

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM311810

<b>SUBMISSION TYPE:</b>	CORRECTIVE ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Corrective Assignment to correct the Assignee's name from "BRAINSPCE CORPORATION" to "BRAINSPACE CORPORATION" due to a typo previously recorded on Reel 005261 Frame 0556. Assignor(s) hereby confirms the CHANGE OF NAME.		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
PureDiscovery Corporation		08/23/2013	CORPORATION: TEXAS
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Brainspace Corporation		
<b>Street Address:</b>	2130 Commerce Street		
<b>City:</b>	Dallas		
<b>State/Country:</b>	TEXAS		
<b>Postal Code:</b>	75201		
<b>Entity Type:</b>	CORPORATION: TEXAS		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	85509812	BRAINSPACE	
<b>Serial Number:</b>	85683980	PUREDISCOVERY	
<b>Serial Number:</b>	86058471	BRAINSPACE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2146594832		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	214-659-4578		
<b>Email:</b>	nealk@akllp.com		
<b>Correspondent Name:</b>	Michele P. Schwartz		
<b>Address Line 1:</b>	1717 Main Street		
<b>Address Line 2:</b>	Suite 3700		
<b>Address Line 4:</b>	Dallas, TEXAS 75201		
<b>ATTORNEY DOCKET NUMBER:</b>	213796		
<b>NAME OF SUBMITTER:</b>	Michele Schwartz		
<b>SIGNATURE:</b>	/Michele Schwartz/		
<b>DATE SIGNED:</b>	07/25/2014		
<b>Total Attachments: 41</b>			

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<b>TRADEMARK ASSIGNMENT</b>
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Electronic Version v1.1

Stylesheet Version v1.1

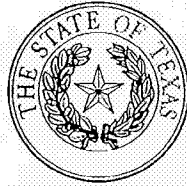
<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
PureDiscovery Corporation		08/23/2013	CORPORATION: TEXAS
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Brainspce Corporation		
<b>Street Address:</b>	2130 Commerce Street		
<b>City:</b>	Dallas		
<b>State/Country:</b>	TEXAS		
<b>Postal Code:</b>	75201		
<b>Entity Type:</b>	CORPORATION: TEXAS		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	86058471	BRAINSPACE	
<b>Registration Number:</b>	4323427	PUREDISCOVERY	
<b>Registration Number:</b>	4311561	BRAINSPACE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2146594832		
<b>Phone:</b>	214-659-4578		
<b>Email:</b>	nealk@akllp.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Correspondent Name:</b>	Michele P. Schwartz		
<b>Address Line 1:</b>	1717 Main Street		
<b>Address Line 2:</b>	Suite 3700		
<b>Address Line 4:</b>	Dallas, TEXAS 75201		
<b>ATTORNEY DOCKET NUMBER:</b>	213796		
<b>NAME OF SUBMITTER:</b>	Michele P. Schwartz		

TRADEMARK

REEL: 005329 FRAME: 0625

<b>Signature:</b>	/Michele P. Schwartz/
<b>Date:</b>	04/16/2014
<b>Total Attachments: 39</b> source=TAB_017 Amended Cert of Formation Brainspace#page1.tif source=TAB_017 Amended Cert of Formation Brainspace#page2.tif source=TAB_017 Amended Cert of Formation Brainspace#page3.tif source=TAB_017 Amended Cert of Formation Brainspace#page4.tif source=TAB_017 Amended Cert of Formation Brainspace#page5.tif source=TAB_017 Amended Cert of Formation Brainspace#page6.tif source=TAB_017 Amended Cert of Formation Brainspace#page7.tif source=TAB_017 Amended Cert of Formation Brainspace#page8.tif source=TAB_017 Amended Cert of Formation Brainspace#page9.tif source=TAB_017 Amended Cert of Formation Brainspace#page10.tif source=TAB_017 Amended Cert of Formation Brainspace#page11.tif source=TAB_017 Amended Cert of Formation Brainspace#page12.tif source=TAB_017 Amended Cert of Formation Brainspace#page13.tif source=TAB_017 Amended Cert of Formation Brainspace#page14.tif source=TAB_017 Amended Cert of Formation Brainspace#page15.tif source=TAB_017 Amended Cert of Formation Brainspace#page16.tif source=TAB_017 Amended Cert of Formation Brainspace#page17.tif source=TAB_017 Amended Cert of Formation Brainspace#page18.tif source=TAB_017 Amended Cert of Formation Brainspace#page19.tif source=TAB_017 Amended Cert of Formation Brainspace#page20.tif source=TAB_017 Amended Cert of Formation Brainspace#page21.tif source=TAB_017 Amended Cert of Formation Brainspace#page22.tif source=TAB_017 Amended Cert of Formation Brainspace#page23.tif source=TAB_017 Amended Cert of Formation Brainspace#page24.tif source=TAB_017 Amended Cert of Formation Brainspace#page25.tif source=TAB_017 Amended Cert of Formation Brainspace#page26.tif source=TAB_017 Amended Cert of Formation Brainspace#page27.tif source=TAB_017 Amended Cert of Formation Brainspace#page28.tif source=TAB_017 Amended Cert of Formation Brainspace#page29.tif source=TAB_017 Amended Cert of Formation Brainspace#page30.tif source=TAB_017 Amended Cert of Formation Brainspace#page31.tif source=TAB_017 Amended Cert of Formation Brainspace#page32.tif source=TAB_017 Amended Cert of Formation Brainspace#page33.tif source=TAB_017 Amended Cert of Formation Brainspace#page34.tif source=TAB_017 Amended Cert of Formation Brainspace#page35.tif source=TAB_017 Amended Cert of Formation Brainspace#page36.tif source=TAB_017 Amended Cert of Formation Brainspace#page37.tif source=TAB_017 Amended Cert of Formation Brainspace#page38.tif source=TAB_017 Amended Cert of Formation Brainspace#page39.tif	
<b>RECEIPT INFORMATION</b>	
<b>ETAS ID:</b>	TM301628
<b>Receipt Date:</b>	04/16/2014
<b>Fee Amount:</b>	\$90

**TRADEMARK**  
**REEL: 005329 FRAME: 0626**



**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

Brainspace Corporation  
800267676

[formerly: PureDiscovery Corporation]

The undersigned, as Secretary of State of Texas, hereby certifies that a Restated Certificate of Formation for the above named domestic for-profit corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 08/23/2013

Effective: 08/23/2013



A handwritten signature in black ink, appearing to read "John Steen".

John Steen  
Secretary of State

AUG 23 2013

Corporations Section

AMENDED AND RESTATED  
CERTIFICATE OF FORMATION OF  
PUREDISCOVERY CORPORATION  
(a Texas for-profit corporation)

Pursuant to the provisions of Sections 3.057, 3.058, 3.059 and 3.060 of the Texas Business Organizations Code (the "TBOC"), the undersigned, on behalf of PureDiscovery Corporation, a Texas for-profit corporation (the "Corporation"), hereby adopts on this 23rd day of August, 2013, the following Amended and Restated Certificate of Formation (the "Certificate"), which accurately states the text of the original Articles of Incorporation filed with the Secretary of State of the State of Texas on November 12, 2003 (the "Original Articles"), as amended by Articles of Amendment filed with the Secretary of State of the State of Texas on February 28, 2005, September 29, 2006, July 19, 2011 and July 12, 2012 (the latest of which was titled "Certificate of Amendment to Certificate of Formation") pursuant to the TBOC, and as further amended by the Certificate as hereinafter set forth. Except as hereinafter set forth, the Certificate contains no other change to the provisions of the Original Articles except for the information permitted to be omitted by the provisions of the TBOC.

SECTION 1

The name of the Corporation as currently shown in the records of the Secretary of State of the State of Texas is PureDiscovery Corporation. The type of filing entity of the Corporation is a Texas for-profit corporation. The file number issued to the filing entity by the Secretary of State of the State of Texas is 800267676. The date of formation of the filing entity is November 12, 2003.

SECTION 2

The Original Articles, as amended, are further amended by the Certificate as follows:

Articles One through Fifteen of the Original Articles are amended in their entirety and restated as provided in Articles I through XI of the Certificate.

SECTION 3

Each new amendment has been made in accordance with the provisions of the TBOC. The amendments to the Original Articles and the Certificate have been approved in the manner required by the TBOC and by the governing documents of the Corporation.

SECTION 4

The text of the Certificate is as follows:

**AMENDED AND RESTATED  
CERTIFICATE OF FORMATION OF  
BRAINSPACE CORPORATION  
(a Texas for-profit corporation)**

**ARTICLE I  
NAME AND ADDRESS**

The name of the filing entity is Brainspace Corporation (the "Corporation"). The filing entity being formed is a for-profit corporation. The address of the principal office and the mailing address of the Corporation is 2130 Commerce Street, Dallas, Texas 75201.

**ARTICLE II  
PURPOSE**

The purpose for which the Corporation is formed is to engage in the transaction of any and all lawful businesses for which corporations may be incorporated under the TBOC.

**ARTICLE III  
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the State of Texas is Corporate Creations Network Inc., 4265 San Felipe #1100, Harris County, Houston, Texas 77027. The name of the Corporation's Registered Agent at such address is Corporate Creations Inc.

**ARTICLE IV  
AUTHORIZED SHARES**

The aggregate number of shares which the Corporation shall have the authority to issue is Twenty-Four Million Four Hundred Twenty-Six Thousand Two Hundred Eighty-Seven (24,426,287) shares, comprising (i) Fifteen Million (15,000,000) shares of common stock, par value \$0.0001 per share ("Common Stock"), and (ii) Nine Million Four Hundred Twenty-Six Thousand Two Hundred Eighty-Seven (9,426,287) shares of preferred stock, par value \$0.0001 per share ("Preferred Stock").

**4.1 Definitions.**

(a) Definitions. Capitalized terms used but not defined in this Article IV shall have the respective meanings ascribed thereto elsewhere in this Certificate. For purposes of the provisions set forth in this Article IV:

(i) "Additional Stock" means (1) additional Common Stock or Preferred Stock (including, without limitation, new classes or series thereof having different rights), (2) obligations, evidences of Indebtedness and other securities or interests convertible into or exercisable or exchangeable for Common Stock or Preferred Stock, or (3) warrants, options and other rights to purchase or otherwise acquire Common Stock or Preferred Stock; provided, however that Additional Stock shall not include Exempt Securities.

(ii) "Affiliate" as applied to any Person, means any other Person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For purposes of this definition, a Person shall be deemed to be "controlled by" a Person if such latter Person possesses, directly or indirectly, power to vote fifty percent (50%) or more of the total number of votes of the securities having ordinary voting power for the election of directors of such former Person.

(iii) "Beneficial Ownership" means, with respect to a specified Person, the ownership of Capital Stock as determined in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended, as such rule is in effect and amended from time to time. "Beneficially Own" and "Beneficial Owner" shall each also have the correlative meaning.

(iv) "Board of Directors" means the Board of Directors of the Corporation.

(v) "Business Day" means any day other than a Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to close.

(vi) "Bylaws" means the Bylaws of the Corporation, as may be amended from time to time.

(vii) "Capital Stock" means any and all shares of Common Stock and Preferred Stock.

(viii) "Common Directors" shall have the meaning set forth in Section 4.4(g)(ii).

(ix) "Common Stock" shall have the meaning set forth in the first paragraph of this Article IV.

(x) "Common Stock Holder" means any holder of Common Stock, as reflected in the register maintained by the Corporation or the transfer agent for the Common Stock.

(xi) "Conversion Date" shall have the meaning set forth in Section 4.4(f)(iii)(1).

(xii) "Conversion Notice" shall have the meaning set forth in Section 4.4(f)(iii)(1).

(xiii) "Exempt Securities" shall have the meaning set forth in Section 4.5(f)(v)(5).



(xiv) "Fair Market Value" means, with respect to any asset or property (other than securities), the price which would be negotiated in an arm's length transaction, for cash, between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy. Fair Market Value shall be determined (A) in good faith by the legally adopted vote or consent of the Board of Directors, including the approval of the Series C Directors, and set forth in duly adopted resolutions of the Board of Directors, or (B) if the Board of Directors is unable or unwilling to determine such value within a period of thirty (30) days immediately following the date on which the Board of Directors is presented with all of the material terms of the relevant transaction, the Fair Market Value shall be determined by an Independent Financial Advisor at the expense of the Corporation. With respect to securities, "Fair Market Value" shall mean (X) the average of the closing prices of the securities on a national securities exchange over the thirty-day period ending three (3) trading days prior to the date at issue or (Y) if the securities are not traded on a national securities exchange but are actively traded over-the-counter, the average of the closing bid or sales prices (whichever is applicable) over the thirty-day period ending three (3) trading days prior to the date at issue. If clauses (X) or (Y) are not applicable, Fair Market Value for securities shall be determined in accordance with clauses (A) and (B) above.

(xv) "Holder" means any Common Stock Holder, Series A Holder, Series B Holder or Series C Holder.

(xvi) "Guarantee" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness. The term "guarantee" used as a verb has a corresponding meaning.

(xvii) "Indebtedness" means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof); or
- (3) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable.

In addition, the term "Indebtedness" includes (A) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person); provided, that the amount of such Indebtedness will be the lesser of (x) the Fair Market Value of such asset at such date of determination and (y) the amount of such Indebtedness, and (B) to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date will be: (i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount; and the principal amount of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness.

(xviii) "Independent", as applied to a Person, means that such Person is in fact deemed independent because such Person (i) does not have any direct material financial interest or any indirect material financial interest in the Corporation or any of its Subsidiaries, or in any Affiliate of the Corporation or any of its Subsidiaries (other than as a result being the Beneficial Owner of less than five percent (5%) of the outstanding Capital Stock or the capital stock, or equivalent equity interests, of any such Subsidiary or Affiliate) and (iii) is not an officer, employee, promoter, trustee, partner, director of, or a Person performing similar functions for, the Corporation or any of its Subsidiaries or any Affiliate of the Corporation or any of its Subsidiaries.

(xix) "Independent Financial Advisor" means a reputable accounting, appraisal or investment banking firm that is, in the reasonable judgment of the Board of Directors, qualified to perform the task for which such firm has been engaged as contemplated hereunder, nationally recognized, Independent and disinterested as to the disposition of the subject task.

(xx) "Issue Date" means the first date on which shares of Series C Preferred Stock are issued, which shall be the date on which this Certificate was filed with the Secretary of State of the State of Texas, as reflected in the records of the Secretary of State of the State of Texas.

(xxi) "Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

(xxii) "Liquidation Event" means, unless in the case of the succeeding clauses (A), (B) and (C), holders of 51% of the then outstanding Series C Preferred Stock elect otherwise, (A) the closing of the sale, transfer, license or other disposition of all or substantially all of the Corporation's assets, (B) the consummation of a merger or consolidation of the Corporation with or into another entity (except a merger or consolidation in which the holders of Capital Stock immediately prior to consummation of such merger or consolidation continue to Beneficially Own immediately thereafter at least fifty-one percent (51%) of the voting power of the Capital Stock, or equivalent equity interests, of the surviving or acquiring entity), (C) the acquisition of Beneficial Ownership, in one transaction or a series of related transactions occurring after the Issue Date, by a Person (other than an underwriter of the Corporation's securities, David S. Copps or MCF or an Affiliate thereof) or group of Persons acting in concert, of fifty-one percent (51%) or more of the outstanding Capital Stock entitled to vote generally in the election of directors of the Corporation or (D) a liquidation, dissolution or winding up of the affairs of the Corporation. For purposes of this definition, the sale or conveyance (by lease,

assignment, transfer or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Subsidiaries of the Corporation, the capital stock of which constitutes all or substantially all of the Corporation's assets, shall be deemed to be the transfer of all or substantially all of the assets of the Corporation, as contemplated by clause (A) above.

(xxiii) "MCF" means Medina Capital Fund, LP, a Delaware limited partnership, and any Affiliate thereof.

(xxiv) "Organic Change" shall have the meaning set forth in Section 4.4(f)(v)(4).

(xxv) "Payment Date" shall have the meaning set forth in Section 4.5(c)(i).

(xxvi) "Person" means any individual, firm, joint venture, corporation, partnership, association, limited liability company or other entity, and shall include any successor (by merger or otherwise) of such entity.

(xxvii) "Preferred Stock" shall have the meaning set forth in the first paragraph of this Article IV.

(xxviii) "Qualified IPO" means a firmly underwritten public offering of Common Stock with a price per share of at least ten (10) times the Series C Conversion Price (subject to adjustments for stock dividends, splits, combinations, recapitalizations and similar events, except for any adjustment made pursuant to Section 4.4(f)(v)(5) or Section 4.5(f)(v)(5)) and which provides gross proceeds to the Company of not less than One Hundred Million Dollars (\$100,000,000) before the deduction of underwriters' commissions and expenses.

(xxix) "Redemption Date" shall have the meaning set forth in Section 4.5(e)(i).

(xxx) "Redemption Notice" shall have the meaning set forth in Section 4.5(e)(ii).

(xxxi) "Redemption Price" shall have the meaning set forth in Section 4.5(e)(i).

(xxxii) "Redemption Request" shall have the meaning set forth in Section 4.5(e)(i).

(xxxiii) "Series A and B Junior Securities" shall have the meaning set forth in Section 4.4(b).

(xxxiv) "Series A and B Parity Securities" shall have the meaning set forth in Section 4.4(b).

(xxxv) "Series A and B Senior Securities" shall have the meaning set forth in Section 4.4(b).

(xxxvi) "Series A Conversion Amount" shall have the meaning set forth in Section 4.4(f)(i).

(xxxvii) "Series A Conversion Price" means the Series A Stated Value, subject to adjustment as provided in Section 4.4(f)(v).

(xxxviii) "Series A Holder" means a holder of shares of Series A Preferred Stock, as reflected in the register maintained by the Corporation or the transfer agent for the Series A Preferred Stock.

(xxxix) "Series A Preferred Stock" shall have the meaning set forth in Section 4.3.

(xl) "Series A Stated Value" means \$0.80 per share of Series A Preferred Stock.

(xli) "Series B Conversion Amount" shall have the meaning set forth in Section 4.4(f)(i).

(xlii) "Series B Conversion Price" means the Series B Stated Value, subject to adjustment as provided in Section 4.4(f)(v).

(xliii) "Series B Holder" means a holder of shares of Series B Preferred Stock, as reflected in the register maintained by the Corporation or the transfer agent for the Series B Preferred Stock.

(xliv) "Series B Preferred Stock" shall have the meaning set forth in Section 4.3.

(xlv) "Series B Stated Value" means \$1.00 per share of Series B Preferred Stock.

(xlvi) "Series C Conversion Amount" shall have the meaning set forth in Section 4.5(f)(i).

(xlvii) "Series C Conversion Date" shall have the meaning set forth in Section 4.5(f)(iii).

(xlviii) "Series C Conversion Notice" shall have the meaning set forth in Section 4.5(f)(iii).

(xlix) "Series C Conversion Price" means the Series C Stated Value, subject to adjustment as provided in Section 4.5(f)(v).

(l) "Series C Directors" shall have the meaning set forth in Section 4.5(g)(ii).

(li) "Series C Dividends" shall have the meaning set forth in Section 4.5(c)(i).

(lii) "Series C Holder" means a holder of shares of Series C Preferred Stock, as reflected in the register maintained by the Corporation or the transfer agent for the Series C Preferred Stock.

(liii) "Series C Junior Securities" shall have the meaning set forth in Section 4.5(b).

(liv) "Series C Parity Securities" shall have the meaning set forth in Section 4.5(b).

(lv) "Series C Preferred Stock" shall have the meaning set forth in Section 4.3.

(lvi) "Series C Senior Securities" shall have the meaning set forth in Section 4.5(b).

(lvii) "Series C Special Vote" shall have the meaning set forth in Section 4.5(h).

(lviii) "Series C Stated Value" means \$1.90 per share of Series C Preferred Stock.

(lix) "Subsidiary" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than fifty percent (50%) of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) a majority of the general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

#### 4.2 **Common Stock**

(a) Voting Rights of Common Stock. Except as may otherwise be required by law, the holders of Common Stock are entitled to one (1) vote for each share of Common Stock held at all meetings of shareholders (and written actions in lieu of meetings). Holders of the Common Stock are not entitled to cumulative votes in the election of any directors. The number

of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Certificate) the affirmative vote of the holders of shares of Common Stock and Preferred Stock, on an as-converted to Common Stock basis and voting together as a single class, representing a majority of the votes represented by all outstanding shares of Capital Stock of the Corporation entitled to vote, irrespective of the provisions of the TBOC that would otherwise require a separate class vote by the Common Stock or existing series of Preferred Stock.

(b) Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation and subject to any preferential dividend rights of any then outstanding series of Preferred Stock.

(c) Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to holders of Common Stock, subject to any rights of any then outstanding series of Preferred Stock as described below.

(d) Redemption. The Corporation shall not have the right pursuant to this Certificate to redeem any shares of Common Stock nor shall any Common Stock Holder have the right pursuant to this Certificate to require the Corporation to redeem any shares of Common Stock.

#### 4.3 Preferred Stock

One Million Five Hundred Thousand (1,500,000) shares of the authorized Preferred Stock of the Corporation are hereby designated as "Series A Participating Convertible Preferred Stock" (the "Series A Preferred Stock"), Two Million Five Hundred Forty-Seven Thousand Nine (2,547,009) shares of the authorized Preferred Stock of the Corporation are hereby designated as "Series B Participating Convertible Preferred Stock" (the "Series B Preferred Stock") and Five Million Three Hundred Seventy-Nine Thousand Two Hundred Seventy-Eight (5,379,278) shares of the authorized Preferred Stock of the Corporation are hereby designated as "Series C Participating Cumulative Convertible Preferred Stock" (the "Series C Preferred Stock"). The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Series A Preferred Stock and the Series B Preferred Stock are as set forth in Section 4.4 and the Series C Preferred Stock are as set forth in Section 4.5.

#### 4.4 Series A Participating Convertible Preferred Stock and Series B Participating Convertible Preferred Stock.

(a) Designation. One Million Five Hundred Thousand (1,500,000) shares of the authorized Preferred Stock are hereby designated as Series A Preferred Stock and Two Million Five Hundred Forty-Seven Thousand Nine (2,547,009) shares of the authorized Preferred Stock are hereby designated as Series B Preferred Stock. The rights, preferences, powers, privileges, restrictions, qualifications, and limitations granted to or imposed upon the

shares of the Series A Preferred Stock and the Series B Preferred Stock shall be as set forth in this Section 4.4.

(b) Rank. The Series A Preferred Stock and the Series B Preferred Stock, with respect to dividend distributions and distributions upon liquidation, winding up or dissolution of the Corporation, shall rank: (i) senior to the Common Stock (collectively, "Series A and B Junior Securities"); (ii) on a parity with any additional Series A Preferred Stock or Series B Stock authorized or issued by the Corporation (collectively, "Series A and B Parity Securities"), provided, that any Series A and B Parity Securities must be approved by the Series A Holders and the Series B Holders in accordance with Section 4.4(h) (if then applicable); and (iii) junior to (a) the Series C Preferred Stock and (b) each other class of Preferred Stock hereafter created, the terms of which expressly provide that such class or series will rank senior to the Series A Preferred Stock and/or the Series B Preferred Stock, as the case may be, as to voting, redemption, dividend distributions and/or distributions upon liquidation, winding-up or dissolution of the Corporation (collectively, "Series A and B Senior Securities"), provided that any such Series A and B Senior Securities described in the immediately preceding clause (iii)(b) that were not approved by the Series A Holders and Series B Holders in accordance with Section 4.4(h) shall be deemed to be Series A and B Junior Securities and not Series A and B Senior Securities.

(c) Dividends.

(i) Payment of Dividends. In the event that the Corporation shall declare and pay or make a dividend or any other distribution (including, without limitation, in cash, in Capital Stock (which shall include, without limitation, any options, warrants, convertible securities or other rights to acquire Capital Stock of the Corporation, whether or not pursuant to a shareholder rights plan, "poison pill" or similar arrangement), evidence of Indebtedness issued by the Corporation or other Persons or other property or assets) on or with respect to shares of any class of Common Stock, then the Board of Directors shall declare, and each Series A Holder and Series B Holder shall be entitled to receive in respect of each share of Series A Preferred Stock or Series B Preferred Stock, as the case may be, held by such Series A Holder or Series B Holder, a dividend or distribution in an amount equal to the amount of such dividend or distribution that would be received by such holder as if such share of Series A Preferred Stock or Series B Preferred Stock had been converted to Common Stock on the date of the payment of such dividend or distribution to holders of Common Stock; provided, however, that such dividends shall only be declared and paid after all Series C Dividends have been paid in full pursuant to Section 4.5(c)(i). All dividends paid with respect to shares of the Series A Preferred Stock and the Series B Preferred Stock pursuant to this Section 4.4(c)(i) shall be paid pro rata to the Series A Holders and Series B Holders entitled thereto.

(ii) Payment to Series A Holders and Series B Holders of Record. Each dividend payable to Series A Holders and Series B Holders shall be paid to the Series A Holders and the Series B Holders of record as they appear on the stock books of the Corporation on the applicable record date therefor.

(d) Liquidation Preference.

(i) Upon the occurrence of a Liquidation Event, before any payment shall be made to the holders of Series A and B Junior Securities by reason of their ownership thereof and only after the payment in full of the liquidation preference of the Series C Preferred Stock as set forth in Section 4.5(d), the Series A Holders and the Series B Holders shall be entitled to be paid (provided that such cash payment is not then prohibited under the TBOC, or other applicable law) out of the assets of the Corporation available for distribution to its shareholders for each share of Series A Preferred Stock and Series B Preferred Stock, as applicable, an amount in cash equal to the greater of (A) the Series A Stated Value or the Series B Stated Value (each as adjusted to reflect stock dividends, splits, combinations, recapitalizations or the like with respect to the Series A Preferred Stock or Series B Preferred Stock, as the case may be), as applicable, plus all declared and unpaid dividends, if any, on such share of Series A Preferred Stock or Series B Preferred Stock, as applicable, or (B) the amount for each share of Common Stock that the Series A Holders and Series B Holders would be entitled to receive pursuant to the Liquidation Event as if all of the shares of Series A Preferred Stock and Series B Preferred Stock had been converted into Common Stock as of the date immediately prior to the date fixed for determination of shareholders entitled to receive a distribution in such Liquidation Event, in each case before any cash distribution shall be made or any other assets distributed in respect of Series A and B Junior Securities to the holders of any Series A and B Junior Securities, except that, with respect to clause (B), such distributions shall be made concurrently with those made, if any, to holders of Common Stock and holders of Preferred Stock on an as converted to Common Stock basis after the payment of all preferential amounts. With respect to clause (A), after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock and the holders of shares of Series B Preferred Stock under such clause, the remaining assets of the Corporation available for distribution to its shareholders shall be distributed among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Certificate immediately prior to such Liquidation Event. Any amounts to be held in escrow in connection with a Liquidation Event shall not affect or reduce in any manner the liquidation preference to be paid to the Series A Holders or Series B Holders pursuant to this Section 4.4(d)(i).

(ii) If upon any Liquidation Event, the amounts payable in respect of the Series A Preferred Stock and Series B Preferred Stock under Section 4.4(d)(i) above are not paid in full, Series A Holders, Series B Holders and the holders of Series A and B Parity Securities will share ratably in any distribution of assets of the Corporation in proportion to the full amount to which each is entitled upon a Liquidation Event.

(e) Redemption. The Corporation shall not be obligated pursuant to this Section 4.4(e) to redeem any shares of Series A Preferred Stock or Series B Preferred Stock nor shall any Series A Holder or Series B Holder have the right pursuant to this Section 4.4(e) to require the Corporation to redeem any shares of Series A Preferred Stock or Series B Preferred Stock.

(f) Conversion Rights; Mechanics; Status of Converted Stock; Adjustments.



(i) Optional Conversion. A Series A Holder of any share of Series A Preferred Stock and a Series B Holder of any share of Series B Preferred Stock may at any time and from time to time convert such share into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (A) an amount equal to the Series A Stated Value (the "Series A Conversion Amount") or Series B Stated Value (the "Series B Conversion Amount"), as the case may be, by (B) the Series A Conversion Price or the Series B Conversion Price, as the case may be, then in effect.

(ii) Automatic Conversion. Each outstanding share of Series A Preferred Stock and Series B Preferred Stock shall be automatically and without any action by any Series A Holder or Series B Holder, as applicable, converted into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Conversion Amount by the Series A Conversion Price or the Series B Conversion Amount by the Series B Conversion Price, as the case may be, then in effect upon the consummation of a Qualified IPO.

(iii) Mechanics of Conversion.

(1) A Series A Holder or a Series B Holder who desires to convert any shares of Series A Preferred Stock or Series B Preferred Stock, respectively, pursuant to Section 4.4(f)(i) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series A Preferred Stock or Series B Preferred Stock, as the case may be, and shall give written notice to the Corporation at such office that such Series A Holder or Series B Holder elects to convert the same (each such notice, a "Conversion Notice"). Each Conversion Notice shall contain the following: (i) the date on which the conversion is to be effected if such date is to be any date after the Corporation's receipt of the Conversion Notice (such date, as applicable, the "Conversion Date"); (ii) the number of shares of Series A Preferred Stock or Series B Preferred Stock then owned by the Series A Holder or Series B Holder, respectively, delivering such Conversion Notice; (iii) the number of shares of Series A Preferred Stock or Series B Preferred Stock to be converted; (iv) the Series A Conversion Price or Series B Conversion Price then in effect, if known by such Series A Holder or Series B Holder; (v) the number of shares of Common Stock to be issued to such Series A Holder or Series B Holder pursuant to such conversion, if known by such Series A Holder or Series B Holder; and (vi) the address to which the Corporation shall deliver one or more certificates evidencing the Common Stock issuable upon such conversion. Following receipt of such certificate or certificates and such Conversion Notice, the Corporation shall promptly issue and deliver to such Series A Holder or Series B Holder, in accordance with such Conversion Notice, (x) one or more certificates evidencing the Common Stock issuable upon such conversion, together with any declared but unpaid dividends on such Series A Preferred Stock or Series B Preferred Stock, and (y) one or more certificates evidencing any shares of Series A Preferred Stock or Series B Preferred Stock that such Series A Holder or Series B Holder, respectively, delivered to the Corporation but were not subject of the Conversion Notice. The Person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on the Conversion Date.

(2) Upon the occurrence of either of the events specified in Section 4.4(f)(ii), the outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be converted automatically and without any action by any Series A Holder or Series B Holder and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock or Series B Preferred Stock are either delivered to the Corporation or its transfer agent or the Series A Holder or Series B Holder, respectively, thereof notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an affidavit satisfactory to the Corporation containing an agreement to indemnify the Corporation (and, if applicable, its transfer agent) from any loss incurred by it in connection with such certificates. Thereupon, there shall be issued and delivered to such Series A Holder or Series B Holder, as the case may be, promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be, surrendered were convertible on the date on which such automatic conversion occurred, together with any declared but unpaid dividends on such Series A Preferred Stock or Series B Preferred Stock.

(iv) Status of Converted Stock. If any shares of Series A Preferred Stock or Series B Preferred Stock are converted pursuant to this Section 4.4(f), then such shares of Series A Preferred Stock and Series B Preferred Stock so converted shall be canceled and thereupon restored to the status of authorized but unissued Preferred Stock, undesignated as to class or series.

(v) Adjustments to Series A Conversion Price and Series B Conversion Price.

(1) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Issue Date effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series A Preferred Stock and Series B Preferred Stock, then the Series A Conversion Price or the Series B Conversion Price, respectively, in effect immediately before such subdivision shall be multiplied by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such subdivision, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately following such subdivision. Conversely, if the Corporation shall at any time or from time to time after the Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series A Preferred Stock and Series B Preferred Stock, then the Series A Conversion Price and Series B Conversion Price, respectively, in effect immediately before the combination shall be multiplied by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such combination, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately following such combination. Any adjustment pursuant to this Section 4.4(f)(v)(1) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(2) Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time or from time to time after the Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in shares of Common Stock, then, in each such event, the Series A Conversion Price and Series B Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price and Series B Conversion Price, respectively, then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issued or issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, then the Series A Conversion Price and Series B Conversion Price shall be recomputed accordingly as of the close of business on such record date, and thereafter the Series A Conversion Price and Series B Conversion Price shall be adjusted pursuant to this Section 4.4(f)(v)(2) to reflect the actual payment of such dividend or distribution.

(3) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Issue Date the Common Stock issuable upon the conversion of the Series A Preferred Stock and Series B Preferred Stock is changed into the same or a different number of shares of any class or classes of Capital Stock, whether by recapitalization, reclassification or otherwise (other than an acquisition or asset transfer or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4.4(f)(v)), then in any such event each Series A Holder and Series B Holder shall have the right thereafter to convert such Series A Holder's shares of Series A Preferred Stock and such Series B Holder's shares of Series B Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock and Series B Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(4) Reorganizations, Mergers, Consolidations or Sales of Assets. If any any capital reorganization, reclassification, recapitalization, consolidation, merger, sale of all or substantially all of the Corporation's assets or other similar transaction (any such transaction being referred to herein as an "Organic Change") shall be effected in such a way that holders of Common Stock shall be entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets in respect of or in exchange for their shares of Common Stock, then, as a condition of such Organic Change, lawful and adequate provisions shall be made whereby each Series A Holder and Series B Holder shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such Series A Holder's shares of Series A Preferred Stock and such Series B Holder's shares of Series B

Preferred Stock, such shares of stock, securities or assets as may be issued or payable in respect of or in exchange for the number of outstanding shares of Common Stock that would have been immediately theretofore receivable upon conversion of such Series A Holder's shares of Series A Preferred Stock and such Series B Holder's shares of Series B Preferred Stock had such Organic Change not taken place, and in the case of any reorganization or reclassification, appropriate provisions shall be made with respect to the rights and interests of such Series A Holder and such Series B Holder whereby the provisions hereof (including, without limitation, provisions for adjustments to the Series A Conversion Price and Series B Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(5) Adjustment for Issuances Below Series A Conversion Price or Series B Conversion Price. If the Corporation shall at any time after the Issue Date issue Additional Stock, without consideration or for a consideration per share less than the Series A Conversion Price or Series B Conversion Price, as the case may be, in effect immediately prior to such issuance, then the Series A Conversion Price or the Series B Conversion Price, as the case may be, shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

"CP<sub>2</sub>" shall mean the Series A Conversion Price or Series B Conversion Price, as the case may be, in effect immediately after such issue of Additional Stock;

"CP<sub>1</sub>" shall mean the Series A Conversion Price or Series B Conversion Price, as the case may be, in effect immediately prior to such issue of Additional Stock;

"A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of options, warrants and rights outstanding immediately prior to such issue or upon conversion or exchange of convertible securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding options, warrants and rights therefor) immediately prior to such issue);

"B" shall mean the number of shares of Common Stock that would have been issued if such Additional Stock had been issued at a price per share equal to CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and

"C" shall mean the number of such Additional Stock issued in such transaction;

provided, that if such issuance or deemed issuance was without consideration, then the Corporation shall be deemed to have received an aggregate of \$0.0001 of consideration for each share of Additional Stock issued or deemed to be issued. Notwithstanding the foregoing, no adjustment shall be made to the Series A Conversion Price or Series B

Conversion Price pursuant to this Section 4.4(f)(v)(5) (i) as a result of the issuance of Exempt Securities (as defined below) or (ii) if such adjustment would be in amount that would result in less than 100 shares of Common Stock being issued upon a conversion of the Series C Preferred after such adjustment; provided that any adjustments that are not required to be made by reason of this clause (ii) shall be carried forward and shall be taken into account at the earlier of when the cumulative adjustments carried forward would equal an amount that would result in 1,000 shares of Common Stock being issued upon a conversion of the Series C Preferred after such cumulative adjustment or at the end of one (1) year from the date of the event giving rise to the adjustment being carried forward (notwithstanding the foregoing, nothing contained in this clause (ii) shall relieve the Corporation of its obligation to provide the certificate in Section 4.4(f)(v)(7) below or any other notice required elsewhere in this Certificate).

(6) Certain Rules. The following rules shall apply for purposes of this Section 4.4(f)(v) (including, for the avoidance of doubt, in respect of issuances or deemed issuances of Additional Stock):

- (i) In the case of the issuance or sale (or deemed issuance or sale) of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or expenses paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;
- (ii) In the case of the issuance or sale (or deemed issuance or sale) of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be valued at the Fair Market Value thereof; and
- (iii) In the case of the issuance or sale of options or warrants to purchase or rights to subscribe for Common Stock, securities convertible into or exchangeable for Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4.4(f)(v):

a) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options or 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 and for consideration equal to the consideration (determined in the manner provided in

Sections 4.4(f)(v)(6)(i) and (ii)), if any, received by the Corporation upon the issuance of such options, warrants or rights plus the minimum exercise price provided in such options, warrants or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby;

b) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) any such convertible or exchangeable securities or upon the exercise of options or warrants to purchase 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 and for a consideration equal to the consideration, if any, received by the Corporation for any such securities or options, warrants or rights, plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or upon the exercise of such options, warrants or rights and subsequent conversion or exchange of the underlying convertible or exchangeable securities, as appropriate (the consideration in each case to be determined in the manner provided in Sections 4.4(f)(v)(6)(i) and (ii));

c) In the event of any change in the number of shares of Common Stock deliverable by the Corporation, or in the consideration payable to the Corporation, upon exercise of such options, warrants or rights with respect to either Common Stock or such convertible or exchangeable securities or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Series A Conversion Price or Series B Conversion Price, as the case may be, to the extent in any way affected by or computed using such options, warrants, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon

the exercise of any such options, warrants or rights or the conversion or exchange of such securities;

d) Upon the expiration of any such options, warrants or rights with respect to either Common Stock or such convertible or exchangeable securities or the termination of any such rights to convert or exchange, the Series A Conversion Price, to the extent in any way affected by or computed using such options, warrants, rights or securities shall be recomputed to reflect only the number of shares of Common Stock actually issued upon the exercise or conversion, as applicable, of such options, warrants, rights or securities; and

e) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4.4(f)(v)(6)(iii)a) and b) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in Sections 4.4(f)(v)(6)(iii)c) and d), as applicable.

(7) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price pursuant to Section 4.4(f)(v), the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each Series A Holder and Series B Holder at such Series A Holder's and Series B Holder's, as the case may be, address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any issuance or deemed issuance of Common Stock or other Capital Stock, (ii) the Series A Conversion Price or Series B Conversion Price, as the case may be, at the time in effect, (iii) the number of shares of Common Stock or other Capital Stock issued or deemed issued and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred Stock or Series B Preferred Stock, as the case may be.

(vi) Fractional Shares: Aggregation. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock or Series B Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a Series A Holder or Series B Preferred Stock by a Series B Holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share of Common Stock, then the Corporation shall, in lieu of issuing any fractional share, round to the nearest whole share, with one-half being rounded upward.

(vii) Reservation of Common 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 Series A Preferred Stock and Series B 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 Series A Preferred Stock and Series B Preferred Stock. 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 Series A Preferred Stock and Series B Preferred Stock, then the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(viii) Payment of Taxes; Opinions. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issuance and delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock and Series B Preferred Stock; provided, however, that if shares of Common Stock are to be issued in the name of any Person other than the Series A Holder or Series B Holder, as the case may be, then such Series A Holder or Series B Holder must pay all transfer taxes payable with respect thereto, and shall deliver to the Corporation or its transfer agent such certificates and opinions of counsel as may be reasonably required by the Corporation or its transfer agent, as applicable.

(ix) Closing of Books. The Corporation shall not, nor shall it permit its transfer agent to, close its transfer books against the transfer of any shares of Series A Preferred Stock, Series B Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock or Series B Preferred Stock in any manner that interferes with the timely conversion of such shares of Series A Preferred Stock and Series B Preferred Stock, except as required to comply with applicable laws.

(g) Voting Rights. (i) Except as otherwise provided in this Certificate or as required by applicable law, the Series A Preferred Stock and Series B Preferred Stock shall vote together with the Common Stock and Series C Preferred Stock and not as a separate class, at any annual or special meeting of shareholders of the Corporation, and may act by written consent in the same manner as the Common Stock and Series C Preferred Stock, in either case upon the following basis: each Series A Holder and Series B Holder shall be entitled to such number of votes as shall be equal to the whole number of shares (with one-half being rounded upward) of Common Stock into which such Series A Holder's and Series B Holder's aggregate number of shares of Series A Preferred Stock and Series B Preferred Stock, respectively, are convertible at the close of business on the record date fixed for such meeting or the effective date of such written consent.

(ii) For so long as there is outstanding not less than twenty-five percent (25%) of the shares of Series A Preferred Stock and twenty-five percent (25%) of the Shares of Series B Preferred Stock, holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock (not including, for purposes of this subsection, any shares of Preferred Stock that otherwise have the right to vote with the Common Stock), voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect three (3) members of the



Board of Directors (the "Common Directors"). At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of at least a majority in interest of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Common Stock, on an as-converted to Common Stock basis, shall constitute a quorum of the Series A Preferred Stock, Series B Preferred Stock and Common Stock for the election of the Common Directors. A vacancy in the directorship elected by the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock shall be filled by vote or written consent of the holders of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Common Stock, consenting or voting, as the case may be, in the same manner as presented in the first sentence of this paragraph. Each Common Director may be removed only by the vote of a least a majority in interest of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Common Stock (not including, for purposes of this subsection, any shares of Preferred Stock that otherwise have the right to vote with the Common Stock), voting together as a single class on an as-converted to Common Stock basis.

(h) Protective Provisions.

(i) For so long as any shares of Series A Preferred Stock or Series B Preferred Stock are outstanding, the Corporation shall not, either directly or by amendment, merger, consolidation, or otherwise, without first obtaining the approval (by vote or written consent) of the holders of a majority of the then outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting or acting, as the case may be, as a single class:

(1) approve the consummation, or entering into of any agreement in respect of the consummation of, any Liquidation Event;

(2) approve the purchase, redemption or other acquisition of any Common Stock of the Corporation, other than repurchases pursuant to this Certificate or stock restriction agreements approved by the Board of Directors that grant to the Corporation a right of repurchase upon termination of the service or employment of a consultant, director or employee; or

(3) approve the transfer of material assets of the Corporation to any person other than a wholly-owned Subsidiary of the Corporation.

(ii) For so long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or by amendment, merger, consolidation, or otherwise, without first obtaining the approval (by vote or written consent) of the holders of a majority of the then outstanding shares of Series A Preferred Stock, voting or acting, as the case may be, as a single class:

(1) increase the total number of authorized shares of Preferred Stock or Series A Preferred Stock;

(2) materially alter or amend the rights, preferences or privileges of the Series A Preferred Stock;

(3) authorize or create any new class or series of shares having rights, preferences or privileges as to voting, dividends, or distribution of assets upon liquidation, merger or otherwise that are senior to or on a parity with the Series A Preferred Stock; or

(4) amend or repeal this Certificate or the Bylaws in any manner that is materially detrimental to the Series A Holders.

(iii) For so long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not, either directly or by amendment, merger, consolidation, or otherwise, without first obtaining the approval (by vote or written consent) of the holders of a majority of the then outstanding shares of Series B Preferred Stock, voting or acting, as the case may be, as a single class:

(1) increase the total number of authorized shares of Preferred Stock or Series B Preferred Stock;

(2) materially alter or amend the rights, preferences or privileges of the Series B Preferred Stock;

(3) authorize or create any new class or series of shares having rights, preferences or privileges as to voting, dividends, or distribution of assets upon liquidation, merger or otherwise that are senior to or on a parity with the Series B Preferred Stock; or

(4) amend or repeal this Certificate or the Bylaws in any manner that is materially detrimental to the Series B Holders.

Notwithstanding the foregoing, the rights of the Series A Holders and Series B Holders described in this Section 4.4(h) will terminate immediately prior to the earlier of (x) the consummation of the Corporation's initial public offering and (y) a merger or sale of substantially all the Corporation's assets (if approved by the holders of at least 51% of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class on an as-converted to Common Stock basis).

(i) No Impairment. The Corporation will not, by amendment of this Certificate, its Bylaws or other organizational documents or through any merger, consolidation, reorganization, reclassification, recapitalization, Liquidation Event, issue or sale of Capital Stock or any other voluntary action by the Corporation or any Subsidiary thereof, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed in this Section 4.4 or Article VII by the Corporation but will at all times in good faith assist in the carrying out of all these provisions, and in the taking of all such action as may be necessary or appropriate in order to protect the conversion and other rights of the Series A Holders and Series B Holders set forth in this Section 4.4 or Article VII.

#### 4.5 Series C Participating Cumulative Convertible Preferred Stock.

(a) Designation. Five Million Three Hundred Seventy-Nine Thousand Two Hundred Seventy-Eight (5,379,278) shares of the authorized Preferred Stock are hereby

designated as Series C Preferred Stock. The rights, preferences, powers, privileges, restrictions, qualifications, and limitations granted to or imposed upon the shares of Series C Preferred Stock shall be as set forth in this Section 4.5.

(b) Rank. The Series C Preferred Stock, with respect to dividend distributions and distributions upon liquidation, winding up or dissolution of the Corporation, shall rank: (i) senior to the Common Stock, the Series A Preferred Stock and the Series B Preferred Stock (collectively, "Series C Junior Securities"); (ii) on a parity with any additional Series C Preferred Stock authorized or issued by the Corporation (collectively, "Series C Parity Securities"), provided, that any Series C Parity Securities must be approved by the Series C Holders in accordance with Section 4.5(h) (if then applicable); and (iii) junior to each other class of Preferred Stock hereafter created, the terms of which expressly provide that such class or series will rank senior to the Series C Preferred Stock as to voting, redemption, dividend distributions and/or distributions upon liquidation, winding-up or dissolution of the Corporation (collectively, "Series C Senior Securities"), provided that any such Series C Senior Securities described in the immediately preceding clause (iii) that were not approved by the Series C Holders in accordance with Section 4.5(h) (if then applicable) shall be deemed to be Series C Junior Securities and not Series C Senior Securities.

(c) Dividends.

(i) From and after the date of the issuance of any shares of Series C Preferred Stock, dividends shall accrue at the rate per annum of five percent (5%) of the Series C Stated Value per share simple interest (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock) (the "Series C Dividends"). Series C Dividends shall accrue, be cumulative and be paid quarterly on the fifteenth (15<sup>th</sup>) of each of March, June, September and December of each calendar year (each such date, a "Payment Date") and may be paid, at the option of the Company, in cash, in kind, in the form of additional shares of Series C Preferred Stock, or in any combination thereof; provided, that to the extent the Company does not pay the then-payable Series C Dividends on any Payment Date, such Series C Dividends shall be payable upon the earliest to occur of the events set forth in the following sentence of this Section 4.5(c)(i), Section 4.5(d) or Section 4.5(e). In the event that the Corporation shall otherwise declare and pay or make a dividend or any other distribution (including, without limitation, in cash, in Capital Stock (which shall include, without limitation, any options, warrants, convertible securities or other rights to acquire Capital Stock of the Corporation, whether or not pursuant to a shareholder rights plan, "poison pill" or similar arrangement), evidence of Indebtedness issued by the Corporation or other Persons or other property or assets) on or with respect to shares of any class of Common Stock, then the Board of Directors shall declare, and each Series C Holder shall be entitled to receive in respect of each share of Series C Preferred Stock held by such Series C Holder, a dividend or distribution in an amount equal to the amount of such dividend or distribution that would be received by such holder as if such share of Series C Preferred Stock had been converted to Common Stock on the date of the payment of such dividend or distribution to holders of Common Stock; provided, however, that such dividends shall only be declared and paid after all Series C Dividends have been paid in full pursuant to this Section 4.5(c)(i). All dividends paid with respect to shares of the Series C Preferred Stock pursuant to this Section 4.5(c)(i) shall be paid pro rata to the Series C Holders entitled thereto.

The Corporation shall not declare any dividends or distributions on any Capital Stock, other than the Series C Preferred Stock, without declaring a dividend or distribution with respect to the Series C Preferred Stock.

(ii) Payment to Series C Holders of Record. Each dividend payable to Series C Holders shall be paid to the Series C Holders of record as they appear on the stock books of the Corporation on the applicable record date therefor.

(d) Liquidation Preference.

(i) Upon the occurrence of a Liquidation Event, before any payment shall be made to the holders of any Series C Junior Securities by reason of their ownership thereof, the Series C Holders shall be entitled to be paid (provided that such cash payment is not then prohibited under the TBOC or other applicable law) out of the assets of the Corporation available for distribution to its shareholders for each share of Series C Preferred Stock, an amount in cash equal to the greater of (A) the Series C Stated Value, plus all declared and unpaid dividends, if any, on each such share of Series C Preferred Stock or (B) the amount for each share of Common Stock that the Series C Holders would be entitled to receive pursuant to the Liquidation Event as if all of the shares of Series C Preferred Stock had been converted into Common Stock as of the date immediately prior to the date fixed for determination of shareholders entitled to receive a distribution in such Liquidation Event, in each case before any cash distribution shall be made or any other assets distributed in respect of Series C Junior Securities to the holders of any Series C Junior Securities, except that, with respect to clause (B), such distributions shall be made concurrently with those made, if any, to holders of Common Stock and holders of Preferred Stock on an as converted to Common Stock basis after the payment of all preferential amounts. With respect to clause (A), after the payment of all preferential amounts required to be paid to the holders of shares of Series C Preferred Stock under such clause, the remaining assets of the Corporation available for distribution to its shareholders shall be distributed next to the holders of the shares of Series A Preferred Stock and Series B Preferred Stock as provided in Section 4.4(d) and next among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Certificate immediately prior to such Liquidation Event. Any amounts to be held in escrow in connection with a Liquidation Event shall not affect or reduce in any manner the liquidation preference to be paid to the Series C Holders pursuant to this Section 4.5(d)(i).

(ii) If upon any Liquidation Event, the amounts payable in respect of the Series C Preferred Stock under Section 4.5(d)(i) above are not paid in full, the Series C Holders and the holders of Series C Parity Securities will share ratably in any distribution of assets of the Corporation in proportion to the full amount to which each is entitled upon a Liquidation Event.

(e) Redemption.

(i) General. At any time on or after the seventh (7<sup>th</sup>) anniversary of the purchase of any such share of Series C Preferred Stock, unless prohibited by Texas law

governing distributions to shareholders, shares of Series C Preferred Stock shall be redeemed by the Corporation at a price equal to the greater of (A) two (2) times the Series C Stated Value per share, plus any Series C Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon and (B) the Fair Market Value of a single share of Series C Preferred Stock as of the date of the Corporation's receipt of the Redemption Request (the "Redemption Price"), in one lump-sum on a date that is not more than 180 days after receipt by the Corporation from the holders of at least 51% of the then outstanding shares of Series C Preferred Stock, of written notice requesting redemption of all shares of Series C Preferred Stock (the "Redemption Request"). Upon receipt of the Redemption Request, the Corporation shall apply all of its assets to such redemption, and to no other corporate purpose, except to the extent prohibited by Texas law governing distributions to shareholders. The date of such redemption shall be referred to as a "Redemption Date". If on the Redemption Date Texas law governing distributions to shareholders prevents the Corporation from redeeming all shares of Series C Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. Any redemption of the Series C Preferred Stock shall take priority over the redemption of any other Capital Stock.

(ii) Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the "Redemption Notice") to each holder of record of Series C Preferred Stock not less than 40 days prior to the Redemption Date. The Redemption Notice shall state:

(1) the number of shares of Series C Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(2) the Redemption Date and the Redemption Price;

(3) the date upon which the holder's right to convert such shares in accordance with this Certificate terminates; and

(4) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series C Preferred Stock to be redeemed.

(iii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Series C Preferred Stock to be redeemed on the Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in this Certificate, 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, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series C Preferred Stock represented by a

certificate are redeemed, a new certificate representing the unredeemed shares of Series C Preferred Stock shall promptly be issued to such holder.

(iv) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series C Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an Independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series C Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series C Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

(v) Status of Redeemed Series C Preferred Stock. If any shares of Series C Preferred Stock are redeemed pursuant to this Section 4.5(e), then such shares of Series C Preferred Stock so redeemed shall be canceled and thereupon restored to the status of authorized but unissued Preferred Stock, undesignated as to class or series.

(f) Conversion Rights; Mechanics; Status of Converted Stock; Adjustments.

(i) Optional Conversion. A Series C Holder of any share of Series C Preferred Stock may at any time and from time to time convert such share into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (A) an amount equal to the Series C Stated Value (the "Series C Conversion Amount") by (B) the Series C Conversion Price then in effect.

(ii) Automatic Conversion. Each outstanding share of Series C Preferred Stock shall be automatically and without any action by any Series C Holder converted into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series C Conversion Amount by the Series C Conversion Price then in effect upon the earlier to occur of (i) the holders of at least fifty-one percent (51%) of the then outstanding Series C Preferred Stock consenting to such conversion or (ii) the consummation of a Qualified IPO.

(iii) Mechanics of Conversion.

(1) A Series C Holder who desires to convert any shares of Series C Preferred Stock pursuant to Section 4.5(f)(i) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series C Preferred Stock, and shall give written notice to the Corporation at such office that such Series C Holder elects to convert the same (each such notice, a "Series C Conversion Notice"). Each Series C Conversion Notice shall contain the following: (i) the date on which the conversion is to be effected if such date is to be any date after the Corporation's receipt of the Series C Conversion Notice (such date, as applicable, the "Series C Conversion Date"); (ii) the number of shares of Series C Preferred Stock then owned by the Series C Holder delivering such Series C Conversion Notice; (iii) the number of shares of Series C Preferred Stock to be converted;

(iv) the Series C Conversion Price then in effect, if known by such Series C Holder; (v) the number of shares of Common Stock to be issued to such Series C Holder pursuant to such conversion, if known by such Series C Holder; and (vi) the address to which the Corporation shall deliver one or more certificates evidencing the Common Stock issuable upon such conversion. Following receipt of such certificate or certificates and such Series C Conversion Notice, the Corporation shall promptly issue and deliver to such Series C Holder, in accordance with such Series C Conversion Notice, (x) one or more certificates evidencing the Common Stock issuable upon such conversion, together with any declared but unpaid dividends on such Series C Preferred Stock, and (y) one or more certificates evidencing any shares of Series C Preferred Stock that such Series C Holder delivered to the Corporation but were not subject of the Series C Conversion Notice. The Person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on the Series C Conversion Date.

(2) Upon the occurrence of either of the events specified in Section 4.5(f)(ii), the outstanding shares of Series C Preferred Stock shall be converted automatically and without any action by any Series C Holder and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series C Preferred Stock are either delivered to the Corporation or its transfer agent or the Series C Holder thereof notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an affidavit satisfactory to the Corporation containing an agreement to indemnify the Corporation (and, if applicable, its transfer agent) from any loss incurred by it in connection with such certificates. Thereupon, there shall be issued and delivered to such Series C Holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series C Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, together with any declared but unpaid dividends on such Series C Preferred Stock.

(iv) Status of Converted Stock. If any shares of Series C Preferred Stock are converted pursuant to this Section 4.5(f), then such shares of Series C Preferred Stock so converted shall be canceled and thereupon restored to the status of authorized but unissued Preferred Stock, undesignated as to class or series.

(v) Adjustments to Series C Conversion Price.

(1) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Issue Date effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series C Preferred Stock, then the Series C Conversion Price in effect immediately before such subdivision shall be multiplied by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such subdivision, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately following such subdivision. Conversely, if the Corporation shall at any time or from time to time after the Issue Date combine the outstanding shares of Common Stock into a smaller

number of shares without a corresponding combination of the Series C Preferred Stock, then the Series C Conversion Price in effect immediately before the combination shall be multiplied by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such combination, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately following such combination. Any adjustment pursuant to this Section 4.5(f)(v)(1) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(2) Adjustment for Common Stock Dividends and Distributions. If the Corporation at any time or from time to time after the Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in shares of Common Stock, then, in each such event, the Series C Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series C Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issued or issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, then the Series C Conversion Price shall be recomputed accordingly as of the close of business on such record date, and thereafter the Series C Conversion Price shall be adjusted pursuant to this Section 4.5(f)(v)(2) to reflect the actual payment of such dividend or distribution.

(3) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Issue Date the Common Stock issuable upon the conversion of the Series C Preferred Stock is changed into the same or a different number of shares of any class or classes of Capital Stock, whether by recapitalization, reclassification or otherwise (other than an acquisition or asset transfer or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4.5(f)(v)), then in any such event each Series C Holder shall have the right thereafter to convert such Series C Holder's shares of Series C Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series C Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(4) Reorganizations, Mergers, Consolidations or Sales of Assets. If Organic Change shall be effected in such a way that holders of Common Stock shall be entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets in respect of or in exchange for their shares of Common Stock, then, as a condition of such Organic Change, lawful and adequate provisions shall be made whereby each Series C Holder shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified



herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such Series C Holder's shares of Series C Preferred Stock, such shares of stock, securities or assets as may be issued or payable in respect of or in exchange for the number of outstanding shares of Common Stock that would have been immediately theretofore receivable upon conversion of such Series C Holder's shares of Series C Preferred Stock had such Organic Change not taken place, and in the case of any reorganization or reclassification, appropriate provisions shall be made with respect to the rights and interests of such Series C Holder whereby the provisions hereof (including, without limitation, provisions for adjustments to the Series C Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(5) Adjustment for Issuances Below Series C Conversion Price. If the Corporation shall at any time after the Issue Date issue Additional Stock, without consideration or for a consideration per share less than the Series C Conversion Price in effect immediately prior to such issuance, then the Series C Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

"CP2" shall mean the Series C Conversion Price in effect immediately after such issuance of Additional Stock;

"CP1" shall mean the Series C Conversion Price in effect immediately prior to such issuance of Additional Stock;

"A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance of Additional Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of options, warrants and rights outstanding immediately prior to such issue or upon conversion or exchange of convertible securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding options, warrants or rights therefor) immediately prior to such issue);

"B" shall mean the number of shares of Common Stock that would have been issued if such Additional Stock had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and

"C" shall mean the number of such Additional Stock issued in such transaction;

provided, that if such issuance or deemed issuance was without consideration, then the Corporation shall be deemed to have received an aggregate of \$0.0001 of consideration for each share of Additional Stock issued or deemed to be issued. Notwithstanding the foregoing, no adjustment shall be made to the Series C Conversion Price pursuant to this Section 4.5(f)(v)(5) (i) if such adjustment would be in amount that would result in less than 100 shares of Common Stock being issued upon a conversion of the Series C Preferred after such adjustment; provided

that any adjustments that are not required to be made by reason of this clause (i) shall be carried forward and shall be taken into account at the earlier of when the cumulative adjustments carried forward would equal an amount that would result in 1,000 shares of Common Stock being issued upon a conversion of the Series C Preferred after such cumulative adjustment or at the end of one (1) year from the date of the event giving rise to the adjustment being carried forward (notwithstanding the foregoing, nothing contained in this clause (i) shall relieve the Corporation of its obligation to provide the certificate in Section 4.5(f)(v)(7) below or any other notice required elsewhere in this Certificate); or (ii) as a result of any of the following (collectively, "Exempt Securities"):

- (i) the issuance of securities for which an adjustment is made under another provision of Section 4.4(f)(v) or this Section 4.5(f)(v);
- (ii) securities issuable upon the exercise or conversion of any Series C Preferred Stock, debenture, warrant, option or other convertible security (including the Series A Preferred Stock, the Series B Preferred Stock and options currently issued to employees under the Corporation's former and then-existing equity incentive plans);
- (iii) the grant of Common Stock or options, warrants or rights to purchase Common Stock (as adjusted for any stock dividends, splits, combinations, recapitalizations and the like) to employees or directors of, or consultants to, the Corporation under compensation plans and agreements approved by the Board of Directors, including the approval of at least one (1) Series C Director (as defined below);
- (iv) shares of Common Stock, Preferred Stock or other securities issued as a dividend or distribution on the Series C Preferred Stock; and
- (v) shares of Common Stock issuable in connection with acquisitions by the Corporation, which are approved by the Board of Directors, including the approval of the Series C Directors.

(6) Certain Rules. The following rules shall apply for purposes of this Section 4.5(f)(v) (including, for the avoidance of doubt, in respect of issuances or deemed issuances of Additional Stock):

- (i) In the case of the issuance or sale (or deemed issuance or sale) of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or expenses paid or incurred by the Corporation for

any underwriting or otherwise in connection with the issuance and sale thereof;

- (ii) In the case of the issuance or sale (or deemed issuance or sale) of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be valued at the Fair Market Value thereof; and
- (iii) In the case of the issuance or sale of options or warrants to purchase or rights to subscribe for Common Stock, securities convertible into or exchangeable for Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4.5(f)(v):

- a) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options or 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 and for consideration equal to the consideration (determined in the manner provided in Sections 4.5(f)(v)(6)(i) and (ii)), if any, received by the Corporation upon the issuance of such options, warrants or rights plus the minimum exercise price provided in such options, warrants or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby;

- b) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) any such convertible or exchangeable securities or upon the exercise of options or warrants to purchase 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 and for a consideration equal to the consideration, if any, received by the Corporation for any such securities or options, warrants or rights, plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or upon the exercise of such options, warrants or rights and

subsequent conversion or exchange of the underlying convertible or exchangeable securities, as appropriate (the consideration in each case to be determined in the manner provided in Sections 4.5(f)(v)(6)(i) and (ii));

c) In the event of any change in the number of shares of Common Stock deliverable by the Corporation, or in the consideration payable to the Corporation, upon exercise of such options, warrants or rights with respect to either Common Stock or such convertible or exchangeable securities or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Series C Conversion Price, to the extent in any way affected by or computed using such options, warrants, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options, warrants or rights or the conversion or exchange of such securities;

d) Upon the expiration of any such options, warrants or rights with respect to either Common Stock or such convertible or exchangeable securities or the termination of any such rights to convert or exchange, the Series C Conversion Price, to the extent in any way affected by or computed using such options, warrants, rights or securities shall be recomputed to reflect only the number of shares of Common Stock actually issued upon the exercise or conversion, as applicable, of such options, warrants, rights or securities; and

e) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4.5(f)(v)(6)(iii)a) and b) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in Sections 4.5(f)(v)(6)(iii)c) and d), as applicable.

(7) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series C Conversion Price pursuant to Section 4.5(f)(v), the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each Series C Holder at such Series C Holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any issuance or deemed issuance of Common Stock or other Capital Stock, (ii) the Series C Conversion Price at the time in effect, (iii) the number of shares of Common Stock or other Capital Stock issued or deemed issued and (iv) the type and amount, if any, of

other property which at the time would be received upon conversion of the Series C Preferred Stock.

(vi) Fractional Shares; Aggregation. No fractional shares of Common Stock shall be issued upon conversion of Series C Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series C Preferred Stock by a Series C Holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share of Common Stock, then the Corporation shall, in lieu of issuing any fractional share, round to the nearest whole share, with one-half being rounded upward.

(vii) Reservation of Common 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 Series C 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 Series C Preferred Stock. 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 Series C Preferred Stock, then the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(viii) Payment of Taxes; Opinions. The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issuance and delivery of shares of Common Stock upon conversion of shares of Series C Preferred Stock; provided, however, that if shares of Common Stock are to be issued in the name of any Person other than the Series C Holder, then such Series C Holder must pay all transfer taxes payable with respect thereto, and shall deliver to the Corporation or its transfer agent such certificates and opinions of counsel as may be reasonably required by the Corporation or its transfer agent, as applicable.

(ix) Closing of Books. The Corporation shall not, nor shall it permit its transfer agent to, close its transfer books against the transfer of any shares of Series C Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series C Preferred Stock in any manner that interferes with the timely conversion of such shares of Series C Preferred Stock, except as required to comply with applicable laws.

(g) Voting Rights.

(i) Except as otherwise provided in this Certificate or as required by applicable law, the Series C Preferred Stock shall vote together with the Common Stock and Preferred Stock, on an as-converted to Common Stock basis, and not as a separate class, at any annual or special meeting of shareholders of the Corporation, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each Series C Holder shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock (with one-half being rounded upward) into which such Series C Holder's

aggregate number of shares of Series C Preferred Stock are convertible at the close of business on the record date fixed for such meeting or the effective date of such written consent.

(ii) For so long as there is outstanding not less than twenty-five percent (25%) of the shares of Series C Preferred Stock issued on the Issue Date, the Series C Holders, voting separately as one class, shall be entitled to elect two (2) members of the Board of Directors (the "Series C Directors"). At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of at least a majority in interest of the then outstanding shares of Series C Preferred Stock shall constitute a quorum of the Series C Preferred Stock for the election of the Series C Directors. A vacancy in the directorship elected by the holders of Series C Preferred Stock shall be filled by vote or written consent of the holders of the then outstanding shares of Series C Preferred Stock, consenting or voting, as the case may be, in the same manner as presented in the first sentence of this paragraph. Each Series C Director may be removed only by the vote of a least a majority in interest of the then outstanding shares of Series C Preferred Stock.

(h) Protective Provisions. For so long as there is outstanding not less than twenty-five percent (25%) of the shares of Series C Preferred Stock issued on the Issue Date, the Corporation shall not, either directly or by amendment, merger, consolidation, or otherwise, without first obtaining the approval (by vote or written consent) of the holders of at least fifty-one percent (51%) of the then outstanding shares of Series C Preferred Stock (a "Series C Special Vote");

(i) amend, alter or change the rights, preferences, privileges or other terms of the shares of Series C Preferred Stock;

(ii) increase or decrease the number of authorized shares of Series C Preferred Stock, or create (by reclassification or otherwise) or issue any Series C Parity Securities, Series C Senior Securities or any other security convertible into or exercisable for any Series C Parity Securities or Series C Senior Securities;

(iii) purchase or redeem any Series C Senior Securities, Series C Parity Securities or Series C Junior Securities prior to the Series C Preferred Stock; provided that no Series C Special Vote shall be required for any such purchase or redemption that is provided for in this Certificate or approved by the Board of Directors, including the approval of least one (1) Series C Director;

(iv) consummate, or enter into any agreement in respect of the consummation of, any Liquidation Event;

(v) amend, alter, repeal or waive any provision of this Certificate in a manner that adversely affects the Series C Preferred Stock;

(vi) pay or declare any dividend on any Series C Senior Securities, Series C Parity Securities or Series C Junior Securities prior to the Series C Preferred Stock;

provided that no Series C Special Vote shall be required for any such payment or declaration approved by the Board of Directors, including the approval of at least one (1) Series C Director;

(vii) incur aggregate Indebtedness (including through the issuance and sale of debt securities) in excess of Five Hundred Thousand Dollars (\$500,000); provided that no Series C Special Vote shall be required for any such Indebtedness approved by the Board of Directors, including the approval of at least one (1) Series C Director;

(viii) increase the salary of any director or officer of the Corporation in excess of competitive market rates that do not exceed market terms in the Corporation's industry for a company of comparable size; provided that no Series C Special Vote shall be required for any such increase approved by the Board of Directors, including the approval of at least one (1) Series C Director;

(ix) increase or decrease the size of the Board of Directors;

(x) transfer any material assets of the Corporation to any Person other than a wholly-owned Subsidiary of the Corporation;

(xi) make any loan or advance to any employee or director; provided that no Series C Special Vote shall be required for any such loan, advance or similar expenditure in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board of Directors, including the approval of at least one (1) Series C Director; or

(xii) approve or otherwise implement any equity compensation plan, or increase the number of shares of the Capital Stock issuable under any equity compensation plan (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock); provided that no Series C Special Vote shall be required for any such equity compensation plan or increase approved by the Board of Directors, including the approval of at least one (1) Series C Director.

(i) No Impairment. The Corporation will not, by amendment of this Certificate, its Bylaws or other organizational documents or through any merger, consolidation, reorganization, reclassification, recapitalization, Liquidation Event, issue or sale of Capital Stock or any other voluntary action by the Corporation or any Subsidiary thereof, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed in this Section 4.5 or Article VII by the Corporation but will at all times in good faith assist in the carrying out of all these provisions, and in the taking of all such action as may be necessary or appropriate in order to protect the conversion and other rights of the Series C Holders set forth in this Section 4.5 or Article VII.

## ARTICLE V NOTICES

Unless otherwise provided by applicable law, all notices, requests, demands, and other communications required or permitted in this Certificate shall be in writing and shall be

personally delivered, delivered by facsimile or courier service, or mailed, certified with first class postage prepaid, in the case of communications to a Holder, to such Holder's address set forth on the books of the Corporation, and, in the case of the Corporation, to the principal office of the Corporation at 2130 Commerce Street, Dallas, Texas 75201, Attention: David Copps, Chief Executive Officer. Each such notice, request, demand or other communication shall be deemed to have been given and received (whether actually received or not) on the date of actual delivery thereof, if personally delivered or delivered by facsimile transmission (if receipt is confirmed electronically at the time of such transmission), or on the third (3rd) Business Day following the date of mailing, if mailed in accordance with this Article V, or on the day specified for delivery to the courier service (if such day is one on which the courier service will give normal assurances that such specified delivery will be made). Any notice, request, demand or other communication given otherwise than in accordance with this Article V shall be deemed to have been given on the date actually received. The Corporation may change its address for purposes of this Article V by giving written notice of such change to each Holder in the manner provided in this Article V. Any Holder may change its address for purposes of this Article V by giving written notice of such change to the Corporation in the manner provided in this Article V. Whenever any notice is required to be given by law or by this Certificate, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of notice. Notwithstanding anything herein to the contrary, prior to the consummation of a Liquidation Event for which shareholder approval is required, the Corporation shall give each Holder of record entitled to vote on such matter written notice of any such impending Liquidation Event not later than the earlier of ten (10) days prior to the shareholders' meeting called to approve such Liquidation Event, if any, and fifteen (15) days prior to the consummation of such Liquidation Event. The notice shall describe the material terms and conditions of the impending Liquidation Event, and the Corporation shall thereafter give such Holders prompt notice of any material changes thereto.

## ARTICLE VI BOARD OF DIRECTORS

6.1 **Number and Term.** The Board of Directors shall consist of no fewer than one (1) director and no more than five (5) directors, with the exact number to be fixed from time to time in the manner provided in the Corporation's Bylaws. Each of the Corporation's directors shall serve until such director's successor is duly elected and qualified in accordance with the Bylaws, or until such director's earlier resignation or death.

6.2 **Current Directors.** The names and addresses of the current directors are as follows:

David S. Copps	2130 Commerce Street Dallas, Texas 75201
Amir L. Ecker	2130 Commerce Street Dallas, Texas 75201



**Richard A. Jacoby**

2130 Commerce Street  
Dallas, Texas 75201

**Randy Rowland**

Courvoisier Centre I  
501 Brickell Key Drive, Suite 200  
Miami, Florida 33131

**Barry P. Field**

Courvoisier Centre I  
501 Brickell Key Drive, Suite 200  
Miami, Florida 33131

6.3 **Meetings.** The Board of Directors shall meet at least annually, unless otherwise agreed by a vote of a majority of the Board of Directors.

6.4 **Cumulative Voting.** Cumulative voting for the election of directors is expressly denied and prohibited with respect to all classes of Capital Stock.

#### **ARTICLE VII INDEMNIFICATION**

The Corporation shall indemnify each of its officers and directors and each of its former officers and directors to the fullest extent permitted by law in existence now or hereafter.

The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VII.

#### **ARTICLE VIII EXCULPATION**

No director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under the applicable provisions of the TBOC or (iv) for any transaction from which the director derived an improper personal benefit. It is the intent that this provision be interpreted to provide the maximum protection against liability afforded to directors under the TBOC, as in existence either now or hereafter.

**ARTICLE IX  
BYLAWS**

The Corporation's Bylaws may be altered, amended or repealed, and new Bylaws adopted, by the affirmative vote of at least a majority of the members of the Board of Directors, including the approval of the Series C Directors, then in office or by the affirmative vote of the holders of at least a majority of the voting power of all shares of Capital Stock of the Corporation then entitled to vote generally in the election of directors, voting as a single class.

**ARTICLE X  
ELECTION NOT TO BE GOVERNED BY BUSINESS COMBINATION LAW**

Pursuant to Section 21.607 of the TBOC, the Corporation expressly elects not to be governed by Section 21.606 of the TBOC Three Year Moratorium on Certain Business Combinations.

**ARTICLE XI  
EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE XII  
EFFECTIVENESS OF FILING**

This document becomes effective when the document is filed by the Secretary of State of the State of Texas.

EXECUTION

The undersigned affirms that the person designated as registered agent in the Amended and Restated Certificate of Formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Dated: August 23, 2013

PUREDISCOVERY CORPORATION

By: 

Name: David S. Copps

Title: Chief Executive Officer

*Signature Page to  
Amended and Restated Certificate of Formation of  
PureDiscovery Corporation, a Texas For-Profit Corporation*