

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM406042

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Fitness on Request, Inc.		07/07/2015	Corporation: DELAWARE
RECEIVING PARTY DATA			
Name:	Wellbeats, Inc.		
Street Address:	11600 96th Avenue North		
City:	Maple Grove		
State/Country:	MINNESOTA		
Postal Code:	55369		
Entity Type:	Corporation: DELAWARE		
PROPERTY NUMBERS Total: 8			
Property Type	Number	Word Mark	
Serial Number:	85566909	FITNESS ON REQUEST	
Serial Number:	85606723	FITNESS ON REQUEST	
Serial Number:	85642618	ELEMENTS	
Serial Number:	85684518	FITNESS ON REQUEST	
Serial Number:	85684526	FITNESS ON REQUEST	
Serial Number:	86149498	WELLBEATS	
Serial Number:	86199993	VIRTUAL PRESENTATION · LIVE EXPERIENCE	
Serial Number:	86205089	W	
CORRESPONDENCE DATA			
Fax Number:	6126324444		
<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>			
Phone:	(612) 632-3357		
Email:	trademark@gpmlaw.com		
Correspondent Name:	Jennifer C. Debrow		
Address Line 1:	500 IDS Center, 80 South Eighth Street		
Address Line 4:	Minneapolis, MINNESOTA 55402		
NAME OF SUBMITTER:	Cynthia Hefferan, Paralegal		
SIGNATURE:	/Cynthia Hefferan/		

CH \$215.00 85566909

DATE SIGNED:

11/18/2016

Total Attachments: 24

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Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "FITNESS ON REQUEST, INC.", CHANGING ITS NAME FROM "FITNESS ON REQUEST, INC." TO "WELLBEATS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF JULY, A.D. 2015, AT 11:11 O'CLOCK A.M.

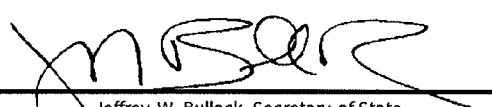
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

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




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 2532212

DATE: 07-07-15

TRADEMARK
REEL: 005925 FRAME: 0153

**THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
FITNESS ON REQUEST, INC.**

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Fitness on Request, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "GCL"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Fitness on Request, Inc., and that this corporation was originally incorporated pursuant to the GCL on November 28, 2011 under the name Fitness on Request, Inc.

2. That the Board of Directors of this corporation duly adopted resolutions proposing to amend and restate the Second Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Second Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

1. **Name**. The name of this Corporation (hereinafter called the "Corporation") is WellBeats, Inc.
2. **Registered Office and Agent**. The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, Dover, Delaware 19904 in the County of Kent. The name of its registered agent at such address is National Registered Agents, Inc.
3. **Purpose**. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the GCL.
4. **Capital Stock**.
 - 4.1 **Authorized Capital Stock**. The Corporation is authorized to issue two classes of stock to be designated, respectively, preferred stock and common stock ("Common Stock"). The total number of shares of capital stock that the Corporation shall have authority to issue is 56,513,542. The total number of shares of preferred stock the Corporation shall have authority to issue is

16,513,542. The total number of shares of Common Stock the Corporation shall have authority to issue is 40,000,000. The Preferred Stock shall have a par value of \$0.00001 per share and the Common Stock shall have a par value of \$0.00001 per share.

- 4.2 Preferred Stock. The preferred stock shall be divided into series. The first series consists of 5,768,350 shares and is designated "Series A Preferred Stock." As used herein, the "Series A Original Issue Price" is sixty cents (\$0.60) per share. The second series consists of 5,745,192 shares and is designated "Series B Preferred Stock." As used herein, the "Series B Original Issue Price" is fifty four cents (\$0.54) per share. The Series A Preferred Stock and Series B Preferred Stock are collectively referred to herein as "Preferred Stock". The remaining 5,000,000 shares of preferred stock shall be undesignated and the Board of Directors may establish, from time to time, by resolution from the undesignated shares of preferred stock, different series and, subject to Section 4.6, may fix the relative rights and preferences of said shares.
- 4.3 Dividend Rights. Holders of Preferred Stock (on an as-converted basis) shall share with the Common Stock in all dividends declared by the Corporation on the shares of Common Stock, other than in respect of dividends declared pro rata to all holders of shares of Common Stock and Preferred Stock. From and after the date of the issuance of any shares of Series A Preferred Stock and Series B Preferred Stock, as the case may be, (on an as-converted basis), dividends at the rate per annum of \$0.03 per share shall accrue on such shares of Series A Preferred Stock and dividends at the rate per annum of \$0.027 per share shall accrue on such shares of Series B Preferred Stock, in each case subject to appropriate adjustment to reflect any stock split, stock dividend, reverse stock split or similar corporate event affecting the Preferred Stock (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not earned or declared, shall be cumulative and shall be convertible into Common Stock upon the conversion of the Preferred Stock pursuant to Section 4.7 herein; provided, however, that except as provided in Sections 4.4 and 4.5, the Corporation shall be under no obligation to pay such Accruing Dividends unless so declared by the Board of Directors. No dividends (other than those payable solely in Common Stock) shall be paid on any Common Stock unless and until (i) the accumulated Accruing Dividends as of such date are paid on each outstanding share of Preferred Stock, and (ii) an additional dividend is paid with respect to all outstanding shares of Preferred Stock in an amount equal to or greater than the aggregate amount of dividends which would be payable on each share of Preferred Stock if, immediately prior to such dividend payment on Common Stock, such share of Preferred Stock had been converted into Common Stock.
- 4.4 Liquidation Preference.
- (A) Series B Preferred Stock. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation"), and including, without limitation, the occurrence of any of

the events described in Section 4.4(D) hereof (together with any Liquidation, a "Liquidation Event"), before any distribution or payment shall be made to the holders of the Series A Preferred Stock or the Common Stock, or any other capital stock ranking junior to the Series B Preferred Stock in respect of payments upon a Liquidation Event, the holders of shares of Series B Preferred Stock shall be entitled to be paid, out of the assets of the Corporation, an amount per share of Preferred Stock equal to two (2) times the Series B Original Issue Price (as adjusted pursuant to Section 4.7(G)) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, and any other dividends declared but unpaid thereon (the "Series B Liquidation Preference Payment") for each share of Series B Preferred Stock held by such holder. In such event, if the assets of the Corporation shall be insufficient to make payment in full to all holders of Series B Preferred Stock of the Series B Liquidation Preference Payment, then such assets shall be distributed among the holders of Series B Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

- (B) Series A Preferred Stock. In the event of a Liquidation Event, following payment in full of the Series B Liquidation Preference, before any distribution or payment shall be made to the holders of the Common Stock, or any other capital stock ranking junior to the Series A Preferred Stock in respect of payments upon a Liquidation Event, the holders of shares of Series A Preferred Stock shall be entitled to be paid, out of the assets of the Corporation, an amount per share of Series A Preferred Stock equal to two (2) times the Series A Original Issue Price (as adjusted pursuant to Section 4.7(G)) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, and any other dividends declared but unpaid thereon (the "Series A Liquidation Preference Payment") for each share of Series A Preferred Stock held by such holder. In such event, if the assets of the Corporation shall be insufficient to make payment in full to all holders of Series A Preferred Stock of the Series A Liquidation Preference Payment, then such assets shall be distributed among the holders of Series A Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.
- (C) Residual Distributions. Following payment in full of the Series B and Series A Liquidation Preference Payments in accordance with Sections 4.4(A) and 4.4(B), in the event of a Liquidation Event, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock, pro rata based on the number of shares held by each such holder of Common Stock. For the avoidance of doubt, Preferred Stock that has not been converted pursuant to Section 4.7 shall not be entitled to any distributions under this Section 4.4(C).

- (D) Liquidation Events. For the purposes of Sections 4.4(A), 4.4(B), and 4.4(C) only, unless otherwise determined by the holders of at least fifty percent (50%) of the then-outstanding shares of Preferred Stock (which shall include LFE, as defined in Section 4.5(A) below), voting together as a single class, the following events shall be considered a liquidation:
- (1) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred (a "Change of Control"); or
 - (2) a sale, lease or other disposition of all or substantially all of the assets of the Corporation, including the exclusive licensing of all or substantially all of the Corporation's intellectual property, in a single transaction or series of related transactions (an "Asset Sale"); or
 - (3) any liquidation, dissolution or winding up of the Corporation.
- (E) Non-Cash Distributions. Whenever a distribution provided for in this Section 4.4 shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property, as determined in good faith by the Board of Directors.

4.5 Redemption Rights.

- (A) Redemption Demand. Each and every issued and outstanding share of Preferred Stock, to the extent the Corporation may lawfully do so, shall be redeemed by the Corporation, in the manner set forth in Section 4.5(B) below, at any time after July 7, 2017, with respect to the Series A Preferred Stock, upon receipt by the Corporation of a written request from LFE Growth Fund II, L.P. ("LFE II") that the Series A Preferred Stock be redeemed and with respect to the Series B Preferred Stock, upon receipt by the Corporation of a written request from LFE Growth Fund III, L.P. ("LFE III") and collectively with LFE II, ("LFE") that the Series B Preferred Stock be redeemed (as the case may be, a "Redemption Demand"). The Corporation shall effect redemptions under this Section 4.5(A) on the Redemption Date (as defined below) by paying in cash, in exchange for each share of Preferred Stock to be redeemed, a sum equal to the greater of (x) the Series B or Series A Liquidation Preference Payment, as the case may be, per share of the Preferred Stock so

redeemed, or (y) the fair market value of a share of the Series B Preferred Stock or Series A Preferred Stock, as applicable, as determined in good faith by the Corporation's Board of Directors, the aggregate amount of such payments necessary to redeem every share of the Preferred Stock subject to redemption referred to herein as the "Redemption Price"). Other than the redemption of shares of Common Stock issued or issuable to persons as described in Section 4.7(D)(iii)(b) in accordance with stock purchase plans, agreements or arrangements approved by the Corporation's Board of Directors, in no event will any Common Stock or any other capital stock ranking junior to the Preferred Stock in respect of redemption payments, be redeemed prior to the redemption of all outstanding shares of Preferred Stock.

- (B) Redemption Notice. Upon receipt of a Redemption Demand, the Corporation shall send a notice (a "Redemption Notice") to each holder of Series A Preferred Stock or Series B Preferred Stock, as the case may be, setting forth: (i) the number of shares of Preferred Stock to be redeemed by the Corporation from such holder and the amount of the Redemption Price applicable thereto; (ii) the place at which such holder may obtain the payment of that portion of the Redemption Price to which he, she or it is entitled upon surrender of his, her or its share certificates; (iii) the date upon which payment of the Redemption Price for the shares will be made (the "Redemption Date"), which shall be no more than one hundred twenty (120) days after receipt of the Redemption Demand. If the Corporation does not have sufficient funds legally available to pay the Redemption Price due on the Redemption Date, then it shall pay first to each holder of the Series B Preferred Stock and second, to the extent there are sufficient funds remaining, to each holder of the Series A Preferred Stock, such holder's *pro rata* share of the maximum amount of the Redemption Price required to be paid by the Corporation on the Redemption Date that the Corporation may legally redeem (based on the aggregate number of shares of Preferred Stock to be redeemed on such Redemption Date). At any time thereafter when additional funds of the Corporation are legally available for the payment of that portion of the Redemption Price that the Corporation was unable to pay on the Redemption Date, then such funds will be used at the earliest permissible time to make payment on the balance of such Redemption Price, or such portion thereof for which funds are then legally available.
- (C) Redemption Procedures. On or after the appropriate Redemption Date, each holder of Series A Preferred Stock or Series B Preferred Stock, as the case may be, shall surrender such holder's certificates representing the shares to be redeemed on such Redemption Date to the Corporation in the manner and at the place designated in the Redemption Notice or as otherwise noticed to the Corporation, and thereupon, subject to the Corporation having sufficient funds legally available, that portion of the Redemption Price to which such holder is entitled for such shares (as set

forth in Section 4.5(B) above) shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event that less than all the shares represented by such certificates are redeemed by the Corporation as a result of insufficient funds, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the entire Redemption Price payable on the applicable Redemption Date due to not having sufficient legally available funds, all rights of the holders of such shares, as holders of Preferred Stock to be redeemed on such Redemption Date (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to all such shares; provided, that, in the event that all of the shares of Preferred Stock to be redeemed are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds, such shares of Preferred Stock not redeemed shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

- (D) Default. Notwithstanding anything contrary contained herein, if the Corporation fails to pay the full Redemption Price on or before the Redemption Date, whether or not such failure is due to lack of legally available funds, or otherwise fails to fully redeem or abide by its obligations to redeem the Preferred Stock under Section 4.5, an Event of Default (as defined below) shall have occurred.

4.6 Voting Rights.

- (A) General – Common Stock. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.
- (B) General – Preferred Stock. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Third Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), holders of Preferred

Stock shall vote together with the holders of Common Stock as a single class.

- (C) Election of Directors. The Board of Directors shall initially be comprised of five (5) directors. The individual serving, as appointed by the Board of Directors, as the full time Chief Executive Officer of the Corporation (the “CEO”) shall be appointed and elected as a member of the Board of Directors during the period of the CEO’s service to the Corporation as the CEO. For so long there are shares of Preferred Stock outstanding, the holders of record of the majority of shares of Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the “Preferred Stock Directors”) and the holders of record of the majority of shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “Common Director”). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, as the case may be, the affirmative vote of the holders of record of the majority of shares of the class or series of capital stock entitled to elect such director, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the third sentence of this Section 4.6(C), then any directorship not so filled shall remain vacant until such time as the holders of the Common Stock or Preferred Stock (by vote or written consent in lieu of a meeting), as the case may be, elect a person to fill such directorship; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock on an as converted basis), exclusively and voting together as a single class, shall be entitled to elect one (1) director, who shall be satisfactory to LFE and independent (as determined in good faith by LFE). At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 4.6(C), a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 4.6(C).
- (D) Special Voting Rights Relating to Directors. Upon the occurrence of an (i) Event of Default (as defined below) and for so long as such Event of

Default has not been cured or otherwise satisfied (provided, however, that for purposes of this Section 4.6(D), an Event of Default under Section 7.1(d) of the Purchase Agreement cannot be cured or otherwise satisfied), or (ii) following the receipt of a Control Notice (as defined below), then LFE shall have the right to immediately remove the Common Director on the Corporation's Board of Directors and replace him or her with a director who shall be chosen by LFE in its sole discretion as is necessary for the Preferred Stock Directors and such additional director to constitute a majority of the Board of Directors. The provisions of this Section 4.6(D) shall terminate upon the earlier to occur of (a) LFE no longer holding any capital stock in the Corporation, or (b) a Qualified IPO. As used herein, "Event of Default" means an Event of Default as such term is defined in the Stock Purchase Agreement, dated July 7, 2015 (the "Purchase Agreement"), or the Corporation defaults on its obligations to fully redeem the Preferred Stock under Section 4.5. As used herein, "Control Notice" means written notice to the Corporation by LFE notifying the Corporation of LFE's intent to exercise the right to elect a majority of the Board of Directors pursuant to this subsection in the event the Corporation fails to satisfy its obligation to fully redeem the Preferred Stock in accordance with Section 4.5, or no Board-approved plan to complete a Liquidation Event or Qualified Public Offering has been adopted by July 7, 2017.

- (E) Preferred Stock Protective Provisions. At any time when shares of Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of more than fifty percent (50%) of the then outstanding shares of Preferred Stock (which shall include LFE), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:
- (i) amend this Certificate of Incorporation, including by way of a merger, consolidation or otherwise;
 - (ii) amend or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Preferred Stock;
 - (iii) authorize the creation of any equity security (including any security convertible into or exercisable for any equity security) senior to or on a parity with the Preferred Stock as to any rights or preferences, including, without limitation, dividend rights or redemption rights or liquidation preferences;
 - (iv) reclassify any outstanding shares into shares having preferences superior to or on a parity with the Preferred Stock;

- (v) increase the number of authorized shares of Preferred Stock; and
- (vi) approve any transaction that would result in a Liquidation Event.

4.7 Conversion. The holders of the Preferred Stock shall have conversion rights as follows:

- (A) Preferred Stock. Each share of Preferred Stock as well as the amount of all accrued and unpaid dividends (including Accruing Dividends) on such Preferred Stock shall be convertible, at the option of the holder thereof, at any time on or prior to the fifth (5th) day prior to the Redemption Date, if any, as may have been fixed in any Redemption Notice with respect to such shares of Preferred Stock, and at any time up to the close of business on the business day immediately preceding the business day on which the consummation of a transaction giving rise to a Change of Control occurs, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by the following: (i) with respect to the shares of Preferred Stock, as is determined by dividing the Original Issue Price by the Conversion Price applicable to such shares, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion; and (ii) with respect to accrued and unpaid dividends (including Accruing Dividends) with respect to the shares of Preferred Stock so converted, by dividing the amount of such unpaid dividends (including Accruing Dividends) by the Conversion Price applicable to the corresponding converted shares under Section 4.7(A)(i). The conversion price of the Preferred Stock and accrued dividends, including Accruing Dividends, with respect to the Series A Preferred Stock shall be \$0.5855 and with respect to the Series B Preferred Stock shall be \$0.54 (accordingly, the "Conversion Price"), in each case subject to adjustment as hereinafter provided.
- (B) Automatic Conversion. Each share of Preferred Stock and all accrued and unpaid dividends shall automatically be converted into shares of Common Stock at the then-effective Conversion Price, accordingly, immediately upon the earlier of (i) the written election of the holders of at least fifty percent (50%) of the then-outstanding shares of, the Series A Preferred Stock (which shall include LFE II) with respect to the Series A Preferred Stock, or the Series B Preferred Stock (which shall include LFE III) with respect to the Series B Preferred Stock, as the case may be, voting together as a single class, and (ii) the closing of a Qualified IPO (as defined below). As used herein, the term "Qualified IPO" means the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), other than a registration relating solely to a transaction under Rule 145 under the Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation in which the equity value of the

Corporation (before deducting underwriting commissions and expenses) is at least thirty million dollars (\$30,000,000).

(C) Conversion Procedures.

- (1) Before any holder of shares of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.
- (2) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person or persons entitled to receive shares of Common Stock upon conversion of the shares of Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such sale of securities.
- (3) Upon the occurrence of a Qualified IPO, the holders of Preferred Stock shall be given customary and reasonable advance notice thereof, and shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock. As soon as practicable thereafter, there shall be issued and delivered to such holder 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 Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred. Upon such automatic conversion, the shares of Preferred Stock shall be converted automatically into shares of Common Stock without any further action by the holders of such shares and

whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, 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 Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

(D) Adjustments to Conversion Price for Certain Diluting Issues.

- (1) Special Definitions. For purposes of Sections 4.7 and 4.8, the following definitions apply:
- (i) “Options” means rights, options or warrants to subscribe for, purchase or otherwise acquire Additional Shares of Common Stock (as defined below) or Convertible Securities (as defined below);
 - (ii) “Convertible Securities” means any evidences of indebtedness, shares or other securities convertible into or exercisable or exchangeable for Additional Shares of Common Stock (as defined below) or Preferred Stock convertible into or exercisable or exchangeable for Additional Shares of Common Stock (as defined below); and
 - (iii) “Additional Shares of Common Stock” means all shares of Common Stock issued (or, pursuant to Section 4.7(F) hereof, deemed to be issued) by the Corporation after the date hereof (including but not limited to any additional shares of Series B Preferred Stock issued after the date hereof), other than shares of Common Stock issued or issuable:
 - (a) upon conversion or exchange of any shares of Preferred Stock outstanding as of the date hereof;
 - (b) to officers, directors or employees of, or consultants vendors, or third party suppliers to, the Corporation pursuant to stock option or stock purchase plans, agreements or arrangements on terms approved by the Board of Directors;

- (c) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another person by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors;
 - (d) as a dividend or distribution on any shares of Preferred Stock, so long as such dividend or distribution is made pro rata to all holders of shares of Series A Preferred Stock or Series B Preferred Stock, as the case may be;
 - (e) upon exercise, exchange or conversion of the Options outstanding as of the date hereof;
 - (f) in connection with any dividend or subdivision which would result in an adjustment to the Conversion Price, pursuant to Section 4.7(I) or Section 4.7(J) hereof; or
 - (g) in connection with the conversion of the “Notes” pursuant to those certain Convertible Promissory Notes among the Corporation and certain “Lenders” dated June 2014.
- (E) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in a Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4.7(H) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, such issuance.
- (F) Deemed Issuance of Additional Shares of Common Stock. In the event the Corporation, at any time, or from time to time, after the date hereof shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities, the conversion, exercise or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have

been fixed, as of the close of business on such record date, provided, that, in any such case in which Additional Shares of Common Stock are deemed to be issued:

- (1) no further adjustments in a Conversion Price shall be made upon the subsequent issue of such Convertible Securities, or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;
- (2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the minimum consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion, exercise or exchange under such Convertible Securities; provided, however, that no such adjustment of a Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock; and provided, further, that no such adjustment of a Conversion Price shall be made as a result of any adjustment to a Conversion Price made pursuant to Sections 4.7(I) or 4.7(J);
- (3) upon the expiration of any such Options or any rights of conversion, exercise or exchange under such Convertible Securities which shall not have been converted or exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:
 - (i) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted, exercised or exchanged, plus the additional consideration, if any;

actually received by the Corporation upon such conversion, exercise or exchange; and

- (ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4.7(H) hereof) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;
 - (4) no readjustment pursuant to Sections 4.7(F)(2) or (3) hereof shall have the effect of increasing a Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date, or (ii) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and
 - (5) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of a Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in Section 4.7(F)(3) hereof.
- (G) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.
- (1) Conversion Price.
 - (i) On or Before July 7, 2017. In the event the Corporation shall, at any time up to and including July 7, 2017, with respect to the Series B Preferred Stock, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.7(F) hereof) without consideration or for a consideration per share less than the Series B Conversion Price in effect immediately prior to such issuance, then, and in such event, such Series B Conversion Price shall be reduced, concurrently with such issuance, to a price equal to the per share consideration received in such issuance.

(ii) In the event the Corporation shall, at any time after the date hereof with respect to the Series A Preferred Stock and July 7, 2017 respect to the Series B Preferred Stock, as the case may be, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.7(F) hereof) without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issuance (subject to Section 4.7(E) hereof) then, and in such event, such Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one one-hundredth of a cent) determined by multiplying (x) such Conversion Price by (y) a fraction, the numerator of which shall be the sum of the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the sum of the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such Additional Shares of Common Stock so issued. For the purpose of the immediately above calculation in this Section 4.7(G)(1)(ii), the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated as if all shares of Preferred Stock, and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance.

(H) Determination of Consideration. For purposes of this Section 4.7, the consideration received by the Corporation for the issuance of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

- (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;
- (ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

- (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.
- (2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.7(F) hereof, relating to Options and Convertible Securities shall be determined by dividing:
 - (i) the sum of the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities or Preferred Stock, the exercise of such Options for Convertible Securities or Preferred Stock, and the conversion, exercise or exchange of such Convertible Securities or Preferred Stock; by
 - (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion, exercise or exchange of such Convertible Securities.
- (I) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation, at any time, or from time to time, after the date hereof, shall (i) declare or pay, without consideration, any dividend on the Common Stock payable in shares of Common Stock or in any right to acquire shares of Common Stock for no consideration (unless made *pro rata* to holders of Preferred Stock and Common Stock), (ii) effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise, other than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or (iii) effect a combination or consolidation of the outstanding shares of Common Stock by reclassification or otherwise (including a reverse split), into a lesser number of shares of Common

Stock, then in any such case, the Conversion Price for any series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

- (J) Adjustments for Reclassifications and Reorganizations. If the Common Stock issuable upon conversion of Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 4.7(I) hereof or a merger or other reorganization referred to in Section 4.4(D) hereof) (an “Exchange Transaction”), concurrently with the effectiveness of such Exchange Transaction, Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of such other class or classes of stock that would have been subject to receipt by the holders had such holder of Preferred Stock converted its shares immediately prior to such Exchange Transaction and thereafter participated in such Exchange Transaction.
- (K) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid, or seek to avoid, the observance or performance of any of the terms to be observed or performed under this Section 4.7 by the Corporation, but will, at all times, in good faith assist in (1) the carrying out of all the provisions of this Section 4.7 and (2) the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment as set forth in this Section 4.7.
- (L) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4.7, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate executed by the Corporation’s Chief Executive Officer or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting

forth (1) such adjustments and readjustments, (2) the Conversion Price for such series of Preferred Stock at the time in effect, and (3) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such Preferred Stock.

- (M) Notices of Record Date. In the event that the Corporation shall propose at any time to: (1) declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (2) offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (3) effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (4) merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to each holder of Preferred Stock:
- (1) at least fifteen (15) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (3) and (4) above; and
 - (2) in the case of the matters referred to in (3) and (4) above, at least fifteen (15) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).
- (N) Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any income taxes of any kind or transfer taxes resulting from any transfer requested by any holder in connection with any such conversion and the Corporation shall not be required to issue or deliver certificates representing such shares unless and until such holder shall have paid to the Corporation the amount of such taxes or shall have established to the satisfaction of the Corporation that such taxes have been paid.
- (O) Reservation of Stock Issuable Upon Conversion. The Corporation shall, at all times, reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the

conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and, if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

- (P) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a 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 a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).
- (Q) Notices. Any notice required by the provisions of this Section 4.7 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or if sent by facsimile, email or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address, email address or facsimile number appearing in the records of the Corporation.

4.8 No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

- 5. Bylaws. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors shall have the power, subject to the provisions of Section 4.8 hereof, to adopt, amend, repeal or otherwise alter the Bylaws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the Board of Directors shall not divest the stockholders of, nor limit their power, subject to the provisions of Section 4.8 hereof, to adopt, amend, repeal or otherwise alter the Bylaws.
- 6. Election of Directors. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

7. **Reservation.** Subject to the provisions of Section 4.8 hereof, the Corporation reserves the right to adopt, repeal, rescind or amend, in any respect, any provisions contained in its Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders, directors or any other persons herein are granted subject to this reservation.

8. **Director Liability.** No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the GCL or (iv) for any transaction from which the director derived an improper personal benefit. All references in this Section 8 to a director shall also be deemed to refer to any other person who, pursuant to a provision of the Certificate of Incorporation in accordance with subsection (a) of Section 141 of the GCL, exercises or performs any of the powers or duties otherwise conferred or imposed upon the Board of Directors of the Corporation by the GCL. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL as so amended. No amendment to or repeal of this Section 8 shall apply adversely to or have any adverse effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

9. **Indemnification.**
 - 9.1 The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Corporation) (a "Proceeding") by reason of the fact that he or she is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust or other enterprise (including service with respect to any employee benefit plan) against expenses (including attorneys' fees), judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement actually and reasonably incurred by him or her in connection with such Proceeding to the fullest extent permitted by the GCL, as the same exists or may hereafter be amended (but, in the case of any amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment). The indemnification provided by this Section 9 shall not be deemed exclusive of any other rights to which any person may be entitled under any bylaw of the Corporation, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity, and shall continue as to a person who has ceased to be a director, officer

or employee and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person. It is expressly understood that, notwithstanding the foregoing, no director, officer or employee shall have any right under this Section 9 if the Proceeding giving rise to the claim for indemnification hereunder arises as a result of actions or failures to act in any capacity other than those set forth in this Section 9.1, and, as such, no such person shall have any rights under this Section 9 if the Proceeding giving rise to the claim for indemnification arises as a result of such person's purchase and/or sale of securities of the Corporation (other than on behalf of the Corporation). For the avoidance of doubt, this Section 9 shall not provide indemnification to any person covered hereunder resulting from a breach by such person of any agreement with the Corporation.

- 9.2 Any indemnification of a director, officer or employee of the Corporation or advance of expenses under this Section 9 shall be made promptly upon the written request of the director, officer or employee, and in any event within thirty (30) days after such request (or, if a determination as described below is required, within thirty (30) days after such determination has been made or deemed made) and shall be provided solely out of the assets (to the extent available) of the Corporation only. If a determination by the Corporation that the director, officer or employee is entitled to indemnification pursuant to this Section 9 is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advancing of expenses, in whole or in part, or payment in full pursuant to such request is not made within thirty (30) days after such request (or, if a determination as described above is required, within thirty (30) days after such determination has been made or deemed made), the right to indemnification or advances as granted by this Section 9 shall be enforceable by the director, officer or employee in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the GCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its board of directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

- 9.3 The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer or employee of the Corporation or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust or other enterprise (including service with respect to any employee benefit plan) against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such liability under this Section 9.
- 9.4 Expenses incurred by any person described in this Section 9 in defending a Proceeding shall be paid by the Corporation in advance of such Proceeding's final disposition upon receipt of an undertaking by or on behalf of the director, officer or employee to repay such amount without interest if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation.
- 9.5 The provisions of this Section 9 shall be deemed to be a contract between the Corporation and each director, officer or employee who serves in any such capacity at any time, and any repeal or modification of this Section 9 or of any relevant provisions of the GCL or other applicable law shall not affect any rights or obligations then existing with respect to any state of facts or Proceeding then existing.
- 9.6 The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any agent of the Corporation to the fullest extent of the provisions of this Section 9 with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

* * *

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the GCL.

4. That this Third Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Second Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the GCL.

IN WITNESS WHEREOF, this Third Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation to be made effective on this 7th day of July, 2015.

FITNESS ON REQUEST, INC.

By:


Jason Von Bank, Chief Executive Officer

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RECORDED: 11/18/2016

TRADEMARK
REEL: 005925 FRAME: 0176