

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM303969

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
The American Academy, Inc.		08/19/2013	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Graduation Alliance, Inc.		
<b>Street Address:</b>	310 South Main Street, 12th Floor		
<b>City:</b>	Salt Lake City		
<b>State/Country:</b>	UTAH		
<b>Postal Code:</b>	84111		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 6</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4319181	NODROPOUTS	
<b>Registration Number:</b>	4367165	NODROPOUTS	
<b>Registration Number:</b>	4312725	RECOVER WHAT'S BEEN LOST	
<b>Registration Number:</b>	4312722	TAA	
<b>Registration Number:</b>	4312723	TOGETHER, LETS DO SOMETHING ABOUT IT	
<b>Registration Number:</b>	4312724	WILLGRADUATE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	8776655870		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	801.799.5825		
<b>Email:</b>	docket@hollandhart.com		
<b>Correspondent Name:</b>	H. Matthew Horlacher		
<b>Address Line 1:</b>	P.O. Box 11583		
<b>Address Line 4:</b>	Salt Lake City, UTAH 84110		
<b>ATTORNEY DOCKET NUMBER:</b>	74118.0005		
<b>NAME OF SUBMITTER:</b>	H. Matthew Horlacher		
<b>SIGNATURE:</b>	/hmhorlacher/		
<b>DATE SIGNED:</b>	05/08/2014		
<b>Total Attachments: 25</b>			

CH \$165.00 4319181

source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page1.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page2.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page3.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page4.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page5.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page6.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page7.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page8.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page9.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page10.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page11.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page12.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page13.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page14.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page15.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page16.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page17.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page18.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page19.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page20.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page21.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page22.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page23.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page24.tif  
source=Graduation Alliance - A&R Certificate of Incorporation (Aug. 19, 2013)#page25.tif

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "THE AMERICAN ACADEMY, INC.", CHANGING ITS NAME FROM "THE AMERICAN ACADEMY, INC." TO "GRADUATION ALLIANCE, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF AUGUST, A.D. 2013, AT 3:27 O'CLOCK P.M.

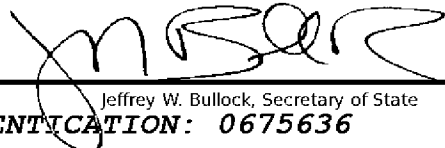
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4235148 8100

131002875



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0675636

DATE: 08-19-13

TRADEMARK  
REEL: 005276 FRAME: 0582

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
THE AMERICAN ACADEMY, INC.**

The American Academy, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

A. The name of the Corporation is The American Academy, Inc. The American Academy, Inc. was originally formed on October 13, 2006 as a limited liability company under the name The American Academy, LLC, and subsequently filed a certificate of conversion to a corporation on March 9, 2007.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

C. The text of the Certificate of Incorporation is amended and restated to read as set forth in **EXHIBIT A** attached hereto.

IN WITNESS WHEREOF, The American Academy, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Ray Kelly, a duly authorized officer of the Corporation, on August 19, 2013.

/s/ Ray Kelly \_\_\_\_\_  
Ray Kelly  
Chief Executive Officer

## EXHIBIT A

### ARTICLE I

The name of the Corporation is Graduation Alliance, Inc.

### ARTICLE II

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

### ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, Zip Code 19801. The name of the registered agent at such address is The Corporation Trust Company.

### ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is Two Hundred Thirty Four Million Five Hundred Ninety Thousand Nine Hundred Fifty-One shares (234,590,951), consisting of One Hundred Thirty-Seven Million (137,000,000) shares of Common Stock, \$0.0002 par value per share, and Ninety-Seven Million Five Hundred Ninety Thousand Nine Hundred Fifty-One (97,590,951) shares of Preferred Stock, \$0.0002 par value per share. The first Series of Preferred Stock shall be designated "**Series A Preferred Stock**" and shall consist of Eight Million (8,000,000) shares, the second series of Preferred Stock shall be designated "**Series B Preferred Stock**" and shall consist of Thirteen Million Five Hundred Ninety Thousand Nine Hundred Fifty-One (13,590,951) shares, and the third series of Preferred Stock shall be designated "**Series C Preferred Stock**" and shall consist of Seventy-Six Million (76,000,000) shares.

### ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) "**Change of Control**" shall be deemed to be occasioned by the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity or the entity controlling such surviving entity), as a result of shares in the Corporation held by such holders prior to such transaction, more than fifty percent (50%) of the total voting power represented by the voting

securities of the Corporation, such surviving entity or the entity that controls such surviving entity outstanding immediately after such transaction or series of transactions.

(b) **“Conversion Price”** shall mean \$0.18045 per share for the Series A Preferred Stock, \$0.23301 per share for the Series B Preferred Stock, and \$0.15501 per share for the Series C Preferred Stock (such price being subject to adjustment from time to time for Recapitalizations with respect to such series of Preferred Stock and as otherwise set forth elsewhere herein).

(c) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(d) **“Distribution”** shall mean the transfer of cash or other property without fair consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of such repurchase at the lower of cost or fair-market value, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, as approved by holders of at least two-thirds (2/3) of the then outstanding shares of Series C Preferred Stock, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder approved by the Board, including at least three of the Preferred Directors, (iv) shares withheld as payment of the exercise price or in satisfaction of any tax obligations in connection with the exercise of any Option issued pursuant to any equity incentive or similar incentive plan and held by then current or former employees, officers, directors or consultants of the Corporation, (v) any other repurchase or redemption of capital stock of the Corporation approved by the holders of at least 75% of the then outstanding shares of Common Stock and two-thirds of the Series C Preferred Stock, each voting as separate classes, (vi) repurchases of capital stock of the Corporation pursuant to the right of first refusal granted to the Corporation in any agreements among the Corporation and its stockholders approved by holders of at least two-thirds (2/3) of the then outstanding shares of Series C Preferred Stock or (vii) dividends and redemptions of the Preferred Stock as provided herein ((i) – (vii) each a **“Permitted Distribution”**).

(e) **“Dividend Rate”** shall mean the Series A Dividend Rate, Series B Dividend Rate and Series C Dividend Rate, as applicable.

(f) **“Filing Date”** shall mean the date upon which this Amended and Restated Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware.

(g) **“Liquidation Event”** shall include (unless the holders of at least sixty percent (60%) of the Preferred Stock then outstanding determine otherwise by vote or written consent): (a) a Change of Control; (b) a Sale of Assets; or (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(h) **“Liquidation Preference”** shall mean as to the Series A Preferred Stock \$0.20 per share, as to the Series B Preferred Stock \$0.3089 per share and as to the Series C Preferred Stock \$0.2325 (subject to adjustment from time to time for Recapitalizations with respect to such series of Preferred Stock), plus (i) any declared but unpaid dividends for such series of Preferred Stock and (ii), with respect to shares of the Series C Preferred Stock, the Series C Preferred Accruing Dividends (as defined below) per share.

(i) **“Options”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(j) **“Option Plan”** shall mean the Corporation’s 2008 Stock Plan.

(k) **“Original Issue Price”** shall mean \$0.20 per share for the Series A Preferred Stock, \$0.3089 per share for the Series B Preferred Stock and \$0.15501 per share for the Series C Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to such series of Preferred Stock).

(l) **“Preferred Stock”** shall mean the Series A Preferred Stock the Series B Preferred Stock and the Series C Preferred Stock.

(m) **“Purchase Agreement”** shall mean the Series C Preferred Stock and Warrant Purchase Agreement between the Corporation and the parties identified therein dated on or about the Filing Date.

(n) **“Recapitalization”** shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(o) **“Sale of Assets”** shall be, or be deemed to be, occasioned by the sale of all or substantially all of the assets of the Corporation or the exclusive licensing of all or substantially all of the Corporation’s intellectual property in a single transaction or series of related transactions unless otherwise determined by holders of at least sixty percent (60%) of the Preferred Stock.

(p) **“Series A Dividend Rate”** shall mean an annual rate of \$0.016 per share of Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to the Series A Preferred Stock and as otherwise set forth elsewhere herein).

(q) **“Series B Dividend Rate”** shall mean an annual rate of \$0.024712 per share of Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to the Series B Preferred Stock and as otherwise set forth elsewhere herein).

(r) **“Series C Dividend Rate”** shall mean an annual rate of \$0.01240 per share of Series C Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to the Series C Preferred Stock and as otherwise set forth elsewhere herein).

2. Dividends.

(a) Preferred Stock Dividend Preference on Series C Preferred Stock. Holders of Series C Preferred Stock, in preference to the holders of the Series A Preferred Stock, Series B Preferred Stock and Common Stock, on a *pari passu* basis among the holders of Series C Preferred Stock, shall be entitled to receive dividends at the Series C Dividend Rate per annum on each outstanding share of Series C Preferred Stock (the “**Series C Preferred Accruing Dividends**”). The Series C Preferred Accruing Dividends shall accrue on each share of Series C Preferred Stock, from the date of issuance of such share of Series C Preferred Stock. The Series C Preferred Accruing Dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative; *provided however*, that unless declared or except as set forth in this Section 2 or in Section 3 below, the Corporation shall be under no obligation to pay such Series C Preferred Accruing Dividends.

(b) Preferred Stock Dividend Preference on Series A Preferred Stock and Series B Preferred Stock. After the payment in full of the Series C Preferred Accruing Dividends, in any calendar year, the holders of outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on the Common Stock of the Corporation in such calendar year. Payment of any dividends to the holders of the Series A Preferred Stock and Series B Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rate for each such series of Preferred Stock, respectively. The right to receive dividends on shares of the Series A Preferred Stock and Series B Preferred Stock shall not be cumulative, and, other than if declared by the Board as set forth above, no right to such dividends shall accrue to holders of the Series A Preferred Stock and Series B Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year.

(c) No Distributions shall be made with respect to the Common Stock until (i) a dividend equal to the Series C Preferred Accruing Dividend is paid with respect to the Series C Preferred Stock, (ii) a dividend equal to applicable Dividend Rate is declared or paid with respect to the Series A Preferred Stock and Series B Preferred Stock, and (iii) all declared dividends on the Series A Preferred Stock and Series B Preferred Stock have been paid or set aside for payment to the holders of such Preferred Stock.

(d) Additional Dividends. After the payment or setting aside for payment of the dividends described in Section 2(a) and Section 2(b), any additional dividends (other than dividends on Common Stock payable solely in Common Stock) declared or paid in any fiscal year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective Conversion Rate.

(e) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in securities or property other than cash, the value of such Distribution shall be the fair market value of such securities or other property as determined in good faith by



the Board and the holders of at least two-thirds (2/3) of the of the then outstanding shares of Preferred Stock; *provided, however*, if the Board and the necessary holders of Preferred Stock are unable to agree upon such value, then the value shall be the value determined by an independent third party selected by the Board and the reasonable costs of the independent third party are to be paid by the Corporation (the “**Valuation Approval**”); *provided, however*, that any securities to be delivered to the holders of Preferred Stock or Common Stock shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 10-trading day period ending three (3) days prior to the date of Distribution;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 10-trading day period ending three (3) days prior to the date of Distribution; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board, subject to the Valuation Approval provided in Section 2(e) above.

(ii) The method of valuation of securities subject to investment letters or other restrictions on free marketability shall be to make an appropriate discount from the market value, determined as provided in paragraphs (i)(1), (i)(2) and (i)(3) above, to reflect the approximate fair market value thereof, as determined in good faith by the Board, subject to the Valuation Approval provided in this Section 2(e) above.

For the purposes of this Section 2(e), “trading day” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “closing prices” or “closing bid prices” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the NYSE Amex Equities exchange, or a NASDAQ exchange, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

### 3. Liquidation Rights.

(a) Series C Preferred Stock Liquidation Preference. In the event of any Liquidation Event, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock and Common Stock by reason of their ownership of such stock, on a *pari passu* basis, an amount per share for each share of Series C

Preferred Stock held by them equal to the applicable Liquidation Preference for such share (the "Series C Preference"). If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series C Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series C Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Series A Preferred Stock and Series B Preferred Stock Liquidation Preference. In the event of any Liquidation Event, and following the payment of all amounts set forth in Section 3(a) above, the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, on a pro rata and *pari passu* basis with each other, an amount per share for each share of Series A Preferred Stock or Series B Preferred Stock held by them equal to the applicable Liquidation Preference for such share. If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series A Preferred Stock and Series B Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(b), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(b).

(c) Remaining Assets. After the payment to the holders of Preferred Stock of the full preferential amounts specified by Section 3(a) and Section 3(b) above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed *pro rata* and *pari passu* to holders of the Common Stock and Series C Preferred Stock together on an as converted basis in proportion to the number of shares held by such holders until such time as the holders of the Series C Preferred Stock have received a total of three times the Series C Original Issue Price (i.e., \$0.46503 per share subject to adjustment from time to time for Recapitalizations with respect to such series of Preferred Stock) per share of Series C when combining the Series C Preference and any amount received through participation with holders of the Common Stock in a distribution of the remaining assets pursuant to this Section 3(c). After the payment of such amounts, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed to holders of the Common Stock in proportion to the number of shares held by such holders.

(d) Deemed Conversion. Notwithstanding anything in Sections 3(a), 3(b) or 3(c) to the contrary, if upon any Distribution, or series of Distributions, pursuant to this Section 3, the holders any series of the Preferred Stock would receive more than the aggregate amount pursuant to Sections, 3(a), 3(b) or 3(c), as applicable, if, immediately prior to the liquidation, dissolution or winding up of the Corporation, such holders were to convert the applicable shares of Preferred Stock held by them into shares of Common Stock, then the payment made to such holders pursuant to this Section 3(d) shall equal the amount such holders would receive if such holders had converted their shares of Preferred Stock into Common Stock immediately prior to the liquidation, dissolution or winding up of the Corporation . If the holders of Preferred Stock are treated as if they had converted shares of Preferred Stock into Common Stock pursuant to

this Section 3(d), then such holders shall not be entitled to receive any Distribution pursuant to Sections 3(a), 3(b) or 3(c), as applicable, that would otherwise be made to such holders.

(e) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets as determined in accordance with the same procedures as set forth in Section 2(e) above.

(f) Redemption Rights Upon Consummation of a Liquidation Event. In the event of a Liquidation Event which takes the form of a Sale of Assets, and the proceeds of the Liquidation Event are not distributed to the stockholders of the Corporation within 15 days after the Liquidation Event, then (A) the Corporation shall provide notice (the "**Asset Sale Notice**") to the holders of Preferred Stock not later than the 15th day after the Liquidation Event advising such holders of their right to require the redemption of such shares of Preferred Stock, and (B) if the holders of at least a majority of the then outstanding shares of Series C Preferred Stock so request in writing at any time within seven (7) days after delivery of the Asset Sale Notice, then the Corporation shall use the consideration received by the Corporation for such Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board) (the "**Net Proceeds**") to redeem, to the extent funds are legally available therefor, on or before the 30th day after such Liquidation Event (the "**Liquidation Redemption Date**"), all outstanding shares of Preferred Stock in the order of priority set forth in this Section 3 and at a price per share that shall be equal to the amount that would have been payable to each share of Preferred Stock had the consideration received for such Liquidation Event and all assets of the Corporation been distributed to the stockholders of the Corporation under a dissolution pursuant to this Section 3 (the "**Liquidation Redemption Price**"). Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Series C Preferred Stock, before any redemption of shares of Series A Preferred Stock or Series B Preferred Stock (the "**Junior Preferred**"), the Corporation shall redeem a pro rata portion, on a *pari passu* basis with holders of Series C Preferred Stock, of each holder's shares of Series C Preferred Stock to the fullest extent of such Net Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Net Proceeds 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. Thereafter, the Corporation shall use the remaining Net Proceeds to redeem a pro rata portion of each holder's shares of Series A Preferred Stock and Series B Preferred Stock, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Net Proceeds were sufficient to redeem all such Junior Preferred Stock, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Sections 3(h) and 3(i) below shall apply to the redemption of Preferred Stock pursuant to this Section 3(f).

(g) Redemption Rights.

(i) Series C Preferred Stock. At any time after the seventh (7<sup>th</sup>) anniversary of the first sale of shares of Series C Preferred Stock, and at the written election of the holders of at least a majority of the outstanding shares of Series C Preferred Stock, the

Corporation shall redeem, out of funds legally available therefor, all (but not less than all) outstanding shares of Series C Preferred Stock which have not been converted into Common Stock pursuant to Section 4 hereof, in two (2) equal annual installments (each a “**Series C Redemption Date**”). The Corporation shall redeem each share of Series C Preferred Stock by paying a cash amount per share equal to the Liquidation Preference for such share (the “**Series C Redemption Price**”). The number of shares of Series C Preferred Stock that the Corporation shall be required under this Section 3 to redeem on any one (1) Series C Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series C Preferred Stock outstanding immediately prior to the Series C Redemption Date by (ii) the number of remaining Series C Redemption Dates (including the Series C Redemption Date to which such calculation applies). If on any Series C Redemption Date, the number of shares of Series C Preferred Stock that may then be legally redeemed by the Corporation is less than the number of such shares to be redeemed, then the shares to be redeemed that may not be legally redeemed will be redeemed as soon as the Corporation has legally available funds therefore.

(ii) Series A Preferred Stock and B Preferred Stock. At any time after later of (x) the seventh (7<sup>th</sup>) anniversary of the first sale of shares of Series C Preferred Stock and (y) such time as there are no shares of Series C Preferred Stock outstanding, and at the written election of the holders of at least a sixty percent (60%) of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting as a single class on an as-if converted basis, the Corporation shall redeem, out of funds legally available therefor, all (but not less than all) outstanding shares of Series A Preferred Stock and Series B Preferred Stock which have not been converted into Common Stock pursuant to Section 4 hereof, in two (2) equal annual installments (each a “**Series A/B Redemption Date**” and together with each Series C Redemption Date, each a “**Redemption Date**”). The Corporation shall redeem each share of Series A Preferred Stock and Series B Preferred Stock by paying a cash amount per share equal to the Liquidation Preference for such share (the “**Series A/B Redemption Price**” and together with each Series C Redemption Price, each a “**Redemption Price**”). The number of shares of Series A Preferred Stock and Series B Preferred Stock that the Corporation shall be required under this Section 3 to redeem on any one (1) Series A/B Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series A Preferred Stock and Series B Preferred Stock outstanding immediately prior to the Series A/B Redemption Date by (ii) the number of remaining Series A/B Redemption Dates (including the Series A/B Redemption Date to which such calculation applies). If on any Series A/B Redemption Date, the number of shares of Series A Preferred Stock and Series B Preferred Stock that may then be legally redeemed by the Corporation is less than the number of such shares to be redeemed, then the shares to be redeemed that may not be legally redeemed will be redeemed as soon as the Corporation has legally available funds therefore.

(h) Pro Rata Redemption Within Series. Any redemption effected pursuant to Section 3(f) or Section 3(g) shall be made on a pro rata basis among the holders of a series of Preferred Stock in proportion to the Redemption Price or Liquidation Redemption Price, as the case may be, applicable to the Preferred Stock then held by them.

(i) Redemption Procedures. At least fifteen (15) days, but no more than thirty (30) days, prior to the applicable Redemption Date or Liquidation Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of

business on the business day next preceding the day on which notice is given) of the Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date or Liquidation Redemption Date, as applicable, the Redemption Price or Liquidation Redemption Price, as applicable, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the holder's certificate or certificates representing the shares to be redeemed (the "**Redemption Notice**"). Except as provided herein, on or after the Redemption Date or Liquidation Redemption Date, as applicable, each holder of Preferred Stock to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price or Liquidation Redemption Price, as applicable, of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. If the Corporation fails to pay the full Redemption Price for all shares of Preferred Stock to be redeemed pursuant to the exercise of redemption rights as set forth in Section 3(g) hereof, on any Redemption Date, then at the request of the holders of at least a majority of the Preferred Stock, the Board of Directors shall be increased by one and the holders of the Series C Preferred Stock, voting as a separate series and class, shall have the right to elect such director. This director shall have a number of votes equal to the number of votes that all other directors are entitled to cast, plus one. Following such election, the Board of Directors will initiate the sale of the Corporation.

(j) Allocation of Escrow. In the event of a Liquidation Event, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow or is payable to the stockholders of the Corporation subject to contingencies, the controlling agreement for such Liquidation Event shall provide that (1) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2 and 3 hereof as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event and (2) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2 and 3 hereof after taking into account the previous payment of the Initial Consideration as part of the same transaction.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "**Conversion Rate**" for each such series. Upon any decrease or increase in the Conversion

Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased. Declared but unpaid dividends will be paid upon conversion of the Preferred Stock in either cash or Common Stock at the option of a majority of the Board, with the number of shares of Common Stock determined by the fair market value of such shares as determined in good faith by the Board.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for the applicable series of Preferred Stock (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "**Securities Act**"), covering the offer and sale of the Corporation's Common Stock, provided that the offering price per share is not less than five times the Series C Original Issue Price (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than \$30,000,000 (a "**Qualified IPO**"), or (ii) upon the election of at least two-thirds (2/3) of the then outstanding shares of Series C Preferred Stock (each an "**Automatic Conversion Event**").

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, the holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and, at the Corporation's option, post a bond or execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the affected outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and, at the Corporation's option, posts a bond or executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of affected shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 4(d), "Additional Shares of Common" shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the Filing Date, other than issuances or deemed issuances of:

- (1) shares of Common Stock issued or issuable upon conversion of the Preferred Stock;
- (2) shares of Common Stock issued or issuable (x) to officers, directors and employees of, or consultants or advisers to, the Corporation pursuant to the Corporation's 2008 Stock Plan or such other employee stock incentive programs or arrangements approved by the Board and the requisite stockholders, or (y) upon exercise of options or warrants granted to such parties pursuant to any such plan or arrangement, provided that each such issuance or grant made after the Filing Date is approved by the Board;
- (3) shares of Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the Filing Date;
- (4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) hereof;
- (5) shares of Common Stock issued in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;
- (6) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of

the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board, including at least three of the Preferred Directors;

(7) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board, including at least three of the Preferred Directors;

(8) shares of Common Stock issued or issuable in connection with transactions of primarily a strategic and not a financing nature, approved by the Board, including at least three of the Preferred Directors, *provided, that*, such shares issued or securities for shares issuable pursuant to this exception and paragraph 4(d)(i)(9) shall not in the aggregate exceed 5% of the fully diluted capitalization of the Corporation;

(9) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board, including at least three of the Preferred Directors, provided, that, such shares issued or securities for shares issuable pursuant to this exception and paragraph 4(d)(i)(8) shall not in the aggregate exceed 5% of the fully diluted capitalization of the Corporation;

(10) shares of Common Stock issued upon a stock split, stock dividend, or any subdivision of shares of Common Stock; and

(11) shares of Common Stock that the holders of at least two-thirds (2/3) of the then outstanding shares of Series C Preferred agree in writing shall not constitute Additional Shares of Common Stock.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than (i) with respect to the Series C Preferred Stock and the Series B Preferred Stock, the Conversion Price of the Series C Preferred Stock in effect on the date of and immediately prior to such issue and (ii) with respect to the Series A Preferred Stock, the Conversion Price of the Series A Preferred Stock in effect on the date of and immediately prior to such issue.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed,



as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon, and any subsequent adjustments thereto, shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no adjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon

the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.

(1) In the event this Corporation shall at any time between the Filing Date and the twelve-month anniversary of the Filing Date issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) for a consideration per share less than (i) with respect to the Series C Preferred Stock and the Series B Preferred Stock, the Conversion Price of the Series C Preferred Stock in effect on the date of and immediately prior to such issue and (ii) with respect to the Series A Preferred Stock, the Conversion Price of the Series A Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of each affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price equal to the consideration per share received by the Corporation for such Additional Shares of Common so issued or, in the event no consideration was received, to the par value per share of such series of Preferred Stock.

(2) In the event this Corporation shall at any time on or after the twelve-month anniversary of Filing Date issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) without consideration or for a consideration per share less than (i) with respect to the Series C Preferred Stock and the Series B Preferred Stock, the Conversion Price of the Series C Preferred Stock in effect on the date of and immediately prior to such issue and (ii) with respect to the Series A Preferred Stock, the Conversion Price of the Series A Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of each affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined in accordance with the following formula:

$$CP2=CP1*(A+B)/(A+C)$$

Where:

CP2 = the new Conversion Price;

CP1 = the Conversion Price in effect immediately prior to the new issuance;

A = the number of shares of Common Stock outstanding immediately prior to such issuance, where for the purposes of this subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise

and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding;

$B = D/CP1$ ;

C = the number of such Additional Shares of Common so issued (or deemed to be so issued); and

D = the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued.

Further, notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate.

(v) Determination of Consideration. For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing:

(a) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the

exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(b) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock without a corresponding subdivision of the Preferred Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock without a corresponding combination of the Preferred Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the applicable Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the applicable Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above (“**Liquidation Rights**”), if the Common Stock issuable upon conversion of the Preferred Stock is ever changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 4(e) above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) No Impairment. The Corporation will not through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, intentionally avoid or intentionally seek to avoid the observance or performance of any of the

terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be reasonably necessary in order to protect the Conversion Rights of the holders of Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 4(h) shall prohibit the Corporation from amending its Certificate of Incorporation or consummating a Recapitalization with the requisite consent of its stockholders and the Board.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(j) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock may be waived by the consent or vote of the holders of the majority of the then outstanding shares of the Series A Preferred Stock with respect to any downward adjustment to the Series A Preferred Stock or eighty percent (80%) of the Series B Preferred Stock with respect to any downward adjustment to the Conversion Price of the Series B Preferred Stock, and any downward adjustment of the Conversion Price of the Series C Preferred Stock may be waived by the consent or vote of the holders of two-thirds (2/3) of the then outstanding shares of the Series C Preferred Stock, respectively, whether before or after the issuance causing the adjustment.

(k) Notices of Record Date. In the event that this Corporation proposes at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any Recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to approve any Liquidation Event;

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least three (3) business days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock.

(iv) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will use its best efforts to cause such corporate action to be taken as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose

5. Voting.

(a) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. Except as set forth in Section 5(b)(i)(c), the holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote, subject to any requirement herein, by law or under contract requiring a vote by the Common Stock as a separate class. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(b) Authorized Board Size; Election of Directors.

(i) Immediately after the initial sale of the Series C Preferred Stock, the authorized number of members of the Board shall be eight (8). At each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors while this Section 5(b)(i) is in effect, (a) for so long as at least 2,182,500 shares of Series A Preferred Stock are issued and outstanding (as adjusted for Recapitalizations), the holders of Series A Preferred Stock, voting as a separate class and series, shall be entitled to elect one (1) member of the Board (a "Series A Director"), (b) for so long as at least 1,750,000 shares of Series B Preferred Stock are issued and outstanding (as adjusted for Recapitalizations), the holders of Series B Preferred Stock, voting as a separate class and series shall be entitled to elect one (1) member of the Board (a "Series B Director"), (c) for so long as at least 10,500,000 shares of Series C Preferred Stock are issued and outstanding (as adjusted for Recapitalizations), the holders of Series C Preferred Stock, voting as a separate class and series shall be entitled to elect two (2) members of the Board (the "Series C Directors," and together with the Series A Director and Series B Director,

the “Preferred Directors”), (d) the holders of Common Stock, voting as a separate class shall be entitled to elect two (2) members of the Board (the “Common Directors”), and (e) the remaining member of the Board shall be elected by the holders of Common Stock and Preferred Stock, voting together as a single class.

(ii) If a vacancy on the Board is to be filled by the Board, only directors elected by the same series, class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

(iii) Only the holders of Common Stock and Preferred Stock entitled to elect the directors as set forth in Section 5(b)(i) shall be entitled to remove such directors from office and to fill any vacancy caused by the resignation, death or removal of such directors.

(c) Adjustment in Authorized Common Stock. Except as otherwise expressly provided herein, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) with the approval of the holders of at least a majority of the Common Stock and Preferred Stock voting together (with the Preferred Stock voting on an as-converted basis) and not as separate classes.

(d) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4, redeemed pursuant to Section 3(d) or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and may not be re-issued by this Corporation.

7. Preferred Stock Protective Provisions.

(a) So long as any shares of Preferred Stock are outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least sixty percent (60%) of the then outstanding shares of Preferred Stock voting together as a single class (and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect):

(i) Effect any Liquidation Event;

(ii) amend or waive any provision of the Certificate of Incorporation or the Corporation’s Bylaws in a manner that would adversely affect the terms of any series of Preferred Stock;

(iii) (a) issue any additional shares of Series A Preferred Stock or Series B Preferred Stock, or (b) issue any Series C Preferred Stock except pursuant to the Purchase Agreement, or (c) increase or decrease the authorized number of shares of any series of Preferred Stock;

(iv) create any new class or series of equity security having rights, preferences or privileges on parity with or senior to any series of Preferred Stock;

(v) issue any equity securities (other than options under the Option Plan) for consideration other than cash;

(vi) declare or pay any Distribution on any equity security;

(vii) license or encumber any of the Corporation's material intellectual property other than in the ordinary course of business;

(viii) redeem, purchase, pay any dividend (other than dividends on the Preferred Stock in accordance herewith), or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) or make any Distribution with respect to any share or shares of Preferred Stock or Common Stock (or permit any subsidiary to take any such action); provided, however, that this restriction shall not apply to any transaction that is a Permitted Distribution;

(ix) create any new stock option or incentive plans, or increase the number of shares reserved under the Option Plan;

(x) change the primary line of business of the Corporation;

(xi) change the authorized number of directors of the Corporation;

(xii) except for reimbursement of expenses incurred in the ordinary course of business, enter into a transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers, are directors or officers, or have a financial interest, unless approved by the Board, including at least two of the Preferred Directors;

(xiii) create or acquire any wholly-owned subsidiary or have any non wholly-owned subsidiaries;

(xiv) undertake or consummate a public offering of the Corporation's securities;

(xv) incur, or permit any subsidiary to incur, indebtedness (including guarantees of indebtedness) per transaction exceeding a principal amount of one hundred thousand dollars (\$100,000), or two hundred fifty thousand dollars (\$250,000) in the aggregate; or

(xvi) agree to do any of the foregoing.

(b) So long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of the Series C Preferred Stock voting as a separate class



(and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect):

- (i) amend or waive any provision of the Certificate of Incorporation or the Corporation's Bylaws;
- (ii) effect a Liquidation Event;
- (iii) create any new class or series of equity security having rights, preferences or privileges on parity with or senior to any existing series of Preferred Stock;
- (iv) issue any equity securities (including securities or rights convertible, exchangeable or exercisable therefore) other than issuances (a) pursuant to the Purchase Agreement (b) in connection with the conversion of outstanding Preferred Stock, or (c) in connection with the grant or exercise of options under the Option Plan;
- (v) redeem, purchase, pay any dividend (other than dividends on the Preferred Stock paid in accordance herewith), or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) or make any Distribution with respect to any share or shares of Preferred Stock or Common Stock (or permit any subsidiary to take any such action); provided, however, that this restriction shall not apply to any transaction that is a Permitted Distribution;
- (vi) change the authorized number of directors of the Corporation;
- (vii) create any new stock option or incentive plans, or increase the number of shares reserved under the Option Plan;
- (viii) effect a reclassification or recapitalization of the outstanding capital stock of the Corporation; or
- (ix) agree to do any of the foregoing.

8. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

#### ARTICLE VI

The Corporation is to have perpetual existence.

#### ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

## ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

## ARTICLE IX

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

## ARTICLE X

To the fullest extent permitted by the Delaware General Corporation Law, or any other applicable law, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for any action taken, or any failure to take any action, as a director.

The Corporation shall indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law, or any other applicable law, as the same exists or may hereafter be amended, any officer or director of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board or is seeking to enforce the provisions of this paragraph.

The Corporation shall have the power to indemnify and hold harmless, to the extent permitted by the Delaware General Corporation Law, or any other applicable law, as the same exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim accruing or arising or that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

The rights to indemnification pursuant to this Article X shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, the Bylaws of the Corporation, any agreement, vote of stockholders or directors or otherwise, and shall in no way limit the right of the Corporation to provide, or of the Board to approve the provision of, indemnification, advancement and similar rights to any officer, director, employee or agent in addition to, and in excess of, the indemnification provided for pursuant to this Article X.

#### ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

#### ARTICLE XII

Any director who is not an employee of the Corporation, as well as his or her respective affiliates, shall be free to engage in any activity or to pursue any opportunity individually or by the means of any entity, and the Corporation waives any interest or expectancy of the Corporation in, or in being offered any opportunity to exploit such opportunity, to the extent that such opportunity is presented to, acquired, created or developed by or otherwise comes into possession of, such director in any capacity other than as a director or other fiduciary to the Corporation.