

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM513508

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	MERGER		
EFFECTIVE DATE:	02/06/2017		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
MomentFeed, Inc.		02/06/2017	Corporation: CALIFORNIA
RECEIVING PARTY DATA			
Name:	MomentFeed, Inc.		
Street Address:	1540 2nd St., 3rd Fl.		
City:	Santa Monica		
State/Country:	CALIFORNIA		
Postal Code:	90401		
Entity Type:	Corporation: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	4035871	MOMENTFEED	
CORRESPONDENCE DATA			
Fax Number:	8052301355		
<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:	8052301350		
Email:	nabeloe@socalip.com		
Correspondent Name:	SoCal IP Law Group LLP		
Address Line 1:	310 N. Westlake Blvd., Suite 120		
Address Line 4:	Westlake Village, CALIFORNIA 91362		
ATTORNEY DOCKET NUMBER:	M276.T19374		
NAME OF SUBMITTER:	Nicole M. Abeloe		
SIGNATURE:	/Nicole M. Abeloe/		
DATE SIGNED:	03/08/2019		
Total Attachments: 31			
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STATE OF CALIFORNIA
CERTIFICATE OF OWNERSHIP

(Pursuant to Section 1110 of the California Corporations Code)

FILED
Secretary of State
State of California
FEB 07 2017

MERGING

MomentFeed, Inc., a California corporation

lcc

INTO

MomentFeed, Inc., a Delaware corporation.

Robert Blatt does hereby certify:

1. He is the Chief Executive Officer and Secretary of MomentFeed, Inc., a California corporation ("MomentFeed California").
2. MomentFeed California owns 100% of the outstanding shares of capital stock of MomentFeed, Inc., a Delaware corporation ("MomentFeed Delaware").
3. The Board of Directors of MomentFeed California, by unanimous written consent, dated February 6, 2017, and the shareholders of MomentFeed California, by a vote that equaled or exceeded the vote required, approved the Agreement and Plan of Merger, by and between MomentFeed California and MomentFeed Delaware, in the form attached to this certificate as Exhibit A (the "Plan of Merger"). The Plan of Merger is incorporated by reference as if fully set forth in this certificate.
4. The Board of Directors of MomentFeed Delaware, by unanimous written consent, dated February 6, 2017, approved the Plan of Merger.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge. In witness whereof, the undersigned have executed this Certificate of Ownership as of the 6th day of February, 2017.

By:



Robert Blatt

Chief Executive Officer and Secretary

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EXHIBIT A

AGREEMENT AND PLAN OF MERGER

[attached]

**AGREEMENT AND PLAN OF MERGER
OF
MOMENTFEED, INC.,
A DELAWARE CORPORATION
AND
MOMENTFEED, INC.,
A CALIFORNIA CORPORATION**

This Agreement and Plan of Merger dated as of February 6, 2017 (the "Agreement") is entered into by and between MomentFeed, Inc., a California corporation ("MomentFeed California"), and its wholly-owned subsidiary, MomentFeed, Inc., a Delaware corporation ("MomentFeed Delaware"). MomentFeed Delaware and MomentFeed California are sometimes referred to in this Agreement as the "Constituent Corporations."

RECITALS

A. MomentFeed Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has authorized 134,257,185 shares of capital stock. 79,377,930 authorized shares are Common Stock, \$0.0001 par value. 54,879,255 authorized shares are Preferred Stock, \$0.0001 par value, of which 13,112,616 are designated "Series AA Preferred Stock", 16,634,841 are designated "Series A Preferred Stock", 5,131,798 are designated "Series B Preferred Stock", and 20,000,000 are designated "Series C Preferred Stock". The shares of Common Stock, Series AA Preferred Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series C-3 Preferred Stock, Series C-5 Preferred Stock and Series C-6 Preferred Stock of MomentFeed Delaware shall be collectively referred to herein as "Surviving Corporation Stock". As of the date of this Agreement, 100 shares of Common Stock of MomentFeed Delaware were issued and outstanding, all of which are held by MomentFeed California.

B. MomentFeed California is a corporation duly organized and existing under the laws of the State of California and has authorized 91,716,965 shares of capital stock. 56,345,216 authorized shares are Common Stock, no par value. 35,371,749 authorized shares are Preferred Stock, no par value, of which 13,112,616 are designated "Series AA Preferred Stock", 16,634,841 are designated "Series A Preferred Stock", and 5,624,292 are designated "Series B Preferred Stock". The shares of Common Stock, Series AA Preferred Stock, Series A Preferred Stock and Series B Preferred Stock of MomentFeed D shall be collectively referred to herein as "MomentFeed California Stock". As of the date of this Agreement, 8,910,908 shares of Common Stock, 13,112,616 shares of Series AA Preferred Stock, 16,362,139 shares of Series A Preferred Stock, and 5,131,798 shares of Series B Preferred Stock were issued and outstanding.

C. The Board of Directors of MomentFeed California has determined that, for the purpose of effecting the reincorporation of MomentFeed California in the State of Delaware, it is advisable and in the best interests of MomentFeed California and its shareholders that MomentFeed California merge with and into MomentFeed Delaware upon the terms and conditions provided in this Agreement.

D. The respective Boards of Directors of MomentFeed Delaware and MomentFeed California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholder(s) and, if approved by such stockholder(s), executed by officers of their respective corporations.

AGREEMENT

In consideration of the mutual agreements and covenants set forth herein, MomentFeed Delaware and MomentFeed California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

Section 1. *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, MomentFeed California shall be merged with and into MomentFeed Delaware (the "Merger"), the separate existence of MomentFeed California shall cease and MomentFeed Delaware shall be, and is sometimes referred to below as, the "Surviving Corporation," and the name of the Surviving Corporation shall be "MomentFeed, Inc."

Section 2. *Closing.* The closing of this Agreement shall take place at 1540 2nd Street, Third Floor, Santa Monica, CA 90401 as soon as practicable following the satisfaction of all conditions to closing set forth in Section 3 of this Agreement (the "Closing").

Section 3. *Conditions to Closing.* The obligations hereunder of both parties to enter into this Agreement are subject to their satisfaction, at or before the Closing, of each of the conditions set forth below:

3.1 *Adoption and Approval by Stockholders.* Adoption and approval of this Agreement and the Merger by the stockholder(s) of each Constituent Corporation in accordance with the applicable requirements of the Delaware General Corporation Law and the California General Corporation Law; and

3.2 *Satisfaction of Conditions Precedent.* The satisfaction or waiver of all of the conditions precedent to the consummation of the Merger as specified in this Agreement.

Section 4. *Filing and Effectiveness.* Upon the satisfaction of all conditions to Closing set forth in Section 3 above, the parties shall file, and the Merger shall become effective upon completion of the filing, with the Secretary of State of Delaware of an executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law. The date and time when the Merger becomes effective is referred to in this Agreement as the "Effective Time of the Merger."

Section 5. *Effect of the Merger.* Upon the Effective Time of the Merger, the separate existence of MomentFeed California shall cease and MomentFeed Delaware, as the Surviving Corporation, (a) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Time of the Merger, (b) shall be subject to all actions previously taken by its and MomentFeed California's Board of Directors, (c) shall

succeed, without other transfer, to all of the assets, rights, powers and property of MomentFeed California in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (d) shall continue to be subject to all of the debts, liabilities and obligations of MomentFeed Delaware as constituted immediately prior to the Effective Time of the Merger and (e) shall succeed, without other transfer, to all of the debts, liabilities and obligations of MomentFeed California in the same manner as if MomentFeed Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

Section 6. *Charter Documents, Directors and Officers.*

6.1 *Certificate of Incorporation.* At the Effective Time of the Merger, the Certificate of Incorporation of the Surviving Corporation shall be in the form attached hereto as Exhibit A until duly amended in accordance with the provisions thereof and applicable law.

6.2 *Bylaws.* The Bylaws of MomentFeed Delaware as in effect immediately prior to the Effective Time of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

6.3 *Directors and Officers.* The directors and officers of MomentFeed California immediately prior to the Effective Time of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

Section 7. *Manner of Conversion of Stock.*

7.1 *MomentFeed California Common Stock.*

(a) Upon the Effective Time of the Merger, each one share of MomentFeed California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.0001 par value, of the Surviving Corporation.

(b) Upon the Effective Time of the Merger, each one share of MomentFeed California Series AA Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series AA Preferred Stock, \$0.0001 par value, of the Surviving Corporation.

(c) Upon the Effective Time of the Merger, each one share of MomentFeed California Series A Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such

share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series A Preferred Stock, \$0.0001 par value, of the Surviving Corporation.

(d) Upon the Effective Time of the Merger, each one share of MomentFeed California Series B Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series B Preferred Stock, \$0.0001 par value, of the Surviving Corporation.

7.2 MomentFeed California Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Time of the Merger, the Surviving Corporation shall assume and continue any and all stock option, stock incentive, employee benefit and other equity-based award plans heretofore adopted by MomentFeed California (the "Plans"). Each outstanding and unexercised option, warrant, other right to purchase, or security convertible into, MomentFeed California Stock (a "Right") shall become an option, right to purchase, or a security convertible into the corresponding series or class of shares of Surviving Corporation Stock, respectively, on the basis of one share of such series or class of Surviving Corporation Stock, as the case may be, for each one share of such series or class of MomentFeed California Stock, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such MomentFeed California Right at the Effective Time of the Merger.

(b) A number of shares of the Surviving Corporation Stock shall be reserved for issuance upon the exercise or conversion of Rights equal to the number of shares of the corresponding class or series of MomentFeed California Stock so reserved immediately prior to the Effective Time of the Merger.

7.3 MomentFeed Delaware Common Stock. Upon the Effective Time of the Merger, each share of Common Stock, \$0.0001 par value, of MomentFeed Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by MomentFeed Delaware, MomentFeed California or any other person, be canceled and returned to the status of authorized but unissued shares.

7.4 Exchange of Certificates. After the Effective Time of the Merger, each holder of an outstanding certificate representing MomentFeed California Stock may, at such holder's option, surrender the same for cancellation to the Surviving Corporation as exchange, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the corresponding class or series of Surviving Corporation Stock into which the surrendered shares were converted as provided herein. Until so surrendered, each outstanding certificate theretofore representing shares of MomentFeed California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation Stock into which such shares of MomentFeed California Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or

conversion or otherwise accounted for to the Surviving Corporation, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of MomentFeed California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Surviving Corporation any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

Section 8. *General.*

8.1 *Covenants of Surviving Corporation.* MomentFeed Delaware covenants and agrees that it will, at or before the Effective Time of the Merger, take all such actions as may be required by the applicable provisions of the California General Corporation Law and Delaware General Corporation Law.

8.2 *Further Assurances.* From time to time, as and when required by MomentFeed Delaware or by its successors or assigns, there shall be executed and delivered on behalf of MomentFeed California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by MomentFeed Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of MomentFeed California and otherwise to carry out the purposes of this Agreement, and the officers and directors of MomentFeed Delaware are fully authorized in the name and on behalf of MomentFeed California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

8.3 *Abandonment.* At any time before the Effective Time of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either MomentFeed California or MomentFeed Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of MomentFeed California or by the sole stockholder of MomentFeed Delaware, or by both.

8.4 *Governing Law.* This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in

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accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

8.5 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one instrument.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed as of this day and year first above written.

MOMENTFEED, INC., a California
corporation

By: 

Name: Robert Blatt

Title: Chief Executive Officer

MOMENTFEED, INC., a Delaware
corporation

By: 

Name: Robert Blatt

Title: Chief Executive Officer

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EXHIBIT A

[attached]

EXHIBIT A**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
MOMENTFEED, INC.****a Delaware corporation****ARTICLE I**

The name of the Corporation is MomentFeed, Inc.

ARTICLE II

The address of this Corporation's registered office in the State of Delaware is 2140 South DuPont Highway, in the City of Camden, County of Kent, Delaware 19934. The name of its registered agent at such address is Paracorp Incorporated.

ARTICLE III

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

ARTICLE IV

The total number of shares of stock that this Corporation shall have authority to issue is 133,014,605, consisting of 78,756,640 shares of Common Stock, \$0.0001 par value (the "**Common Stock**"), and 54,257,965 shares of Preferred Stock, \$0.0001 par value (the "**Preferred Stock**"). Thirteen Million One Hundred Twelve Thousand Six Hundred Sixteen (13,112,616) shares of Preferred Stock shall be designated "**Series AA Preferred Stock**", Sixteen Million Six Hundred Thirty Four Thousand Eight Hundred Forty One (16,634,841) shares of Preferred Stock shall be designated "**Series A Preferred Stock**", Five Million One Hundred Thirty-One Thousand Seven Hundred Ninety-Eight (5,131,798) shares of Preferred Stock shall be designated "**Series B Preferred Stock**", and Nineteen Million Three Hundred Seventy-Eight Thousand Seven Hundred Ten (19,378,710) shares of Preferred Stock shall be designated "**Series C Preferred Stock**".

ARTICLE V

The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock and Preferred Stock are as follows:

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

(a) "**Conversion Price**" shall mean (i) initially, \$0.8547 per share for the Series C Preferred Stock, (ii) initially, \$0.5334 per share for the Series B Preferred Stock,

(iii) initially, \$0.3667 per share for the Series A Preferred Stock and (iv) initially, \$0.25 per share for the Series AA Preferred Stock, and in each case shall be subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein.

(b) “**Corporation**” shall mean MomentFeed, Inc.

(c) “**Distribution**” shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services at the lower of cost or fair market value pursuant to agreements providing for the right of said repurchase that have been unanimously approved by the Corporation’s Board of Directors, and (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, which agreements have been unanimously approved by the Corporation’s Board of Directors.

(d) “**Liquidation Preference**” shall mean (i) \$0.8547 per share for the Series C Preferred Stock plus any declared but unpaid dividends with respect to such shares, (ii) \$0.5334 per share for the Series B Preferred Stock plus any declared but unpaid dividends with respect to such shares, (iii) \$0.3667 per share for the Series A Preferred Stock plus any declared but unpaid dividends with respect to such shares, and (iv) \$0.25 per share for the Series AA Preferred Stock plus any declared but unpaid dividends with respect to such shares, in each case subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein.

(e) “**Original Issue Price**” shall mean (i) \$0.8547 per share for the Series C Preferred Stock, (ii) \$0.5334 per share for the Series B Preferred Stock, (iii) \$0.3667 per share for the Series A Preferred Stock, and (iv) \$0.25 per share for the Series AA Preferred Stock, in each case subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein.

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

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

2. Dividends.

(a) The holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution to the holders of Series B Preferred Stock, Series A Preferred Stock, Series AA Preferred Stock and Common Stock, for each share of Series C Preferred Stock held, out of any funds legally available therefor, noncumulative dividends in an amount equal to eight percent (8%) per annum of the Original Issue Price of the Series C Preferred Stock, only when, as, and if declared by the Corporation’s Board of Directors. No dividend shall be paid on the Series B Preferred Stock, Series A Preferred Stock, Series AA Preferred Stock or the Common Stock in any year, other than dividends payable solely in

Common Stock, until all dividends for such year have been paid or declared and set aside on the Series C Preferred Stock.

(b) The holders of the Series B Preferred Stock and Series A Preferred Stock shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution to the holders of Series AA Preferred Stock and Common Stock, out of any funds legally available therefor, noncumulative dividends in an amount equal to (i) for each share of Series B Preferred Stock held, eight percent (8%) per annum of the Original Issue Price of the Series B Preferred Stock and (ii) for each share of Series A Preferred Stock held, eight percent (8%) per annum of the Original Issue Price of the Series A Preferred Stock, in each case only when, as, and if declared by the Corporation's Board of Directors. No dividend shall be paid on the Series AA Preferred Stock or the Common Stock in any year, other than dividends payable solely in Common Stock, until all dividends for such year have been paid or declared and set aside on the Series B Preferred Stock and Series A Preferred Stock.

(c) In addition to any dividends set forth in Section 2(a) and Section 2(b) above, upon declaration or payment of any dividends or distributions upon the Common Stock (whether payable in cash, securities or other property), the Corporation shall also declare and pay to the holders of the Preferred Stock, at the same time it declares and pays such dividends to the holders of Common Stock, the dividends that would have been declared and paid with respect to the Common Stock issuable upon conversion of the Preferred Stock had all of the Preferred Stock been converted immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined. The provisions of this Section 2(c) shall not, however, apply to a dividend payable solely in shares of Common Stock for an adjustment to the Conversion Price of the Preferred Stock is made pursuant to Section 4(e).

(d) Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Corporation's Board of Directors.

3. Liquidation Rights.

(a) Liquidation Preference.

(i) In the event of any Liquidation Event (as defined in Section 3(d) below), the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series B Preferred Stock, Series A Preferred Stock, Series AA Preferred Stock and Common Stock by reason of their ownership of such stock, an amount per share for each share of Series C Preferred Stock held by them equal to the Liquidation Preference specified for such share of Series C Preferred Stock. If upon the Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series C Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(i), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series C Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(i).

(ii) In the event of any Liquidation Event, after the payment or setting aside for payment to the holders of Series C Preferred Stock of the full amounts specified in Section 3(a)(i) above, the assets of the Corporation available for distribution to its stockholders shall be distributed to the holders of the Series B Preferred Stock and Series A Preferred Stock, on a pari passu basis, prior to and in preference of any distribution of any of the assets of the Corporation to the holders of the Series AA Preferred Stock or Common Stock by reason of their ownership of such stock, as follows: (A) the holders of Series B Preferred Stock shall be entitled to receive an amount per share for each share of Series B Preferred Stock held by them equal to the Liquidation Preference specified for such share of Series B Preferred Stock and (B) the holders of Series A Preferred Stock shall be entitled to receive an amount per share for each share of Series A Preferred Stock held by them equal to the Liquidation Preference specified for such share of Series A Preferred Stock. If upon the Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series B Preferred Stock and Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(ii), then the entire assets of the Corporation legally available for distribution (after payment of the preferential amounts to the Series C Preferred Stock pursuant to Section 3(a)(i)) shall be distributed with equal priority and *pro rata* among the holders of the Series B Preferred Stock and Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(ii).

(iii) In the event of any Liquidation Event, after the payment or setting aside for payment to the holders of Series C Preferred Stock of the full amounts specified in Section 3(a)(i) above and the holders of Series B Preferred Stock and Series A Preferred Stock of the full amounts specified in Section 3(a)(ii) above, the holders of the Series AA Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series AA Preferred Stock held by them equal to the Liquidation Preference specified for such share of Series AA Preferred Stock. If upon the Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series AA Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a)(iii), then the entire assets of the Corporation legally available for distribution to the Series AA Preferred Stock (after payment of the preferential amounts to the Series C Preferred Stock pursuant to Section 3(a)(i) and the Series B Preferred Stock and Series A Preferred Stock pursuant to Section 3(a)(ii)) shall be distributed with equal priority and *pro rata* among the holders of the Series AA Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(iii).

(b) Remaining Assets. After the payment or setting aside for payment to the holders of Series C Preferred Stock of the full amounts specified in Section 3(a)(i), to the holders of Series B Preferred Stock and Series A Preferred Stock of the full amounts specified in Section 3(a)(ii) above and to the holders of Series AA Preferred Stock of the full amounts specified in Section 3(a)(iii) above, the entire remaining assets of the Corporation legally available for distribution shall be distributed: (i) first, *pro rata* to holders of the Common Stock of the Corporation and holders of Series C Preferred Stock (on an as-converted basis) in proportion to the number of shares of Common Stock (and shares of Common Stock into which the Series C Preferred Stock is convertible) held by them until the holders of Series C Preferred Stock have received pursuant to this Section 3 (including the amounts specified in Section

3(a)(i)) an amount per share for each share of Series C Preferred Stock held by them equal to five (5) times the Liquidation Preference specified for such share of Series C Preferred Stock; and (ii) thereafter, any remaining amounts, *pro rata* to holders of the Common Stock of the Corporation. Notwithstanding Section 3(a) above or the first sentence of this Section 3(b), each holder of Series AA Preferred Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such Preferred Stock into shares of Common Stock.

(c) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any distribution, or series of distributions, as shares of Common Stock pursuant to Section 3(b), without first foregoing participation in the distribution, or series of distributions, as shares of Preferred Stock pursuant to Section 3(a).

(d) Liquidation Event. For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include (each of which, a "Liquidation Event"), (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock exclusively for capital raising purposes) other than a transaction or series of related transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Corporation held by such holders prior to such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation; (iii) a debt or equity financing of the Corporation engaged in primarily or in material part for the purpose of distributing the proceeds of such financing to the Corporation's equity holders (other than the equity financing related to the issuance of the Series C Preferred Stock); or (iv) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a liquidation, dissolution or winding up pursuant to clause (i) or (ii) of the preceding sentence may be waived by the consent or vote of the holders of both (A) a majority of the outstanding shares of Series B Preferred Stock and Series A Preferred Stock, voting together as a single class on an as-converted basis, and (B) a majority of the outstanding shares of Series C Preferred Stock, voting as a separate class (the "Required Vote").

(e) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as

determined in good faith by the Board of Directors and the holders of the Required Vote, *except that* any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) if the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(e), “**trading day**” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “**closing prices**” or “**closing bid prices**” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(f) Allocation of Escrow and Contingent Consideration. In the event of a Liquidation Event pursuant to this Section 3, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the definitive agreement effecting such Liquidation Event shall provide that (i) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a) and 3(b) as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event; and (ii) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a) and 3(b) after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 3(f), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Liquidation Event shall be deemed to be Additional Consideration.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "**Conversion Rate**" for each such series. Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "**Securities Act**"), covering the offer and sale of the Corporation's Common Stock, if the per share price is greater than or equal to \$4.2735 (as adjusted in the event of Recapitalizations) and the gross proceeds to the Corporation pursuant to the offering equals or exceeds \$50,000,000 or (ii) upon the vote or written consent of the holders of the Required Vote, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "**Automatic Conversion Event**").

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

Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(d) Conversion Price Adjustments for Certain Dilutive Issuances. The Conversion Price of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock only shall be subject to adjustment for certain dilutive issuances as follows:

(i) Issuance of Additional Stock below Purchase Price. If the Corporation should issue, at any time after the date that this Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware (the "**Filing Date**"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, respectively, then in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, respectively, then in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) Adjustment Formula. Whenever the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock is adjusted pursuant to this Section 4(d)(i), the new Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be determined by multiplying the Conversion Price for the applicable series of Preferred Stock then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding on a fully-diluted basis immediately prior to such issuance (the "**Outstanding Common**") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "**Outstanding Common**" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) Definition of "Additional Stock". For purposes of this Section 4(d)(i), "**Additional Stock**" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Filing Date) other than the following ("**Exempted Securities**");

(1) any shares of Common Stock issued upon conversion of Preferred Stock;

(2) any shares of Common Stock issued or issuable to officers, employees, directors, consultants, placement agents, and other service providers of the

Corporation (or any subsidiary) pursuant to stock grants, option plans, purchase plans, agreements or other employee stock incentive programs or arrangements approved by the Board of Directors of the Corporation but not to exceed 16,498,675 shares (as adjusted in the event of Recapitalizations) unless unanimously approved by the Board of Directors of the Corporation and the holders of the Required Vote;

(3) any shares of Common Stock issued pursuant to the conversion or exercise of warrants or any outstanding convertible or exercisable securities as of the Filing Date;

(4) any shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock of the Corporation or pursuant to any event for which adjustment has been or shall be made pursuant to Sections 4(e), 4(f), 4(g) or 4(h);

(5) any shares of Common Stock offered pursuant to a bona fide, firmly underwritten public offering pursuant to a registration statement filed under the Securities Act;

(6) any shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; provided, that such issuances are approved by at least a 3/4th majority of the Board of Directors of the Corporation and the holders of the Required Vote;

(7) any shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a commercial leasing or debt financing transaction approved by at least a 3/4th majority of the Board of Directors of the Corporation and the holders of the Required Vote;

(8) any shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by at least a 3/4th majority of the Board of Directors of the Corporation and the holders of the Required Vote;

(9) any shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by at least a 3/4th majority of the Board of Directors of the Corporation and the holders of the Required Vote;

(10) any shares of Common Stock issued or issuable in a transaction that the holders of the Required Vote elect in writing to be included in the definition of Exempted Securities, which election may be applied prospectively or retroactively and either generally or in a particular instance; and

(11) any right, option or warrant to acquire any security convertible into shares of Common Stock included in subsections (1) through (10) above.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one one-hundredth of a cent per share (\$0.0001); provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefore before deducting any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board of Directors of the Corporation irrespective of any accounting treatment.

(E) Deemed Issuances of Common Stock. In the case of the issuance (after the Filing Date) of securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "**Common Stock Equivalents**"), the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution or similar adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued or granted and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents, other than a change resulting from the antidilution or similar provisions thereof, the Conversion Price of any series of Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change.

(3) The number of shares of Common Stock deemed issued and the consideration deemed paid therefore pursuant to Section 4(d)(i)(E)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(2).

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

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

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

(h) Reorganizations, Mergers or Consolidations. If at any time after the first issuance of Preferred Stock, there is a capital reorganization of the Common Stock or the merger or consolidation of the Corporation with or into another corporation or another entity (other than a Liquidation Event) as a part of such capital reorganization, provision shall be made so that the holders of the Preferred shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise to which a holder of Common Stock, deliverable upon conversion thereof, would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Preferred Stock after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price of the Preferred Stock then in effect and the

number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

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

(j) Notices of Record Date. In the event that this Corporation shall propose at any time:

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

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

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3(d);

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least ten (10) days' prior written notice of the date on which a record shall be taken for such distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

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

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of the Required Vote.

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will 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.

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Other than as provided herein or required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) Election of Directors. The Corporation's Board of Directors shall be fixed at no more than five (5) members. So long as any shares of Series C Preferred Stock remain outstanding, the holders of Series C Preferred Stock, voting as a single class, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Series C Preferred Director**"). So long as any shares of Series B Preferred Stock and Series A Preferred Stock remain outstanding, the holders of Series B Preferred Stock and Series A Preferred Stock, voting together as a single class, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "**Series A & B Preferred Directors**" and, together with the Series C Preferred Director, the "**Preferred Directors**"). The holders of Common Stock, voting as a separate class (which vote, for the avoidance of doubt, does not include the shares of Common Stock into which the shares of Preferred Stock are convertible), shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock and the Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect the remaining member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

Any director elected as provided in the preceding paragraph may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, 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 the applicable series 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 first paragraph of this Section 5(d), then any directorship not so filled shall remain vacant until such time as the holders of the applicable series of Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; 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. 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 5, 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 5.

(e) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. Subject to Section 6 below, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

6. Protective Provisions.

(a) As long as at least 1,000,000 shares of Series AA Preferred Stock (as adjusted in the event of Recapitalization) shall remain issued and outstanding, the Corporation shall not (whether directly or indirectly, by amendment, merger or consolidation or otherwise), without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Series AA Preferred Stock:

(i) amend, alter or repeal any provision of this Restated Certificate of Incorporation or Bylaws of the Corporation if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series AA Preferred Stock;

(ii) increase or decrease (other than for decreases resulting from conversion of the Series AA Preferred Stock) the authorized number of shares of Series AA Preferred Stock; or

(iii) consummate a Liquidation Event.

(b) As long as at least an aggregate of 4,000,000 shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted in the event of Recapitalization) shall remain issued and outstanding, the Corporation shall not (whether directly or indirectly, by amendment, merger or consolidation or otherwise), without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class:

(i) amend, alter or repeal any provision of this Restated Certificate of Incorporation or Bylaws of the Corporation if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series A Preferred Stock or the Series B Preferred Stock;

(ii) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series A Preferred Stock or the Series B Preferred Stock;

(iii) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Common Stock, Preferred Stock, Series AA Preferred Stock, Series A Preferred Stock or Series B Preferred Stock;

(iv) declare or make any Distributions on any Common Stock or Series AA Preferred Stock prior to the Series A Preferred Stock or Series B Preferred Stock;

(v) create, or authorize the creation of, or issue, or authorize the issuance of, any debt securities, or incur any indebtedness (including any guarantee of indebtedness and the grant of any lien or pledge to secure any indebtedness), other than equipment leases, bank lines of credit, general trade credit or debt otherwise incurred in the ordinary course of business of the Corporation, provided such debt does not exceed, in the aggregate, \$250,000;

(vi) increase or decrease the authorized number of directors of the Corporation;

(vii) make any loan or advance to, or acquire any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Corporation;

(viii) make any loan or advance to any person, including, any employee or director of the Corporation, except advances and similar expenditures in the ordinary course of business, unless such transaction is unanimously approved by the Corporation's Board of Directors;

(ix) sell, assign, license, pledge or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business, unless such transaction is unanimously approved by the Corporation's Board of Directors; or

(x) consummate a Liquidation Event.

(c) As long as at least an aggregate of 3,500,000 shares of Series C Preferred Stock (as adjusted in the event of Recapitalization) shall remain issued and outstanding, the Corporation shall not (whether directly or indirectly, by amendment, merger or consolidation or otherwise), without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Series C Preferred Stock:

(i) amend, alter or repeal any provision of this Restated Certificate of Incorporation or Bylaws of the Corporation if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series C Preferred Stock;

(ii) create or authorize the creation of or issue any equity security (other than Exempted Securities) or any other security convertible into or exercisable for any equity security;

(iii) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Common Stock, Preferred Stock, Series AA Preferred Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(iv) declare or make any Distributions on any Common Stock, Series AA Preferred Stock, Series A Preferred Stock or Series B Preferred Stock prior to the Series C Preferred Stock;

(v) create, or authorize the creation of, or issue, or authorize the issuance of, any debt securities, or incur any indebtedness (including any guarantee of indebtedness and the grant of any lien or pledge to secure any indebtedness), other than equipment leases, general trade credit or debt otherwise incurred in the ordinary course of business of the Corporation, provided such debt does not exceed, in the aggregate, \$250,000;

(vi) increase or decrease the authorized number of directors of the Corporation;

(vii) make any loan or advance to, or acquire any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Corporation;

(viii) make any loan or advance to any person, including, any employee or director of the Corporation, except advances and similar expenditures in the ordinary course of business, unless such transaction is unanimously approved by the Corporation's Board of Directors;

(ix) sell, assign, license, pledge or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business, unless such transaction is unanimously approved by the Corporation's Board of Directors; or

(x) consummate a Liquidation Event;

provided, however, that the provisions set forth in Sections 6(c)(ii), 6(c)(iii) and 6(c)(v) shall terminate, and be of no further force and effect, upon the Corporation's receipt of a Redemption Notice (as defined in Section 7(b) below).

7. Redemption of Series C Preferred Stock.

(a) (i) So long as a Liquidation Event or initial public offering of the Corporation's Common Stock has not occurred, the Series C Preferred Stock shall be redeemed by the Corporation, in whole and not in part (except as expressly set forth herein), and out of funds lawfully available therefor, at a price per share equal to the Fair Market Value (determined in the manner set forth below) of a single share of Series C Preferred Stock as of the date of the Corporation's receipt of the Redemption Request (as defined below) (the "**Series C Redemption Price**"), in a single installment in accordance with the terms hereof not more than twelve (12) months after receipt by the Corporation, at any time on or after February 7, 2022, from holders of a majority of the outstanding shares of Series C Preferred Stock (the "**Series C Majority**") of written notice requesting the redemption of the Series C Preferred Stock (the "**Redemption Request**"). For purposes of this Section 7, the "**Fair Market Value**" of a single share of Series C Preferred Stock shall be the greater of (x) the value of a single share of Series C Preferred Stock as determined by an independent third-party appraiser agreed to by the Corporation and the Series C Majority and (y) the sum of the Original Issue Price of the Series C Preferred Stock plus an eight percent (8%) annualized return thereon through the Series C Redemption Date (as defined below). If the Corporation and the Series C Majority cannot agree upon a mutually acceptable independent third-party appraiser within twenty (20) days after receipt of the Redemption Notice, then the Corporation shall pick an appraiser, and the Series C Majority shall pick an appraiser, and those two (2) appraisers shall select within forty-five (45) days of the Redemption Request the appraiser that will determine the Fair Market Value hereunder. The date of the Corporation's redemption of the Series C Preferred Stock shall be referred to as a "**Series C Redemption Date**." On the Series C Redemption Date, the Corporation shall redeem all of the shares of Series C Preferred Stock outstanding immediately prior to such Series C Redemption Date; provided, however, that Excluded Shares (as such term is defined in Section 7(b)) shall not be redeemed. If the Corporation does not have sufficient funds legally available to redeem on the Series C Redemption Date all of the shares of Series C Preferred Stock to be redeemed on such Series C Redemption Date, then the Corporation shall redeem a pro rata portion of each holder's redeemable shares out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(ii) Redemptions of Junior Securities. So long as any Series C Preferred Stock shall remain issued and outstanding, no redemptions, dividends or other Distributions shall be made or declared on any Series B Preferred Stock, Series A Preferred Stock, Series AA Preferred Stock or Common Stock, until all Series C Preferred Stock has been redeemed and paid in full.

(b) Redemption Notice. The Corporation shall send written notice of the redemption (the "**Redemption Notice**") to each holder of record of Series C Preferred Stock not less than forty (40) days prior to the Series C Redemption Date. Each Redemption Notice shall state, as applicable:

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

- (ii) the Series C Redemption Date and the Series C Redemption Price;
- (iii) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4); and
- (iv) 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.

If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Series C Preferred Stock, a written notice from such holder that such holder elects to be excluded from the redemption provisions provided in this Section 7, then the Series C Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "**Excluded Shares.**" Excluded Shares shall not be redeemed or redeemable pursuant to this Section 7, whether on such Series C Redemption Date, or thereafter.

(c) Surrender of Certificates; Payment. On or before the applicable Series C Redemption Date, each holder of shares of Series C Preferred Stock to be redeemed on such Series C Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, 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 Series C Redemption Price for such shares shall be payable to the order of the person whose name appears on 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.

(d) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Series C Redemption Date the Series C Redemption Price payable upon redemption of the shares of Series C Preferred Stock to be redeemed on such Series C 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 Series C Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such Series C Preferred Stock, if any, shall cease to accrue after such Series C Redemption Date, and all rights with respect to such shares shall forthwith after the Series C Redemption Date terminate, except only the right of the holders to receive the Series C Redemption Price without interest upon surrender of their certificate or certificates therefor.

8. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

9. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given (i) if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation, (ii) if such notice is provided by electronic transmission in a manner permitted by Section 232 of the General Corporation Law, or (iii) if such notice is provided in another manner then permitted by the General Corporation Law.

10. Waivers. Any of the rights, powers, preferences of the holders of the Series C Preferred Stock, and any notice provisions applicable to the holders of the Series C Preferred Stock, may be waived or defeased by the affirmative consent or vote of the holders of a majority of the Series C Preferred Stock then outstanding, voting as a separate class, and any such waiver or defeasance shall bind all holders of the Series C Preferred Stock. Any of the rights, powers, preferences of the holders of the Series B Preferred Stock, and any notice provisions applicable to the holders of the Series B Preferred Stock, may be waived or defeased by the affirmative consent or vote of the holders of a majority of the Series B Preferred Stock then outstanding, voting as a separate class, and any such waiver or defeasance shall bind all holders of the Series B Preferred Stock. Any of the rights, powers, preferences of the holders of the Series A Preferred Stock, and any notice provisions applicable to the holders of the Series A Preferred Stock, may be waived or defeased by the affirmative consent or vote of the holders of a majority of the Series A Preferred Stock then outstanding, voting as a separate class, and any such waiver or defeasance shall bind all holders of the Series A Preferred Stock. Any of the rights, powers, preferences of the holders of the Series AA Preferred Stock, and any notice provisions applicable to the holders of the Series AA Preferred Stock, may be waived or defeased by the affirmative consent or vote of the holders of a majority of the Series AA Preferred Stock then outstanding, voting as a separate class, and any such waiver or defeasance shall bind all holders of the Series AA Preferred Stock.

ARTICLE VI

Except as otherwise provided in this Restated Certificate, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this Corporation.

ARTICLE VII

Subject to Section 5 and Section 6 of ARTICLE V, the number of directors of this Corporation shall be determined in the manner set forth in the Bylaws of this Corporation.

ARTICLE VIII

Elections of directors need not be by written ballot unless the Bylaws of this Corporation shall so provide.

ARTICLE IX

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of this Corporation may provide. The books of this Corporation may be kept (subject

to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this Corporation.

ARTICLE X

To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this ARTICLE X 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 General Corporation Law as so amended.

Any amendment, repeal or modification of the foregoing provisions of this ARTICLE X by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such amendment, repeal or modification.

ARTICLE XI

To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and agents of this Corporation (and any other persons to which General Corporation Law permits this Corporation to provide indemnification) through Bylaw provisions, agreements with such persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this ARTICLE XI shall not adversely affect any right or protection of a director, officer, employee, agent or other person existing at the time of, or increase the liability of any such person with respect to any acts or omissions of such person occurring prior to, such amendment, repeal or modification.

ARTICLE XII

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes

into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

ARTICLE XIII

To the extent sections of state corporations codes setting forth minimum requirements for the Corporation's retained earnings and/or net assets are applicable to the Corporation's repurchase of shares of Common Stock, such code sections shall not apply, to the greatest extent permitted by applicable law, with respect to repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which the Corporation has the right to repurchase such shares at cost upon the occurrence of certain events, such as the termination of service to the Corporation. Distributions by the Corporation may be made without regard to the "preferential dividends arrears amount" or any "preferential rights amount," as such terms may be defined in state corporations codes.

ARTICLE XIV

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XIV.

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