

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Certificate of Conversion from LLC to Corporation		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
TWIGTEK, LLC		10/14/2010	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	TWIGTEK, INC.		
Street Address:	2711 Centerville Road		
Internal Address:	Suite 400		
City:	Wilmington		
State/Country:	DELAWARE		
Postal Code:	19808		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3964116	YOURENEW	
CORRESPONDENCE DATA			
Fax Number:	3122071000		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	312-207-1000		
Email:	ipdocket-chi@reedsmith.com		
Correspondent Name:	Matthew Pinkham		
Address Line 1:	10 South Wacker Drive		
Address Line 2:	Reed Smith, LLP		
Address Line 4:	Chicago, ILLINOIS 60606		
NAME OF SUBMITTER:	Matthew Pinkham		
Signature:	/Matthew Pinkham/		

OP \$40.00 3964116

Date:

11/20/2012

Total Attachments: 25

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Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "TWIGTEK, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE TWENTY-SIXTH DAY OF JANUARY, A.D. 2009, AT 3:43 O'CLOCK P.M.

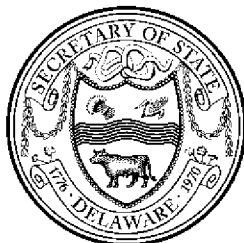
CERTIFICATE OF CONVERSION, CHANGING ITS NAME FROM "TWIGTEK, LLC" TO "TWIGTEK, INC.", FILED THE FOURTEENTH DAY OF OCTOBER, A.D. 2010, AT 8:49 O'CLOCK A.M.


CERTIFICATE OF INCORPORATION, FILED THE FOURTEENTH DAY OF OCTOBER, A.D. 2010, AT 8:49 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "TWIGTEK, INC.".

4648596 8100H

110886294




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8946334

DATE: 08-03-11

You may verify this certificate online
at corp.delaware.gov/authver.shtml

TRADEMARK
REEL: 004904 FRAME: 0324

Certificate of Formation

Of

TwigTek, LLC

1. The name of the limited liability company is **TwigTek, LLC** (the Company”).
2. The Company’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware 19808. The Corporation’s registered agent at such address is Corporation Service Company.
3. The Company shall have a perpetual existence.

IN WITNESS WHEREOF, the undersigned, being the authorized person forming the Company, has executed, signed and acknowledged this Certificate of Formation this 26th day of January, 2009.

/s/ Tracy Doherty
Tracy Doherty
Organizer

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CERTIFICATE OF CONVERSION FROM A LIMITED LIABILITY
COMPANY TO A CORPORATION PURSUANT TO SECTION 265 OF
THE DELAWARE GENERAL CORPORATION LAW

CERTIFICATE OF CONVERSION
OF
TWIGTEK, LLC
TO
TWIGTEK, INC.

This Certificate of Conversion is being duly executed and delivered by TwigTek, LLC, a Delaware limited liability company (the "*Limited Liability Company*"), to convert the Limited Liability Company to TwigTek, Inc., a Delaware corporation (the "*Corporation*"), under the General Corporation Law of the State of Delaware (8 Del. C. Section 101 *et seq.*).

1. The Limited Liability Company was formed on January 26, 2009 when its Certificate of Formation was filed with the Secretary of State of the State of Delaware.
2. The jurisdiction of the Limited Liability Company immediately prior to filing this Certificate is Delaware.
3. The name of the Limited Liability Company immediately prior to filing this Certificate is "TwigTek, LLC."
4. The jurisdiction of the Corporation shall be Delaware.
5. The name of the Corporation shall be "TwigTek, Inc."
6. This conversion has been approved in accordance with 8 Del. C. Section 265.

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting Limited Liability Company has executed this Certificate of Conversion on the 14th day of October, 2010.

TwigTek, LLC

By: /s/ Guy Minetti

Guy Minetti

Its President and Chief Executive Officer

CERTIFICATE OF INCORPORATION

OF

TWIGTEK, INC.
(a Delaware stock corporation)

ARTICLE 1
NAME

The name of the corporation is TWIGTEK, INC. (the "Corporation").

ARTICLE 2
ADDRESS

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE 3
PURPOSE

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

ARTICLE 4
CAPITAL STOCK

4.1 Authorization; Definitions.

(a) **Authorization.** The authorized capital stock of the Corporation shall consist of 3,000,000 shares consisting of (i) 2,579,510 shares of common stock, \$0.0001 par value per share (the "**Common Stock**"), and (ii) 420,490 shares of preferred stock, \$0.0001 par value per share (the "**Preferred Stock**"), consisting of 73,353 shares of Series A Participating Convertible Preferred Stock, \$0.0001 par value per share (the "**Series A Preferred Stock**"), 186,247 shares of Series B Participating Convertible Preferred Stock, \$0.0001 par value per share (the "**Series B Preferred Stock**"), and 160,890 shares of Series C Participating Convertible Series C Preferred Stock, \$0.0001 par value per share (the "**Series C Preferred Stock**").

(b) **Definitions.**

"**Accrued Dividends**" means Full Cumulative Dividends to the date of determination, less the amount of all dividends paid pursuant to Section 4.2(a) upon the shares of Series C Preferred Stock.

"**Board**" means the Board of Directors of the Corporation.

“Certificate” means this Certificate of Incorporation.

“Current Market Price” means, as of any date, and with respect to one (1) share of Common Stock, the average of the daily closing prices for the thirty (30) consecutive business days ending five (5) business days before the day in question (as adjusted for any stock dividend, split, combination or reclassification that took effect during such 30-business day period). The closing price for each day shall be the closing price on the principal securities exchange on which the Common Stock is listed or admitted to trading (or if the Common Stock is not at the time listed or admitted for trading on any such exchange, then such price shall be equal to the average of the last reported bid and asked prices on such day as reported by The National Quotation Bureau Incorporated or any similar reputable quotation and reporting service, if such quotation is not reported by The National Quotation Bureau Incorporated); provided, however, that if the Common Stock is not traded in such manner that the quotations referred to herein are available for the period required hereunder, the Current Market Price shall be such price as mutually agreed upon by the Corporation and the Supermajority Vote of the Preferred Stock, and, in the event that they are unable to reach agreement, the Current Market Price shall be determined by a nationally recognized independent arms-length appraiser mutually selected by (i) the Corporation and (ii) the Supermajority Vote of the Preferred Stock, provided, however, that, if such selection of an appraiser cannot be mutually made within twenty (20) business days of the commencement of the selection process, as provided above, a nationally recognized independent appraiser shall be selected by the American Arbitration Association in accordance with its rules, and the cost of any such appraisal shall be paid by the Corporation.

“Effective Date” means the “Initial Closing Date” under the Series C Purchase Agreement.

“Equity Security” means any capital stock (including the Common Stock) of the Corporation, whether now authorized or not, and options, warrants or rights to purchase capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; the number of shares of an Equity Security which is a convertible security shall be the number of shares of such Equity Security which would result upon the immediate conversion of such convertible security, without regard to when such convertible security may in fact be converted.

“Excluded Securities” means Equity Securities issued by the Corporation:

- (i) as a stock dividend or distribution on, or upon any stock split or other subdivision or combination of, then outstanding shares of Common Stock or Preferred Stock;
- (ii) upon the conversion of any debenture, warrant, option, or other convertible security outstanding as of the Effective Date;
- (iii) as part of shares of Common Stock issued or issuable to employees, directors and/or consultants pursuant to any authorized Stock Option Plan;
- (iv) upon conversion of the Preferred Stock;

(v) in connection with acquisitions or joint ventures, or to consultants, vendors, lenders, equipment lessors, independent members of the Board, or customers, provided that any such transaction and issuance is approved by the majority vote of the Board, which approval must include the vote, consent or approval of the Launch Director; or

(vi) in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships, provided that any such transaction and issuance is approved by the majority vote of the Board, which approval must include the vote, consent or approval of the Launch Director.

"Filing Date" means the date and time that this Certificate is filed with the Secretary of State of Delaware.

"Full Cumulative Dividends" means, as to any share of Series C Preferred Stock (whether or not in respect of which such term is used there shall have been net profits or net assets of the Corporation legally available for the payment of such dividends), that amount which shall be equal to dividends at the full rate fixed for the Series C Preferred Stock as provided herein for the period of time elapsed from the Original Issuance Date to the date as of which Full Cumulative Dividends are to be computed.

"GAAP" means generally accepted accounting principles used in the United States of America, consistently applied.

"Junior Stock" means: (a) as to the Series C Preferred Stock, the Series A Preferred Stock, Series B Preferred Stock and the Common Stock, and (b) as to the Series A Preferred Stock and Series B Preferred Stock, the Common Stock.

"Launch Director" shall have the meaning for such term set forth in the Stockholders Agreement.

"Liquidation Event" means a merger, consolidation, liquidation, dissolution, winding up of the affairs of the Corporation or sale or exclusive license, in one or a series of transactions, of all or substantially all of the assets of the Corporation as an entirety to a third party or third parties, whether voluntary or involuntary, and whether for cash, stock or other consideration; provided, however, that: (a) a merger or consolidation shall not be considered a Liquidation Event if the Corporation's stockholders as constituted immediately prior to such merger or consolidation will, immediately after such merger or consolidation, hold a majority of the outstanding voting power of the capital stock of (i) the surviving or resulting corporation or (ii) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; and (b) none of the above events shall be considered to be a Liquidation Event if the holders of the Series C Preferred Stock elect, by the Supermajority Vote of the Series C Preferred Stock, that such event shall not be a Liquidation Event.

"Majority Vote of the Series C Preferred" shall mean the vote or written consent of the holder(s) of at least a majority in voting power of the Series C Preferred Stock then outstanding

(such voting power determined as if all shares of Series C Preferred Stock have been converted into Common Stock pursuant to this Certificate).

“Original Issuance Date” means, as to each share of Series C Preferred Stock, the later of (a) the Effective Date and (b) the date on which such share was actually issued.

“Original Purchase Price” means: (a) with respect to the Series A Preferred Stock, \$1.80 per share of Series A Preferred Stock; (b) with respect to the Series B Preferred Stock, \$4.36 per share of Series B Preferred Stock; and (c) with respect to the Series C Preferred Stock, \$4.66156 per share of Series C Preferred Stock.

“Person” means any individual, corporation, limited liability company, association, partnership, limited partnership, trust or estate, or government (or any agency or political subdivision thereof), or any other entity.

“Preferred Stock” means, individually and collectively, the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.

“Qualified IPO” means the consummation of a firm commitment underwritten public offering of shares of Common Stock registered under the Securities Act of 1933, as amended, or any comparable laws and regulations of any applicable foreign jurisdiction, based on a pre-offering valuation of one share of Common Stock of not less than three (3) times the Original Purchase Price of the Series C Preferred Stock (adjusted for stock splits, stock dividends, stock combinations, reclassifications and other recapitalization events occurring after the Effective Date), and which results in aggregate net cash proceeds to the Corporation of not less than Twenty Five Million Dollars (\$25,000,000).

“Series C Purchase Agreement” means that certain Series C Participating Convertible Preferred Stock Purchase Agreement dated on or about October 14, 2010 by and among the Corporation and certain purchasers of the Series C Preferred Stock, as the same is amended and in effect from time to time.

“Stock Option Plans” means any stock option, stock grant or other equity incentive plan authorized and approved by (i) a majority of the Board (which approval must include the vote, consent or approval of the Launch Director) and (ii) the holders of Series C Preferred Stock in accordance with Section 4.2(d)(ii).

“Stockholders Agreement” means that certain Stockholders Agreement dated on or about October 14, 2010 by and among the Corporation and its stockholders, as the same is amended and in effect from time to time.

“Supermajority Vote” means, as to any class(es) or series of stock, the vote or written consent of the holders of at least seventy-five percent (75%) in voting power of such class(es) or series of stock then outstanding (such voting power determined as if all shares of such series of Preferred Stock have been converted into Common Stock pursuant to this Certificate).

4.2 Terms of the Preferred Stock.

(a) Dividends.

(i) Series C Preferred Stock.

(A) The holder of each share of Series C Preferred Stock shall be entitled to receive, before any dividends shall be declared and paid upon or set aside for the Junior Stock, when as declared by the Board, out of funds legally available for that purpose, accruing dividends in cash at the rate per annum per share equal to \$0.349617 per share, compounded annually on a cumulative basis, payable when declared, or upon a Liquidation Event or upon redemption in accordance with, and to the extent provided in, Section 4.2(c) hereof.

(B) Dividends on shares of Series C Preferred Stock shall be cumulative from the Original Issuance Date thereof (whether or not there shall be net profits or net assets of the Corporation legally available for the payment of such dividends), so that, if at any time Full Cumulative Dividends upon the Series C Preferred Stock shall not have been paid or declared and a sum sufficient for payment thereof set apart, the amount of the deficiency in such dividends shall be fully paid or dividends in such amount shall be declared on the shares of the Series C Preferred Stock and a sum sufficient for the payment thereof shall be set apart for such payment, before any dividend shall be declared or paid or any other distribution ordered or made upon any Junior Stock applicable to the Series C Preferred Stock and before any sum or sums shall be set aside for or applied to the purchase or redemption of Junior Stock applicable to the Series C Preferred Stock. With respect to rights to dividends, the Series C Preferred Stock shall rank prior to the Junior Stock applicable to the Series C Preferred Stock. Any dividends declared upon the Series C Preferred Stock in addition to accruing dividends as set forth in Section 4.2(a)(i) shall be declared pro rata per share. All payments due under this Section 4.2(a) to any holder of shares of Series C Preferred Stock shall be made to the nearest cent. So long as there exists any Accrued Dividends, the Corporation shall not pay or declare any dividends on or make or set aside any other distribution on any Junior Stock applicable to the Series C Preferred Stock.

(ii) The holder of each share of Preferred Stock shall participate, on an as-converted basis, in any dividends paid on the Common Stock.

(b) Rights on a Liquidation Event.

(i) Series C Preferred Stock. Upon the occurrence of a Liquidation Event, the holders of shares of Series C Preferred Stock then outstanding, by reason of their ownership thereof, shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, an amount per share equal to (A) the Original Purchase Price for the Series C Preferred Stock (i.e., \$4.66156) plus (B) all Accrued Dividends thereon (the "**Series C Liquidation Amount**"). The Series C Liquidation Amount is to be paid in full before any payment shall be made to any holders of Junior Stock applicable to the Series C Preferred Stock.

If, upon any Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay all such holders of shares of Series C Preferred Stock

the full Series C Liquidation Amount, such holders shall share ratably in any distribution of assets according to the respective amounts which would be payable in respect of the shares of Series C Preferred Stock held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(ii) Series A and B Preferred Stock. Subject to the provisions of Section 4.2(b)(i), upon the occurrence of a Liquidation Event, the holders of shares of Series A Preferred Stock and Series B Preferred Stock then outstanding, by reason of their ownership thereof, shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, an amount per share equal to the Original Purchase Price for the Series A Preferred Stock (i.e., \$1.80) or the Series B Preferred Stock (i.e., \$4.36), as applicable (the “**Series A-B Liquidation Amount**”). The Series A-B Liquidation Amount is to be paid in full before any payment shall be made to any holders of Junior Stock applicable to the Series A Preferred Stock and Series B Preferred Stock. None of the Series A-B Liquidation Amount is to be paid until the Series C Liquidation Amount shall be paid in full as set forth in Section 4.2(b)(i).

If, upon any Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay all such holders of shares of Series A Preferred Stock and Series B Preferred Stock the full Series A-B Liquidation Amount, such holders shall share ratably in any distribution of assets according to the respective amounts which would be payable in respect of the shares of Series A Preferred Stock and Series B Preferred Stock held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(iii) Allocation of Cash and Non-Cash Consideration. In the event that such distribution of assets pursuant to this Section 4.2 is other than in cash, such distribution of cash and other assets (including securities) shall be made ratably among the stockholders in accordance with this Section 4.2 based upon the fair market value of such assets as mutually agreed to by the Corporation and the Supermajority Vote of the holders of Preferred Stock, and, if they cannot agree, as determined by a nationally recognized valuation consultant mutually selected by the Supermajority Vote of the holders of Series C Preferred Stock, and the Corporation (or if such selection cannot be so mutually selected, by a nationally recognized independent valuation consultant selected by the American Arbitration Association in accordance with its rules).

(iv) Participation. In the event of any Liquidation Event, after the Series C Liquidation Amount has been paid in full to the holders of Series C Preferred Stock and the Series A-B Liquidation Amount has been paid in full to the holders of Series A Preferred Stock and Series B Preferred Stock, the holders of any Common Stock and the holders of any Preferred Stock shall be entitled to participate ratably, on an as-converted basis in the case of such Preferred Stock, in all remaining assets of the Corporation available for distribution to its stockholders.

(c) Redemption.

(i) Optional Redemption. At any time after the earlier to occur of (x) the date of a Liquidation Event or (y) such date that is five (5) years after the Effective Date,

upon the Supermajority Vote of the holders of Series C Preferred Stock (the “**Redemption Initiating Holders**”) and pursuant to their written notice to the Corporation (the “**Redemption Notice**”), the Corporation shall, out of funds legally available therefor (to the extent allowed by law), redeem all of the shares of Series C Preferred Stock of the Redemption Initiating Holders which are elected to be redeemed pursuant to such Redemption Notice, plus any other shares of Series C Preferred Stock that other holders of Series C Preferred Stock (the “**Joining Redemption Holders**”) elect in their discretion to be included in the redemption if such election is made by written Redemption Notice to the Corporation within fifteen (15) days after they receive the Corporation Redemption Notice (as defined below). As to each Redemption Notice from Redemption Initiating Holders (each a “**Initiating Redemption Notice**”), the redemption of shares of Series C Preferred Stock held by the applicable Redemption Initiating Holders, and those Joining Redemption Holders who deliver Redemption Notices based upon such Initiating Redemption Notice, shall be deemed a single redemption event (as to each such event, a “**Redemption**”). Notwithstanding the foregoing, as to each Redemption, the minimum aggregate amount of shares of Series C Preferred Stock that may be elected to be redeemed by the Redemption Initiating Holders and Joining Redemption Holders on a combined basis thereunder shall be 25% (rounded to the nearest share) of the aggregate outstanding shares of Series C Preferred Stock at such time. Each Redemption shall occur in the following tranches on the following dates (each a “**Redemption Date**”):

(A) one-third (1/3) of the shares of Series C Preferred Stock subject to such Redemption shall be redeemed on a date selected by the Corporation that is no later than sixty (60) days following the Redemption Notice (the “**Initial Redemption Date**”);

(B) one-third (1/3) of the shares of Series C Preferred Stock subject to such Redemption shall be redeemed on that date which is twelve (12) months after the Initial Redemption Date; and

(C) the balance of the shares of Series C Preferred Stock subject to such Redemption shall be redeemed on that date which is twenty-four (24) months after the Initial Redemption Date.

Upon receiving any Initiating Redemption Notice, the Corporation shall promptly send notice thereof to each holder of Series C Preferred Stock other than the Initiating Redemption Holders (the “**Corporation Redemption Notice**”), which notice shall set forth (a) the Initial Redemption Date (which date shall be no earlier than thirty (30) days following the date of the Corporation Redemption Notice) and each subsequent Redemption Date, (b) the number of shares of Preferred Stock held by such holder that the Corporation may redeem on each Redemption Date, and (c) the Redemption Price payable on the Initial Redemption Date.

The amount per share payable upon any Redemption of shares of Series C Preferred Stock pursuant to this subsection shall be equal to the greater of (a) (x) the Original Purchase Price of such share of Series C Preferred Stock multiplied by two, plus (y) all Accrued Dividends or (b) the Current Market Price of a share of Common Stock, with all shares of Series C Preferred Stock being redeemed to be deemed to have been converted into shares of Common Stock immediately prior to such redemption at the then-conversion rate (the “**Redemption Price**”).

(ii) **Pro Rata.** If, on any Redemption Date, fewer than all shares of Series C Preferred Stock then outstanding are to be redeemed in accordance with this Section, the shares to be redeemed shall be allocated pro rata among the holders whose shares are being redeemed (based on the number of shares Series C Preferred Stock owned by each holder).

(iii) **Payment of Redemption Price; Termination of Rights.** On or before the applicable Redemption Date, the holders of record of shares of Series C Preferred Stock to be redeemed on such Redemption Date in accordance with this Section shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation and each holder surrendering its certificate or certificates (or a lost certificate affidavit and agreement) shall be entitled to receive the applicable Redemption Price on the Redemption Date. On and after any Redemption Date, all rights in respect of the shares of Series C Preferred Stock to be redeemed (including without limitation rights to convert such shares of Series C Preferred Stock into shares of Common Stock pursuant to Section 4.2(e)), except the right to receive the applicable Redemption Price, shall cease and terminate, and such shares shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation; provided, however, that, if any default shall be made by the Corporation in the payment of the applicable Redemption Price as provided in the previous sentence, any and all such rights in respect of the shares of Series C Preferred Stock (including without limitation rights to convert such shares of Series C Preferred Stock into shares of Common Stock pursuant to Section 4.2(e)) shall be exercisable by the respective holders thereof until such default is cured. If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Series C Preferred Stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(d) **Voting.**

(i) **Votes Generally with Common Stock.** In addition to the rights specified in Section 4.2(d)(ii) below, and any other rights provided in the Corporation's Bylaws, the Series C Purchase Agreement or any agreement among the Corporation and any of its stockholders, or by law, the shares of Preferred Stock shall entitle each holder thereof to such number of votes as shall equal the number of shares of Common Stock (rounded to the nearest whole number) into which the shares of Preferred Stock held by such holder are then convertible pursuant to Section 4.2(e) and shall entitle each such holder to vote on all matters as to which holders of Common Stock shall be entitled to vote (including those set forth in Section 4.2(d)(ii) below), in the same manner and with the same effect as such holders of Common Stock, voting together with the holders of Common Stock as one class.

(ii) **Separate Class Vote.** The Majority Vote of the Series C Preferred Stock, as a single and separate class, in person or by proxy, at a special or annual meeting called for the purpose, or by written consent in lieu of a meeting, shall be required before the Corporation may:

- (A) effect a Liquidation Event;
- (B) amend this Certificate or the Bylaws of the Corporation;
- (C) authorize or issue any class or series of capital stock having preferences or rights equal to or greater than the Series C Preferred Stock in any respect;
- (D) create or issue any debt securities, incur any indebtedness for borrowed money (including liabilities that are treated as such under GAAP) or grant any guaranty relating to debt securities or indebtedness of any other Person that (I) are convertible or exchangeable into any Equity Security of the Corporation, (II) are issued in conjunction with warrants or options to acquire any Equity Security of the Corporation, (III) are in excess of \$100,000, or (IV) when aggregated with all other outstanding debt securities, would cause indebtedness for borrowed money and guaranteed amounts to exceed \$100,000;
- (E) pay dividends on the Common Stock;
- (F) alter or change any of the rights, preferences or privileges of the Series C Preferred Stock, including by merger, consolidation or otherwise;
- (G) reclassify, alter or amend, whether by amendment to the Certificate or by merger, consolidation or otherwise, any existing class or series of capital stock of the Corporation that is junior to the Series C Preferred Stock in right of redemption, liquidation, voting or dividends if such reclassification, alteration or amendment would render such other class or series of capital stock senior to or *pari passu* with the Series C Preferred Stock in respect of any such right, preference or privilege
- (H) issue any shares of Series C Preferred Stock other than pursuant to the Series C Purchase Agreement;
- (I) pay any dividends or redeem or repurchase any outstanding Equity Security, except for (1) redemptions of, or dividends payable on, Series C Preferred Stock under this Certificate, or (2) repurchases of Equity Securities from employees terminated from service with the Corporation or any subsidiary;
- (J) change the size of, or election procedure of, the Board, whether set forth in the Bylaws or otherwise;
- (K) change the number of shares reserved under any authorized Stock Option Plan;

(L) engage in any substantial change in, or take on a significantly different and more capital intensive, line of business by the Corporation or any subsidiary than that engaged in on the Effective Date; or

(M) authorize an initial public offering of securities of the Corporation, or engage any investment banking firm or underwriter in connection therewith.

(e) Conversion.

(i) Optional Conversion.

(A) The holder of any shares of Preferred Stock shall have the right, at such holder's option, at any time or from time to time (subject to Section 4.2(e)(iii)) to convert any or all such holder's shares of Preferred Stock into such whole number of fully paid and nonassessable shares of Common Stock as equals:

(I) the product of (x) the Original Purchase Price multiplied by (y) the number of shares of Preferred Stock being converted,

divided by

(II) the Conversion Price (as last adjusted and then in effect) for the shares of the Preferred Stock being converted,

by surrender of the certificates representing the shares of Preferred Stock to be so converted in the manner provided Section 4.2(e)(i)(B) below. The conversion price (the "**Conversion Price**") for the Preferred Stock shall initially be equal to the following: (a) with respect to the Series A Preferred Stock, the applicable Original Purchase Price therefor; (b) with respect to the Series B Preferred Stock, the applicable Original Purchase Price therefor; and (c) with respect to the Series C Preferred Stock, initially the applicable Original Purchase Price therefor, provided, however, that such Conversion Price for Series C Preferred Stock shall be subject to adjustment as set forth in Section 4.2(e)(i)(D) below.

(B) The holder of any shares of Preferred Stock may exercise such holder's conversion right pursuant to this Section 4.2(e)(i) by delivering to the Corporation during regular business hours at the office of any transfer agent of the Corporation for the Preferred Stock or at such other place as may be designated by the Corporation, the certificate or certificates for the shares to be converted, duly endorsed or assigned in blank or to the Corporation (if required by it) accompanied by written notice stating that such holder elects to convert such shares and stating the name or names (with address) in which the certificate or certificates for the shares of Common Stock are to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. Conversion shall be deemed to have been effected with respect to conversion under (1) Section 4.2(e)(i)(A) above, on the date when the aforesaid delivery is made, and (2) Section 4.2(e)(ii), upon the consummation of a Qualified IPO or the date and time set forth in a Conversion Notice (as such term is defined below), as the case may be, and each and any such date is referred to herein as the "**Conversion**

Date”. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, or upon the written order of such holder to the place designated by such holder, a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and a check or cash in respect of any fractional interest in a share of Common Stock, as provided in Section 4.2(e)(i)(C) below, payable with respect to the shares of Preferred Stock so converted up to and including the Conversion Date. The Person in whose names the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of Common Stock on the applicable Conversion Date unless the transfer books of the Corporation are closed on that date, in which event such holder shall be deemed to have become a holder of Common Stock on the next succeeding date on which the transfer books are open, but the Conversion Price shall be that in effect on the Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Preferred Stock surrendered for conversion, the Corporation shall issue and deliver to, or upon the written order of, the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Preferred Stock representing the unconverted portion of the certificate so surrendered, which new certificate shall entitle the holder thereof to dividends on the shares of Preferred Stock represented thereby to the same extent as if the certificate theretofor covering such unconverted shares had not been surrendered for conversion.

(C) No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Preferred Stock. If more than one share of Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to the then-fair market value of a share of Common Stock, as determined in good faith by the Board, multiplied by such fractional interest. Fractional interests shall not be entitled to dividends, and the holders of a fractional interest shall not be entitled to any rights as stockholders of the Corporation in respect of such fractional interest.

(D) Unless waived in any instance by the Supermajority Vote of the holders of Series C Preferred Stock, the Conversion Price for Series C Preferred Stock shall be subject to adjustment from time to time as follows:

(I) If the Corporation shall at any time or from time to time after the Filing Date issue or be deemed (by virtue of any of the provisions of this Section 4.2(e)(i)(D)) to have issued any shares of Common Stock without consideration or for a consideration per share (the “**Last Issue Price**”) less than the Conversion Price for a share of Series C Preferred Stock in effect immediately prior to each such issuance or deemed issuance of Common Stock, the Conversion Price for such share of Series C Preferred Stock in effect immediately prior thereto shall forthwith be adjusted, as of the opening of business on the date of such issuance, as follows:

$$CP = \frac{(CP1)(OS1) + (CP2)(OS2)}{(OS1) + (OS2)}$$

Where:

CP equals the adjusted Conversion Price for Series C Preferred Stock;

CP1 equals the Conversion Price for Series C Preferred Stock in effect immediately prior to such issuance; and

OS1 equals the number of outstanding shares of Common Stock deemed outstanding immediately prior to such issuance on an As-Converted, Fully-Diluted Basis, including Preferred Stock on an as-converted basis;

CP2 equals the average price per share received by the Corporation upon such issuance; and

OS2 equals the number of shares of Common Stock issued or sold or deemed to have been issued or sold upon such issuance.

(II) The foregoing shall not apply in connection with any issuance of Excluded Securities. For the purposes of any adjustment of the Conversion Price for Series C Preferred Stock pursuant to this clause (I), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor.

(2) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board, irrespective of any accounting treatment.

(3) In case of the issuance of (i) options/warrants to purchase or rights to subscribe for Common Stock, (ii) securities by their terms convertible into or exchangeable for Common Stock, or (iii) options/warrants to purchase or rights to subscribe for such convertible or exchangeable securities:

a. the aggregate number of shares of Common Stock deliverable upon exercise of such options/warrants to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options/warrants or rights were issued/granted and for a consideration equal to the consideration (determined in the manner provided in subdivisions 4.2(e)(i)(D)(I)(1) and 4.2(e)(i)(D)(I)(2) above), if any, received by the Corporation upon the issuance/grant of such options/warrants or rights plus the purchase or exercise price provided in such options/warrants or rights for the Common Stock covered thereby;

b. the aggregate number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options/warrants to

purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options/warrants or rights were issued/granted and for a consideration equal to the consideration received, if any, by the Corporation for any such securities and related options/warrants or rights (excluding any cash received on accounts of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options/warrants or rights (the consideration in each case to be determined in the manner provided in subdivisions 4.2(e)(i)(D)(I)(1) and 4.2(e)(i)(D)(I)(2) above);

c. on any change in the number of shares or exercise price of Common Stock deliverable upon the exercise of any such options/warrants or rights or conversions of or exchange for such convertible or exchangeable securities, other than a change resulting from the antidilution provisions thereof, the Conversion Price for Series C Preferred Stock shall forthwith be readjusted to such Conversion Price for Series C Preferred Stock as would have been obtained had the adjustment made upon the issuance/grant of such options/warrants, rights or securities not been made upon the basis of such change; and

d. on the expiration of any such options/warrants or rights, the termination of any such rights to convert or exchange or the expiration of any options/warrants or rights related to such convertible or exchangeable securities, the Conversion Price for Series C Preferred Stock shall forthwith be readjusted to such Conversion Price for Series C Preferred Stock as would have obtained had such options/warrants, rights, securities or options or rights related to such securities not been issued/granted.

(III) If, at any time after the Filing Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, upon the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the Conversion Price for Series C Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series C Preferred Stock shall be increased in proportion to such increase in outstanding shares.

(IV) If, at any time after the Filing Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, upon the record date for such combination, the Conversion Price for Series C Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series C Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(V) All calculations under this Section 4.2(e)(i)(D) shall be made to the nearest one cent (\$.01) or to the nearest one-tenth (1/10) of a share, as the case may be.

(VI) In any case in which the provisions of Section 4.2(e)(i)(D) shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (i) issuing to the holder of any share of Series C Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock, securities, cash or other property issuable upon such conversion by reason of the adjustment required by such event over and above the shares of Common Stock, securities, cash or other property issuable upon such conversion before giving effect to such adjustment and (ii) if applicable, paying to such holder any amount in cash in lieu of a fractional share of Common Stock pursuant to Section 4.2(e)(i)(C) above; provided, however, that the Corporation shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares of Common Stock, securities, cash and/or other property upon the occurrence of the event requiring such adjustment.

(E) Whenever the Conversion Price for Series C Preferred Stock shall be adjusted as provided in Section 4.2(e)(i)(D), the Corporation shall, as promptly as reasonably practicable, furnish to each holder of Series C Preferred Stock a statement showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment (or, if applicable, the kind and amount of securities, cash or other property into which the Series C Preferred Stock shall be convertible after such adjustment), such statement to be sent by first class, certified mail, return receipt requested, postage prepaid, to each holder of shares of Series C Preferred Stock at such holder's address appearing on the Corporation's records. Where appropriate, such statement may be given in advance and may be included as part of a notice required to be mailed under the provisions of Section 4.2(e)(i)(F) below.

(F) In the event that the Corporation shall propose to take any action of the types described in clauses (I), (II), (III) or (IV) of Section 4.2(e)(i)(D) above, the Corporation shall give notice to each holder of shares of Series C Preferred Stock, in the manner set forth in Section 4.2(e)(i)(E) above, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price for Series C Preferred Stock and the number, kind or class of shares or other securities, cash or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of Series C Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed or to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(G) The Corporation shall pay all documentary, stamp or other transactional taxes attributable to the issuance or delivery of shares of capital stock of the Corporation upon conversion of any shares of Preferred Stock; provided, however, that the Corporation shall not be required to pay any taxes which may be payable in respect of any

transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Preferred Stock in respect of which such shares are being issued.

(H) Subject to the receipt of requisite stockholder approval, the Corporation shall reserve, free from preemptive rights, out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, sufficient shares to provide for the conversion of all outstanding shares of Preferred Stock.

(I) All shares of Common Stock reserved in accordance with Section 4.2(e)(i)(H), above, will, upon issuance by the Corporation, be validly issued, fully paid and nonassessable, with no personal liability attaching to the ownership thereof, and free from all taxes, liens or charges with respect thereto.

(J) In case, at any time after the Filing Date, of any capital reorganization, or any reclassification of the stock of the Corporation (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split up or combination of shares), or the consolidation or merger of the Corporation with or into another Person (other than a consolidation or merger in which the Corporation is the continuing corporation and which does not result in any change in the Common Stock or any Preferred Stock) or of the sale or other disposition of all or substantially all the properties and assets of the Corporation as an entirety to any other Person, each share of Preferred Stock shall after such reorganization, reclassification, consolidation, merger, sale or other disposition be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger or to which such properties and assets shall have been sold or otherwise disposed to which the holder of the number of shares of Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or other disposition) upon conversion of such share would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or other disposition. The provisions of this Section 4.2(e)(i)(J) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions. With respect to any of the foregoing actions, the Corporation shall give notice to each holder of shares of Preferred Stock, to be sent by first class, certified mail, return receipt requested, postage prepaid, to each holder of shares of Preferred Stock at such holder's address appearing on the Corporation's records, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed or to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(ii) **Automatic Conversion.** Upon (x) the date and time specified by a Supermajority Vote of the holders of Series C Preferred Stock (which shall be no earlier than

five (5) business days and no later than thirty (30) days after the date of such Supermajority Vote of the Series C Preferred Stock) indicated by written notice to the Corporation (a “**Conversion Notice**”) or (y) the consummation of a Qualified IPO, all shares of Preferred Stock then outstanding shall, without any action on the part of the holders thereof, be deemed automatically converted into such whole number of fully paid and nonassessable shares of Common Stock as is determined under the conversion formula set forth in Section 4.2(e)(i)(A). Promptly following receipt of a Conversion Notice, the Corporation shall send written notice to all holders of Preferred Stock of such automatic conversion, which notice shall set forth the Conversion Date. Such notice need not be sent in advance of the Conversion Date. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. The provisions of Section 4.2(e)(i) regarding shall apply to any automatic conversion.

(f) **Waiver.** Any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of the respective class or series of Preferred Stock by a Supermajority Vote of such class or series of Preferred Stock.

(g) **Notice.** Any notice required or permitted by the provisions of this Section 4.2 to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the DGCL, and shall be deemed sent upon such mailing or electronic transmission.

4.3 Common Stock. The holders of Common Stock shall have the following rights and privileges:

(a) **Voting Rights.** Each holder of record of Common Stock shall be entitled to one vote for each share of stock held with respect to each matter voted on by the stockholders of the Corporation.

(b) **Voting Requirements.** Stockholder action on any matter whatsoever shall require the affirmative vote of at least a majority of the shares of Common Stock issued and outstanding at the time of such vote, and for those matters for which the vote of a greater proportion of such shares may be specified by law, the affirmative vote of the proportion of such shares so specified shall be required.

ARTICLE 5 BOARD OF DIRECTORS; CORPORATE OPPORTUNITY

5.1 General. For the management of the business and for the conduct of the affairs of the Corporation, it is further provided that the management of the business and the conduct of the affairs of the Corporation shall be vested in its Board. The number of directors which shall

constitute the whole Board shall be fixed by, or in the manner provided in, the Bylaws and any agreement among the Corporation and any of its stockholders. No election of directors need be by written ballot.

5.2 Corporate Opportunity. The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

ARTICLE 6 **LIMITATION OF LIABILITY; INDEMNIFICATION**

6.1 Personal Liability. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended after approval by the stockholders of this Section 6.1 to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of the foregoing provisions of this Section 6.1 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

6.2 Actions, Suits and Proceedings Other Than by or in the Right of the Corporation. To the fullest extent permitted by law, the Corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that the person is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an “**Indemnitee**”), or by reason of any action alleged to have been taken or omitted in such capacity, against all judgments, fines and amounts paid in settlement actually and reasonably incurred by the person or the person’s appeal therefrom, if the person acted in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its

equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he/she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful.

6.3 Actions or Suits by or in the Right of the Corporation. The Corporation shall, to the fullest extent permitted by law, indemnify any Indemnitee who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all amounts paid in settlement actually and reasonably incurred by the person or on the person's behalf in connection with such action, suit or proceeding and any appeal therefrom, if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses (including attorneys' fees) which the Court of Chancery of Delaware or such other court shall deem proper.

6.4 Indemnification for Expenses of Successful Party. Notwithstanding the other provisions of this Article 6, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 6.2 or 6.3 of this Article 6, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, he/she shall be indemnified against expenses (including reasonable attorneys' fees) actually and reasonably incurred by him/her or on his/her behalf in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to the Indemnitee, (ii) an adjudication that the Indemnitee was liable to the Corporation, (iii) a plea of guilty or nolo contendere by the Indemnitee, (iv) an adjudication that the Indemnitee did not act in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (v) with respect to any criminal proceeding, an adjudication that the Indemnitee had reasonable cause to believe his/her conduct was unlawful, the Indemnitee shall be considered for the purpose hereof to have been wholly successful with respect thereto.

6.5 Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, the Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving the Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnitee. After notice from the Corporation to the Indemnitee of its election so to assume such defense, the Corporation shall not be liable to the Indemnitee for

any legal or other expenses subsequently incurred by the Indemnitee in connection with such claim, other than as provided below in this Section 6.5. The Indemnitee shall have the right to employ the Indemnitee's own counsel in connection with such claim, but the fees and expenses of such assumption of the defense thereof shall be at the expense of the Indemnitee unless (i) the employment of counsel by the Indemnitee has been authorized by the Corporation, (ii) counsel to the Indemnitee shall have reasonably concluded that there may be a conflict of interest or conflict in the position on any significant issue between the Corporation and the Indemnitee in the conduct of the defense of such action, or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the reasonable fees and expenses of counsel for the Indemnitee shall be at the expense of the Corporation. The Corporation shall not be entitled, without the consent of the Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for the Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above.

6.6 Advance of Expenses. Subject to the provisions of Section 6.7 below, in the event that the Corporation does not assume the defense pursuant to Section 6.5 of any action, suit, proceeding or investigation of which the Corporation receives an indemnification notice under this Article 6, any reasonable expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal action, suit proceeding or investigation or any appeal therefrom may, with the approval of the Board, be paid by the Corporation in advance of the final disposition of such matter, provided, however, that the payment of such expenses incurred by an Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article 6. Such undertaking may be accepted without reference to the financial ability of such person to make such repayment.

6.7 Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 6.2, 6.3, 6.4 or 6.5, the Indemnitee shall submit to the Corporation a written request, including in such request such documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification or advancement of expenses. Any such indemnification or advancement of expenses shall be made promptly, and in any event within sixty (60) days after receipt by the Corporation of the written request of the Indemnitee, unless, with respect to requests under Section 6.2, 6.3 or 6.4, the Corporation determines, by clear and convincing evidence, within such 60-day period that the Indemnitee did not meet the applicable standard of conduct set forth in Section 6.2 or 6.3, as the case may be. Such determination shall be made at the option of the Corporation in each instance by (i) a majority vote of a quorum of the directors of the Corporation consisting of persons who are not at that time parties of the action, suit or proceeding in question ("disinterested directors"), (ii) if no such quorum is obtainable, a majority vote of a committee of one or more disinterested directors, or (iii) if there are no disinterested directors, at the option of a majority vote of the Board, either (A) independent legal counsel (who may be regular legal counsel to the Corporation), or (B) a court of competent jurisdiction.

6.8 Remedies. The right to indemnification or advances as granted by this Article 6 shall be enforceable by the Indemnitee in any court of competent jurisdiction if the Corporation

denies such request, in whole or in part, or if no disposition thereof is made within the 60-day period referred to above in Section 6.7. Unless otherwise provided by law, the burden of proving that the Indemnitee is not entitled to indemnification or advancement of expenses under this Article 6 shall be on the Corporation. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has not met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6.7 that the Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. The Indemnitee's reasonable expenses (including attorneys' fees) incurred in connection with successfully establishing his/her right to indemnification in any such proceeding shall also be indemnified by the Corporation.

6.9 Subsequent Amendment. No amendment, termination or repeal of this Article 6 shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

6.10 Other Rights. The indemnification and advancement of expenses provided by this Article 6 shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in his/her official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of the Indemnitee. Nothing contained in this Article 6 shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article 6. In addition, the Corporation may, to the extent authorized from time to time by its Board, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article 6.

6.11 Partial Indemnification. If an Indemnitee is entitled under any provision of this Article 6 to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by him/her or on his/her behalf in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify the Indemnitee for the portion of such reasonable expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which the Indemnitee is entitled.

6.12 Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability, or loss incurred by him/her in any such capacity, or

arising out of his/her status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

6.13 Savings Clause. If this Article 6 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any reasonable expenses (including attorneys' fees), and any judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by an applicable portion of this Article 6 that shall not have been invalidated and to the fullest extent permitted by applicable law.

6.14 Definitions. Terms used in this Article 6 and defined in Section 145(h) and Section 145(i) of the DGCL shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

6.15 Subsequent Legislation. If the DGCL is amended after adoption of this Article 6 to expand further the indemnification permitted to Indemnitees, then the Corporation shall indemnify such persons to the fullest extent permitted by the DGCL, as so amended.

6.16 Exception to Right of Indemnification. Notwithstanding any provision in this Article 6 to the contrary, the Corporation shall not be obligated to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of an Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by an Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law;

(c) in connection with any proceeding (or any part of any proceeding) initiated by an Indemnitee, including any proceeding (or any part of any proceeding) initiated by an Indemnitee against the Corporation or any or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the proceeding (or the relevant part of any proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) in connection with any proceeding (or any part of any proceeding) initiated by the Corporation or any of its subsidiaries against an Indemnitee, unless the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law.

6.17 Primacy of Indemnification. The Corporation hereby acknowledges that an Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by the fund/institution/entity with which an Indemnitee is associated and/or other sources (collectively, the "**Other Indemnitors**"). The Corporation hereby agrees that it is

the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by an Indemnitee are secondary), and that the Corporation will not assert that any Indemnitee must seek expense advancement or reimbursement, or indemnification, from any Other Indemnitor before the Corporation must perform its expense advancement and reimbursement, and indemnification obligations, hereunder. No advancement or payment by the Other Indemnitors on behalf of any Indemnitee with respect to any claim for which such Indemnitee has sought indemnification from the Corporation shall affect the foregoing. The Other Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery which any Indemnitee would have had against the Corporation if the Other Indemnitors had not advanced or paid any amount to or on behalf of such Indemnitee. If for any reason a court of competent jurisdiction determines that the Other Indemnitors are not entitled to the subrogation rights described in the preceding sentence, the Other Indemnitors shall have a right of contribution by the Corporation to the Other Indemnitors with respect to any advance or payment by the Other Indemnitors to or on behalf of an Indemnitee. Each Indemnitee and the Corporation hereby acknowledge and agree that each Other Indemnitor shall be a third party beneficiary of the indemnity provided to each such Indemnitee under this Article 6.

ARTICLE 7
INCORPORATOR

The name of the incorporator is Guy Minetti. The address of the incorporator is 10 Plateau Circle West, Bronxville, NY 1070.

IN WITNESS WHEREOF, this Certificate has been executed on this 14 day of October, 2010.

By: /s/ Guy Minetti
Guy Minetti
Incorporator