subject to community property laws where applicable. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of Common Stock subject to options held by that person that are currently exercisable, or become exercisable by June 19, 1999 (60 days after April 20, 1999), are deemed outstanding. Such shares,

however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person. Percentage ownership is based on 15,926,219 shares of Common Stock outstanding on April 20, 1999, plus securities deemed to be outstanding with respect to individual stockholders pursuant to Rule 13d-3(d)(1) under the Exchange Act. The information as to each person has been furnished by such person.

- (2) Includes 241,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999.
- (3) Includes 370,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999, as well as 280 shares owned by Mr. Reichman's wife and 427 shares owned by Mr. Reichman's children, as to which 707 shares Mr. Reichman disclaims beneficial ownership.
- (4) Includes 272,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999, as well as 450 shares owned by Mr. Semel's daughter, as to which he disclaims beneficial ownership.
- (5) Includes 59,333 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999.
- (6) Includes 43,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999.
- (7) Includes 43,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999 and 450 shares owned by Mr. Shapiro's wife as to which he disclaims beneficial ownership.
- (8) Includes 43,500 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999.
- (9) Includes 22,000 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999.
- (10) Includes 1,096,333 shares issuable pursuant to outstanding stock options exercisable within 60 days of April 20, 1999. See also Notes 2 through 9 above for further details concerning such options.

(c) Changes in Control

On December 7, 1998, a Consent Solicitation with respect to 1,570,200 shares of Common Stock executed on behalf of Jewelcor and its controlling shareholder, Seymour Holtzman, was delivered to the Company for the purpose of removing and replacing the members of the Company's Board of Directors other than Chairman Stanley I. Berger. A preliminary Consent Solicitation Statement was filed on December 7, 1998 by the Holtzman Group with the Securities and Exchange Commission. On December 11, 1998, the Board of Directors of the Company determined to oppose the Consent Solicitation by Jewelcor and Mr. Holtzman.

Stanley I. Berger filed a Schedule 13D with the Securities and Exchange Commission as of December 29, 1998, stating that he had consented or would consent in his capacity as a shareholder to the proposals described in the Consent Solicitation Statement of Jewelcor.

The Consent Solicitation expired without the election of any new members to the Company's Board of Directors. Accordingly, Stanley I. Berger, Joel H. Reichman, James G. Groninger, Melvin I. Shapiro, Peter L. Thigpen and Bernard M. Manuel remained in office as members of the Company's Board of Directors following the termination of the Consent Solicitation.

The Company did not enter into any settlement with Jewelcor or Mr. Holtzman terminating the Consent Solicitation.

On December 11, 1998, the Company announced that its Board of Directors had formed a committee of independent outside directors to consider the Company's strategic alternatives, including a possible sale of the Company, with a view towards maximizing shareholder value. To date, the Company has not entered into an agreement providing for the sale of the Company.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The Company entered into a consulting agreement with Mr. Berger dated as of December 21, 1994 (the "Consulting Agreement") in which he agreed to provide an average of four days per week of consulting services to the Company until December 20, 1997. As compensation for such services, among other things, the Company paid Mr. Berger \$250,000 per year and provided health benefits to him and his spouse. The Consulting Agreement contained covenants pursuant to which Mr. Berger agreed that, during the term of the Consulting Agreement and for a two-year period following expiration of the Consulting Agreement, not to have any connection with any business that competes with the business of the Company in the eastern United States. Under the Consulting Agreement, the Company also agreed, during the term of the Consulting Agreement, to make available to Mr. Berger an automobile for

use in connection with his work for the Company and to reimburse him for the expenses of operation of the automobile. The Company further agreed to transfer title to such automobile to Mr. Berger, without charge to him, promptly after expiration of the term of the Consulting Agreement, and such automobile, having a value of approximately \$19,800 at the time of transfer, was transferred to Mr. Berger in January 1998. From January 1, 1998 through December 31, 1998, Mr. Berger was paid to provide consulting services to the Company on a month-to-month basis at the rate of \$50,000 per annum. During this period and thereafter, the Company has provided, and will continue to provide, health benefits to Mr. Berger and his spouse pursuant to the Consulting Agreement. The Company paid Mr. Berger \$45,833 in consulting fees pursuant to this arrangement for his services in fiscal 1998.

#### SIGNATURES

Pursuant to the requirements of the Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this amendment to be signed on its behalf by the undersigned, thereunto duly authorized.

Designs, Inc.

Date: May 28, 1999

By: /s/ Joel H. Reichman

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Joel H. Reichman  
President and Chief  
Executive Officer

#### EXHIBIT INDEX

3.4 By-Laws of the Company, as amended.

BY-LAWS  
OF  
DESIGNS, INC.

Section 1. CERTIFICATE OF INCORPORATION AND BY-LAWS

1.1 These By-Laws are subject to the Certificate of Incorporation of the Corporation. In these By-Laws, references to the Certificate of Incorporation and By-Laws mean the provisions of the Certificate of Incorporation and the By-Laws as are from time to time in effect.

Section 2. OFFICES

2.1 Registered Office. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

2.2 Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 3. STOCKHOLDERS

3.1 Location of Meetings. All meetings of the stockholders shall be held at such place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors. Any adjourned session of any meeting shall be held at the place designated in the vote of adjournment.

3.2 Annual Meeting. The annual meeting of stockholders shall be held for the election of directors on the second Tuesday in June in each year, unless that day be a legal holiday at the place where the meeting is to be held, in which case the meeting shall be held at the same hour on the next succeeding day not a legal holiday, or at such other date and time as shall be designated from time to time by the Board of Directors. Any other business as may be required or permitted by law or these By-Laws may properly come before the annual meeting.

3.3 Special Meeting in Place of Annual Meeting. If the election for directors shall not be held on the day designated by these By-Laws, the directors shall cause the election to be held as soon thereafter as convenient, and to that end, if the annual meeting is omitted on the day herein provided therefor or if the election of directors shall not be held thereat, a special meeting of the stockholders may be held in place of such omitted meeting or election, and any business transacted or election held at such special meeting shall have the same effect as if transacted or held at the annual meeting, and in such case all references in these By-Laws to the annual meeting of the stockholders, or to the annual election of directors, shall be deemed to refer to or include such special meeting. Any such special meeting shall be called and the purposes thereof shall be specified in the call, as provided in Section 3.4.

3.4 Notice of Annual Meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. Such notice may specify the business to be transacted and actions to be taken at such meeting. No action shall be taken at such meeting unless such notice is given, or unless waiver of such notice is given by the holders of outstanding stock having not less than the minimum number of votes necessary to take such action at a meeting at which all shares entitled to vote thereon were voted. Prompt notice of all action taken in connection with such waiver of notice shall be given to all stockholders not present or represented at such meeting.

3.5 Special Meetings. Except as otherwise required by law and subject to the rights, if any, of the holders of any series of preferred stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office.

3.6 Notice of Special Meeting. Written notice of a special meeting of stockholders stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. No action shall be taken at such meeting unless such notice is given, or unless waiver of such notice is given by the holders of outstanding stock having not less than the minimum number of votes necessary to take such action at a meeting at

which all shares entitled to vote thereon were voted. Prompt notice of all action taken in connection with such waiver of notice shall be given to all stockholders not present or represented at such meeting.

3.7 Stockholder List. The Secretary 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. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also 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.

3.8 Quorum of Stockholders. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise required by law, or by the Certificate of Incorporation or by these By-Laws. Except as otherwise provided by law, no stockholder present at a meeting may withhold his shares from the quorum count by declaring his shares absent from the meeting.

3.9 Adjournment. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these By-Laws, which time and place shall be announced at the meeting, by a majority of votes cast upon the question, whether or not a quorum is present. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

3.10 Proxy Representation. Every stockholder may authorize another person or persons to act for him by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, objecting to or voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. Except as otherwise provided by law, a stockholder may revoke any proxy which is not irrevocable by attending the meeting for which the proxy was given and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. A duly executed 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 proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. The authorization of a proxy may but need not be limited to specified action, provided, however, that if a proxy limits its authorization to a meeting or meetings of stockholders, unless otherwise specifically provided such proxy shall entitle the holder thereof to vote at any adjourned session but shall not be valid after the final adjournment thereof.

3.11 Inspectors. The directors or the person presiding at the meeting may, but need not, appoint one or more inspectors of election and any substitute inspectors to act at the meeting or any adjournment thereof. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them.

3.12 Action by Vote. When a quorum is present at any meeting, whether the same be an original or an adjourned session, a plurality of the votes

properly cast for election to any office shall elect to such office and a majority of the votes properly cast upon any question other than an election to an office shall decide the question, except when a larger vote is required by law, by the Certificate of Incorporation or by these By-Laws. No ballot shall be required for any election unless requested by a stockholder present or represented at the meeting and entitled to vote in the election.

3.13 Action Without Meetings. Unless otherwise provided in the Certificate of Incorporation, any action required 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 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. 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.

3.14 Matters to be Considered at Annual Meetings. At any annual meeting of stockholders or any special meeting in lieu of annual meeting of stockholders (for purposes of this Section 3.14 and Section 4.16 hereof, hereinafter referred to as an "Annual Meeting"), only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before such Annual Meeting. To be considered as properly brought before an Annual Meeting, business must be: (a) specified in the notice of the Annual Meeting, (b) otherwise properly brought before the annual meeting by, or at the direction of, the Board of Directors, or (c) otherwise properly brought before the Annual Meeting by any holder of record (both as of the time notice of such proposal is given by the stockholder as set forth below and as of the record date for the Annual Meeting in question) of any shares of capital stock of the Corporation entitled to vote at such Annual Meeting who complies with the requirements set forth in this Section 3.14.

In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting by a stockholder of record of any shares of capital stock entitled to vote at such Annual Meeting, such stockholder shall: (i) give timely notice as required by this Section 3.14 to the Secretary of the Corporation and (ii) be present at such Annual Meeting, either in person or by a representative. A stockholder's notice shall be timely if delivered to, or mailed to and received by, the Corporation at its principal executive office not less than seventy-five days nor more than one hundred twenty days prior to the anniversary date of the immediately preceding Annual Meeting (for purposes of this Section 3.14 and Section 4.16 hereof, hereinafter referred to as the "Anniversary Date"); provided, however, that in the event the Annual Meeting is scheduled to be held on a date more than thirty days before the Anniversary Date or more than sixty days after the Anniversary Date, a stockholder's notice shall be timely if delivered to, or mailed to and received by, the Corporation at its principal executive office not later than the close of business on the later of (A) the seventy-fifth day prior to the scheduled date of such Annual Meeting or (B) the fifteenth day following the day on which public announcement of the date of such Annual Meeting is first made by the Corporation.

For purposes of these By-Laws, "public announcement" shall mean: (i) disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service, (ii) a report or other document filed publicly with the Securities and Exchange Commission (including, without limitation, a Form 8-K), or (iii) a letter or report sent to all stockholders of record of the Corporation at the time of the mailing of such letter or report.

A stockholder's notice to the Secretary shall set forth as to each matter proposed to be brought before an Annual Meeting: (i) a brief description of the business the stockholder desires to bring before such Annual Meeting and the reasons for conducting such business at such Annual Meeting, (ii) the name and address, as they appear on the Corporation's stock transfer books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation's capital stock beneficially owned by the stockholder proposing such business, (iv) the names and addresses of the beneficial owners, if any, of any capital stock of the Corporation registered in such stockholder's name on such books, and the class and number of shares of the Corporation's capital stock beneficially owned by such beneficial owners, (v) the names and addresses of other stockholders known by the stockholder proposing such business to support such proposal, and the class and number of shares of the Corporation's capital stock beneficially owned by such other stockholders, and (vi) any

material interest of the stockholder proposing to bring such business before such meeting (or any other stockholders known to be supporting such proposal) in such proposal.

If the Board of Directors or a designated committee thereof determines that any stockholder proposal was not made in a timely fashion in accordance with the provisions of this Section 3.14 or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 3.14 in any material respect, such proposal shall not be presented for action at the Annual Meeting in question. If neither the Board of Directors nor such committee makes a determination as to the validity of any stockholder proposal in the manner set forth above, the presiding officer of the Annual Meeting shall determine whether the stockholder proposal was made in accordance with the terms of this Section 3.14. If the presiding officer determines that any stockholder proposal was not made in a timely fashion in accordance with the provisions of this Section 3.14 or that the information provided in a stockholders notice does not satisfy the information requirements of this Section 3.14 in any material respect, such proposal shall not be presented for action at the Annual Meeting in question. If the Board of Directors, a designated committee thereof or the presiding officer determines that a stockholder proposal was made in accordance with the requirements of this Section 3.14, the presiding officer shall so declare at the Annual Meeting and ballots shall be provided for use at the Annual Meeting with respect to such proposal.

Notwithstanding the foregoing provisions of this Section 3.14, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder with respect to the matters set forth in this Section 3.14, and nothing in this Section 3.14 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

3.15. Inspection of Stockholder Consents. In the event of the delivery to the Corporation of the requisite written stockholder consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of such consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the Corporation that the consents delivered to the Corporation constitute at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

#### Section 4. DIRECTORS

4.1 Number; Qualifications. The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders.

4.2 Election; Vacancies. The Board of Directors shall initially consist of persons elected as such by the incorporator. At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors to replace those directors whose terms then expire. Vacancies and any newly created directorships resulting from any increase in the number of directors may be filled by vote of the stockholders at a meeting called for the purpose, or by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have resigned, shall have power to fill such vacancy or vacancies, the vote or action by writing thereon to take effect when such resignation or resignations shall become effective. The directors shall have and may exercise all their powers notwithstanding the existence of one or more vacancies in their number, subject to any requirements of law or of the Certificate of Incorporation or of these By-Laws as to the number of directors required for a quorum or for any vote or other actions.

4.3 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws, each director shall hold office until



the next annual meeting and until his successor is elected and qualified, or until he sooner dies, resigns, is removed or becomes disqualified.

4.4 Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which shall have and may exercise all the powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these By-Laws directed or required to be exercised or done by the stockholders.

4.5 Committees. The Board of Directors may, by vote of a majority of the whole Board, (a) designate, change the membership of or terminate the existence of any committee or committees, each committee to consist of one or more of the directors; (b) designate one or more directors as alternate members of any such committee who may replace any absent or disqualified member at any meeting of the committee; and (c) determine the extent to which each such committee shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, including the power to authorize the seal of the Corporation to be affixed to all papers which require it and the power and authority to declare dividends or to authorize the issuance of stock; excepting, however, such powers which by law, by the Certificate of Incorporation or by these By-Laws they are prohibited from so delegating. In the absence or disqualification of any member of such committee and his alternate, if any, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Board or such rules, its business shall be conducted as nearly as may be in the same manner as is provided by these By-Laws for the conduct of business by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

4.6 Regular Meeting. Regular meetings of the Board of Directors may be held without call or notice at such place within or without the State of Delaware and at such times as the Board may from time to time determine, provided that notice of the first regular meeting following any such determination shall be given to absent directors. A regular meeting of the directors may be held without call or notice immediately after and at the same place as the annual meeting of the stockholders.

4.7 Special Meetings. Special meetings of the Board of Directors may be held at any time and at any place within or without the State of Delaware designed in the notice of the meeting, and may be called only by the Secretary upon the request of persons constituting a majority of the Special Committee of the Board of Directors formed by resolution adopted by the Board of Directors on December 1, 1998, reasonable notice thereof being given to each director by the Secretary or any member of such Special Committee.

4.8 Notice. It shall be reasonable and sufficient notice to a director to send notice by mail at least forty-eight hours or by telegram at least twenty-four hours before the meeting, addressed to him at his usual or last known business or residence address or to give notice to him in person or by telephone at least twelve hours before the meeting. Notice of a meeting need not be given to any director if a written waiver of notice, executed by him before or after the meeting, is filed with the records of the meeting, or to any director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him. Neither notice of a meeting nor a waiver of a notice need specify the purposes of the meeting.

4.9 Quorum. Except as may be otherwise provided by law, by the Certificate of Incorporation or by these By-Laws, at any meeting of the directors a majority of the directors then in office shall constitute a quorum; a quorum shall not in any case be less than one-third of the total number of directors constituting the whole Board. Any meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

4.10 Action by Vote. Except as may be otherwise provided by law, by the Certificate of Incorporation or by these By-Laws, when a quorum is present at any meeting the vote of a majority of the directors present shall be the act of the Board of Directors.

4.11 Action Without a 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 the members of the

Board or of such committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the records of the meetings of the Board or of such committee. Such consent shall be treated for all purposes as the act of the Board or of such committee, as the case may be.

4.12 Participation in Meetings by Conference Telephone. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, members of the Board of Directors or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at such meeting.

4.13 Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board of Directors shall have the authority to fix from time to time the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and the performance of their responsibilities as directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and/or a stated salary as director. No such payment shall preclude any director from serving the Corporation or its parent or subsidiary corporations in any other capacity and receiving compensation therefor. The Board of Directors may also allow compensation for members of special or standing committees for service on such committees.

#### 4.14 Interested Directors and Officers.

(a) 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 the Corporation's 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 their votes are counted for such purpose, if:

(1) The material facts as to his 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 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 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.

(b) 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.

4.15 Resignation or Removal of Directors. Unless otherwise restricted by the Certificate of Incorporation or by law, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the stock issued and outstanding and entitled to vote at an election of directors. Any director may resign at any time by delivering his resignation in writing to the President or the Secretary or to a meeting of the Board of Directors. Such resignation shall be effective upon receipt unless specified to be effective at some other time; and without in either case the necessity of its being accepted unless the resignation shall so state. No director resigning and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Corporation) no director removed shall have any right to receive compensation as such director for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise; unless in the case of a resignation, the directors, or in the case of removal, the body acting on the removal, shall in their or its discretion provide for compensation.

4.16 Director Nominations. Nominations of candidates for election as directors of the Corporation at any Annual Meeting may be made only (a) by, or at the direction of, a majority of the directors then in office or (b) by any holder of record (both as of the time notice of such nomination is given by the stockholder as set forth below and as of the record date for

the Annual Meeting in question) of any shares of the capital stock of the Corporation entitled to vote at such Annual Meeting who complies with the timing, informational and other requirements set forth in this Section 4.16. Any stockholder who has complied with the timing, informational and other requirements set forth in this Section 4.16 and who seeks to make such a nomination, or such stockholder's representative, must be present in person at the Annual Meeting. Only persons nominated in accordance with the procedures set forth in this Section 4.16 shall be eligible for election as directors at an Annual Meeting.

Nominations, other than those made by, or at the direction of, the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation as set forth in this Section 4.16. A stockholder's notice shall be timely if delivered to, or mailed to and received by, the Corporation at its principal executive office not less than seventy-five days nor more than one hundred twenty days prior to the Anniversary Date; provided, however, that in the event the Annual Meeting is scheduled to be held on a date more than thirty days before the Anniversary Date or more than sixty days after the Anniversary Date, a stockholder's notice shall be timely if delivered to, or mailed and received by, the Corporation at its principal executive office not later than the close of business on the later of (i) the seventy-fifth day prior to the scheduled date of such Annual Meeting or (ii) the fifteenth day following the day on which public announcement of the date of such Annual Meeting is first made by the Corporation.

A stockholder's notice to the Secretary shall set forth as to each person whom the stockholder proposes to nominate for election or re-election as a director: (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the class and number of shares of the Corporation's capital stock which are beneficially owned by such person on the date of such stockholder notice, and (iv) the consent of each nominee to serve as a director if elected. A stockholder's notice to the Secretary shall further set forth as to the stockholder giving such notice: (i) the name and address, as they appear on the Corporation's stock transfer books, of such stockholder and of the beneficial owners (if any) of the Corporation's capital stock registered in such stockholder's name and the name and address of other stockholders known by such stockholder to be supporting such nominee(s), (ii) the class and number of shares of the Corporation's capital stock which are held of record, beneficially owned or represented by proxy by such stockholder and by any other stockholders known by such stockholder to be supporting such nominee(s) on the record date for the Annual Meeting in question (if such date shall then have been made publicly available) and on the date of such stockholder's notice, and (iii) a description of all arrangements or understandings between such stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by such stockholder.

If the Board of Directors or a designated committee thereof determines that any stockholder nomination was not made in accordance with the terms of this Section 4.16 or that the information provided in a stockholder's notice does not satisfy the informational requirements of this Section 4.16 in any material respect, then such nomination shall not be considered at the Annual Meeting in question. If neither the Board of Directors nor such committee makes a determination as to whether a nomination was made in accordance with the provisions of this Section 4.16, the presiding officer of the Annual Meeting shall determine whether a nomination was made in accordance with such provisions. If the presiding officer determines that any stockholder nomination was not made in accordance with the terms of this Section 4.16 or that the information provided in a stockholder's notice does not satisfy the informational requirements of this Section 4.16 in any material respect, then such nomination shall not be considered at the Annual Meeting in question. If the Board of Directors, a designated committee thereof or the presiding officer determines that a nomination was made in accordance with the terms of this Section 4.16, the presiding officer shall so declare at the Annual Meeting and ballots shall be provided for use at the Annual Meeting with respect to such nominee.

Notwithstanding anything to the contrary in the second sentence of the second paragraph of this Section 4.16, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least seventy-five days prior to the Anniversary Date, a stockholder's notice required by this Section 4.16 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if such notice shall be delivered to, or mailed to and received by, the Corporation at its principal executive office not later

than the close of business on the fifteenth day following the day on which such public announcement is first made by the Corporation.

No person shall be elected by the stockholders as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 4.16. Election of directors at an Annual Meeting need not be by written ballot, unless otherwise provided by the Board of Directors or presiding officer at such Annual Meeting. If written ballots are to be used, ballots bearing the names of all the persons who have been nominated for election as directors at an Annual Meeting in accordance with the procedures set forth in this Section 4.16 shall be provided for use at such Annual Meeting.

## Section 5. NOTICES

5.1 Form of Notice. Whenever, under the provisions of law, or of the Certificate of Incorporation or of these By-Laws, notice is required to be given to any director or stockholder, such notice may be given by mail, addressed to such director or stockholder, at his 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. Unless written notice by mail is required by law, written notice may also be given by telegram, cable, telecopy, commercial delivery service, telex or similar means, addressed to such director or stockholder at his address as it appears on the records of the Corporation, in which case such notice shall be deemed to be given when delivered into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the Corporation or the person sending such notice and not by the addressee. Oral notice or other in-hand delivery (in person or by telephone) shall be deemed given at the time it is actually given.

5.2 Waiver of Notice. Whenever notice is required to be given under the provisions of law, the Certificate of Incorporation or these By-Laws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. 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, 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 meeting of the stockholders, directors or members of a committee of the directors need be specified in any written waiver of notice.

## Section 6. OFFICERS AND AGENTS

6.1 Enumeration; Qualification. The officers of the Corporation shall be a Chairman of the Board of Directors, a President, a Treasurer, a Secretary and such other officers, if any, as the Board of Directors from time to time may in its discretion elect or appoint including without limitation one or more Vice Presidents. Any officer may be, but none need be, a director or stockholder. Any two or more offices may be held by the same person. Any officer may be required by the Board of Directors to secure the faithful performance of his duties to the Corporation by giving bond in such amount and with sureties or otherwise as the Board of Directors may determine.

6.2 Powers. Subject to law, to the Certificate of Incorporation and to the other provisions of these By-Laws, each officer shall have, in addition to the duties and powers herein set forth, such duties and powers as are commonly incident to his office and such additional duties and powers as the Board of Directors may from time to time designate.

6.3 Election. The Board of Directors at its first meeting after each annual meeting of stockholders, or special meeting in place of an annual meeting, shall choose a Chairman, a President, a Secretary and a Treasurer. Other officers may be appointed by the Board of Directors at such meeting, at any other meeting or by written consent. At any time or from time to time, the directors may delegate to any officer their power to elect or appoint any other officer or any agents.

6.4 Tenure. Each officer shall hold office until the first meeting of the Board of Directors following the next annual meeting of the stockholders and until his successor is elected and qualified unless a shorter period shall have been specified in terms of his election or appointment, or in each case until he sooner dies, resigns, is removed or becomes disqualified. Each agent of the Corporation shall retain his authority at the pleasure of the directors, or the officer by whom he was appointed or by the officer who then holds agent appointive power.

6.5 Resignation and Removal. Any officer may resign at any time by

delivering his resignation in writing to the President or the Secretary or to a meeting of the Board of Directors. Such resignation shall be effective upon receipt unless specified to be effective at some other time, and without in any case the necessity of its being accepted unless the resignation shall so state. The Board of Directors may at any time remove any officer either with or without cause. The Board of Directors may at any time terminate or modify the authority of any agent. No officer resigning and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Corporation) no officer removed shall have any right to any compensation as such officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise; unless in the case of a resignation, the directors, or in the case of removal, the body acting on the removal, shall in their or its discretion provide for compensation.

6.6 Vacancies. If the office of the Chairman, the President, the Treasurer or the Secretary becomes vacant, the directors may elect a successor by vote of a majority of the directors then in office. If the office of any other officer becomes vacant, any person or body empowered to elect or appoint that office may choose a successor. Each such successor shall hold office for the unexpired term of his predecessor, and in the case of the Chairman, the President, the Treasurer and the Secretary until his successor is chosen and qualified, or in each case until he sooner dies, resigns, is removed or becomes disqualified.

## Section 7. CAPITAL STOCK

7.1 Stock Certificates. Each stockholder shall be entitled to a certificate stating the number and the class and the designation of the series, if any, of the shares held by him, in such form as shall, in conformity to law, the Certificate of Incorporation and the By-Laws, be prescribed from time to time by the Board of Directors. Such certificate shall be signed by the President or a Vice-President and (i) the Treasurer or an Assistant Treasurer or (ii) the Secretary or an Assistant Secretary. Any of or all the signatures on the certificate may be a facsimile. In case an officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent, or registrar at the time of its issue.

7.2 Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

## Section 8. TRANSFER OF SHARES OF STOCK

8.1 Transfer on Books. Subject to any restrictions with respect to the transfer of shares of stock, shares of stock may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment and power of attorney properly executed, with necessary transfer stamps affixed, and with such proof of the authenticity of signature as the Board of Directors or the transfer agent of the Corporation may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these By-Laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to receive notice and to vote or to give any consent with respect thereto and to be held liable for such calls and assessments, if any, as may lawfully be made thereon, regardless of any transfer, pledge or other disposition of such stock until the shares have been properly transferred on the books of the Corporation.

It shall be the duty of each stockholder to notify the Corporation of his post office address.

## Section 9. GENERAL PROVISIONS

9.1 Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action to which such record date relates. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. If no record date is fixed,

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business 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;

(b) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed; and

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

9.2 Dividends. Dividends upon the capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting or by written consent, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

9.3 Payment of Dividends. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

9.4 Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

9.5 Fiscal Year. The fiscal year of the Corporation shall end the Saturday closest to the 31st of January unless otherwise determined by the Board of Directors.

9.6 Seal. The Board of Directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the word "Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the Board of Directors.

## Section 10. INDEMNIFICATION

10.1 It being the intent of the Corporation to provide maximum protection available under the law to its officers and directors, the Corporation shall indemnify its officers and directors to the full extent the Corporation is permitted or required to do so by the General Corporation Law of Delaware as the same exists or hereafter may be amended. Such indemnification shall include payment by the Corporation, in advance of the final disposition of a civil or criminal action, suit or proceedings, of expenses incurred by a director or officer in defending any such action, suit or proceeding upon receipt of any undertaking by or on behalf of such director or officer to repay such payment if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation. The Corporation may accept any such undertaking without reference to the financial ability of the person to make such repayment. As used in this paragraph, the terms "director" and "officer" include their respective heirs, executors, and administrators.

## Section 11. AMENDMENTS

11.1 These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors. If the power to adopt, amend or repeal By-Laws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal By-Laws.