

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM673402

SUBMISSION TYPE:	RESUBMISSION
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	06/17/2021
RESUBMIT DOCUMENT ID:	900638051

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Visiquate, Inc.		06/17/2021	Corporation: CALIFORNIA

RECEIVING PARTY DATA

Name:	Visiquate, Inc.
Street Address:	520 Third Street
Internal Address:	Suite 300
City:	Santa Rosa
State/Country:	CALIFORNIA
Postal Code:	94501
Entity Type:	Corporation: DELAWARE

PROPERTY NUMBERS Total: 12

Property Type	Number	Word Mark
Serial Number:	88350424	PEAK BUSINESS HEALTH
Registration Number:	4584988	VISIQUE
Registration Number:	4597687	VISIQUE
Registration Number:	4584989	VISIQUE
Registration Number:	4584991	YOU'LL SEE
Registration Number:	4614230	YOU'LL SEE
Registration Number:	4584990	YOU'LL SEE
Registration Number:	4584999	
Registration Number:	4584998	
Registration Number:	4584997	
Registration Number:	4664330	HEALTHMOBILE.D
Registration Number:	6206452	PEAK BUSINESS HEALTH

CORRESPONDENCE DATA

Fax Number: 5108419800

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.

TRADEMARK

Phone: 510-841-9800
Email: trademarks@cobaltlaw.com
Correspondent Name: Cobalt LLP
Address Line 1: 1912 Bonita Ave
Address Line 4: Berkeley, CALIFORNIA 94704

ATTORNEY DOCKET NUMBER: VISIQUATE MERGER

NAME OF SUBMITTER: Noemi Zieman

SIGNATURE: /Noemi Zieman/

DATE SIGNED: 09/09/2021

Total Attachments: 17

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Delaware

The First State

Page 1

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 CERTIFICATE OF MERGER, WHICH MERGES:

"VISIQUATE, INC.", A CALIFORNIA CORPORATION,
WITH AND INTO "VISIQUATE, INC." UNDER THE NAME OF
"VISIQUATE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER
THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS
OFFICE ON THE SEVENTEENTH DAY OF JUNE, A.D. 2021, AT 4:36
O`CLOCK P.M.



7874038 8100M
SR# 20212483537

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

A handwritten signature in black ink, appearing to read "JBULLOCK", written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 203477823
Date: 06-17-21

TRADEMARK
REEL: 007415 FRAME: 0713

**CERTIFICATE OF MERGER
OF
VISIQUATE, INC.
(a California corporation)
INTO
VISIQUATE, INC.
(a Delaware corporation)**

Pursuant to Title 8, Section 252 of the General Corporation Law of the State of Delaware, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is VisiQuate, Inc., a Delaware corporation (the “**Surviving Corporation**”), and the name of the corporation being merged into the Surviving Corporation is VisiQuate, Inc., a California corporation (“**VisiQuate California**”).

SECOND: The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8, Section 252 of the General Corporation Law of the State of Delaware.

THIRD: The name of the Surviving Corporation in the merger is VisiQuate, Inc., a Delaware corporation.

FOURTH: The certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time (as defined below) to read in its entirety as set forth on Exhibit A attached hereto and incorporated herein by reference, and as so amended and restated shall constitute the certificate of incorporation of the Surviving Corporation.

FIFTH: The authorized capital stock and par value of VisiQuate California consists of 15,245,038 shares, 11,149,638 shares of which are Common Stock, and 4,095,400 shares of which are Preferred Stock, no par value per share.

SIXTH: The merger shall become effective upon the filing of this Certificate of Merger with the Secretary of State of the State of Delaware (the “**Effective Time**”).

SEVENTH: The Agreement and Plan of Merger is on file at the principal office of the Surviving Corporation at 520 Third Street, Suite 300, Santa Rosa, California 95401.

EIGHTH: A copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, VisiQuate, Inc., a Delaware corporation, has caused this Certificate of Merger to be signed by its duly authorized officer this 17 day of June, 2021.

VisiQuate, Inc.

By: /s/ Brian Robertson
Name: Brian Robertson
Title: Chief Executive Officer

EXHIBIT A
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VISIQUATE, INC.

ARTICLE 1

The name of the corporation is VisiQuate, Inc. (the “**Corporation**”).

ARTICLE 2

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

ARTICLE 3

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

ARTICLE 4

1. The Corporation is authorized to issue two classes of shares to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares of stock that the Corporation is authorized to issue is 15,245,038 shares, 11,149,638 shares of which will be Common Stock, each having a par value of \$0.0001 per share, and 4,095,400 shares of which will be Preferred Stock, each having a par value of \$0.0001 per share.

2. The Preferred Stock may be issued from time to time in one or more series. The first series will consist of 525,289 shares and is designated “Series A Preferred Stock” (“**Series A Preferred**”). The second series will consist of 789,327 shares and is designated “Series B Preferred Stock” (“**Series B Preferred**”). The third series will consist of 1,294,593 shares and is designated “Series C Preferred Stock” (“**Series C Preferred**”). The fourth series will consist of 42,465 shares and is designated “Series C-1 Preferred Stock” (“**Series C-1 Preferred**”). The fifth series will consist of 546,746 shares and is designated “Series C-2 Preferred Stock” (“**Series C-2 Preferred**”). The sixth series will consist of 896,980 shares and is designated “Series C-3 Preferred Stock” (“**Series C-3 Preferred**”).

3. The rights, preferences, privileges, restrictions, and other matters relating to the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, Series C-2 Preferred, and the Series C-3 Preferred are as follows:

(a) **DIVIDENDS**

(i) The holders of shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred will have no preference or priority with respect to each other or to holders of Common Stock for dividends or other distributions (other than upon the occurrence of a Liquidation Event, as defined in Article 4, Section 3(c)(i)), if and to the extent such dividends or other distributions are declared by the Board of Directors.

(ii) If a dividend or other distribution is made on any Common Stock (other than upon the occurrence of a Liquidation Event, as defined in Article 4, Section 3(c)(i)), the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred will be entitled to proportionate shares of any such dividend or other distribution as though the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred were the holders of the number of shares of Common Stock into which their respective shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred are convertible (pursuant to Article 4, Section 3(e)), rounded to the nearest whole number with one-half being rounded upward, immediately after the close of business on the record date fixed for determination of the holders of Common Stock entitled to receive such dividend or other distribution.

(b) VOTING RIGHTS AND DIRECTORS

(i) **Voting for Other than Directors.** Except as otherwise provided herein or as required by law, the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred will be voted equally with the shares of Common Stock, not as a separate class, at any annual or special meeting of stockholders of the Corporation, and the holders thereof may act by written consent in the same manner as the holders of Common Stock, in either case upon the following basis: each holder of shares of the Series A Preferred, each holder of shares of the Series B Preferred, each holder of shares of the Series C Preferred, each holder of shares of the Series C-1 Preferred, each holder of shares of the Series C-2 Preferred, and each holder of shares of the Series C-3 Preferred is entitled to such number of votes equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series A Preferred, Series B Preferred, Series C Preferred, Series C-1 Preferred, Series C-2 Preferred, and Series C-3 Preferred are convertible (pursuant to Article 4, Section 3(e)), rounded to the nearest whole number with one-half being rounded upward, immediately after the close of business on the record date fixed for such meeting (or, if no such record date is established, at the date such vote is taken) or the effective date of such written consent.

(ii) **Voting for Directors.** The Board of Directors of the Corporation will consist of six (6) members. The holders of a majority of the Series A Preferred, voting as a single class, are entitled to elect one (1) member of the Board of Directors. The holders of the Series B Preferred, the holders of the Series C Preferred, the holders of the Series C-1 Preferred, the holders of the Series C-2 Preferred, the holders of the Series C-3 Preferred, and the holders of the Common Stock will vote together as a single class and not as separate series to elect the five (5) remaining members of the Board of Directors. The provisions of this

Article 4, Section 3(b)(ii) with respect to the right of the holders of the Series A Preferred to elect one (1) director will expire and be of no further force or effect on conversion of all outstanding shares of Series A Preferred into Common Stock pursuant to Article 4, Section 3(e). At such time, the holders of the Series B Preferred, the holders of the Series C Preferred, the holders of the Series C-1 Preferred, the holders of the Series C-2 Preferred, the holders of the Series C-3 Preferred, and the holders of Common Stock will elect all the members of the Board of Directors. If there is a vacancy in the office of a director elected by a specified group of stockholders, a successor will be elected to hold office for the unexpired term of that vacant director seat by the affirmative vote of the shares of that specified group of stockholders given at an annual meeting or special meeting of such stockholders duly called or by an action by written consent for that purpose; *provided, however*, that in the absence of such stockholder action, the vacancy will be filled by a majority of the directors then in office, even if the directors then in office constitute less than a quorum or there is only one remaining director then in office. Any director who has been elected to fill the seat of a specified group of stockholders may be removed during his or her term of office by the affirmative vote of the holders of the shares of that specified group, given at an annual meeting or special meeting of such stockholders duly called or by an action by written consent for that purpose, in accordance with Section 141 of the DGCL. Any vacancy thereby created may be filled by the vote of the holders of the shares of that specified group of stockholders represented at that meeting or in such consent, in accordance with Section 223 of the DGCL.

(iii) **Special Voting Rights of the Series A Preferred.** In addition to any other vote or consent required herein or by law, as long as the Series A Preferred remains outstanding, the vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred, voting as a single class, is required for any waiver, amendment, alteration or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation that adversely affects the voting powers, the preferences, or other rights or qualifications, limitations, or restrictions of the Series A Preferred.

(iv) **Special Voting Rights of the Series B Preferred.** In addition to any other vote or consent required herein or by law, as long as the Series B Preferred remains outstanding, the vote or written consent of the holders of a majority of the outstanding shares of Series B Preferred, voting as a single class, is required for any waiver, amendment, alteration or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation that adversely affects the voting powers, the preferences, or other rights or qualifications, limitations, or restrictions of the Series B Preferred.

(v) **Special Voting Rights of the Series C Preferred.** In addition to any other vote or consent required herein or by law, as long as the Series C Preferred remains outstanding, the vote or written consent of the holders of a majority of the outstanding shares of Series C Preferred, voting as a single class, is required:

(A) for any waiver, amendment, alteration or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation that adversely affects the voting powers, the preferences, or other rights or qualifications, limitations, or restrictions of the Series C Preferred;

(B) to increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

(C) to redeem, purchase or otherwise acquire any shares of any class or series of capital stock, except for (i) purchases from directors, officers, employees, consultants, advisors of, and persons performing services for, the Corporation or its subsidiaries pursuant to a written agreement by and between any such person and the Corporation, and (ii) purchases or exchanges pursuant to a written agreement by and among the Corporation and one or more holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, the Series C-3 Preferred, or Common Stock, as applicable; or

(D) declare or pay dividends on or make any distributions with respect to Common Stock (other than upon the occurrence of a Liquidation Event, as defined in Article 4, Section 3(c)(i)).

(vi) **Special Voting Rights of the Series C-1 Preferred.** In addition to any other vote or consent required herein or by law, as long as the Series C-1 Preferred remains outstanding, the vote or written consent of the holders of a majority of the outstanding shares of Series C-1 Preferred, voting as a single class, is required:

(A) for any waiver, amendment, alteration or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation that adversely affects the voting powers, the preferences, or other rights or qualifications, limitations, or restrictions of the Series C-1 Preferred;

(B) to increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

(C) to redeem, purchase or otherwise acquire any shares of any class or series of capital stock, except for (i) purchases from directors, officers, employees, consultants, advisors of, and persons performing services for, the Corporation or its subsidiaries pursuant to a written agreement by and between any such person and the Corporation, and (ii) purchases or exchanges pursuant to a written agreement by and among the Corporation and one or more holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, the Series C-3 Preferred, or Common Stock, as applicable; or

(D) declare or pay dividends on or make any distributions with respect to Common Stock (other than upon the occurrence of a Liquidation Event, as defined in Article 4, Section 3(c)(i)).

(vii) **Special Voting Rights of the Series C-2 Preferred.** In addition to any other vote or consent required herein or by law, as long as the Series C-2 Preferred remains outstanding, the vote or written consent of the holders of a majority of the outstanding shares of Series C-2 Preferred, voting as a single class, is required:

(A) for any waiver, amendment, alteration or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation that adversely affects the voting powers, the preferences, or other rights or qualifications, limitations, or restrictions of the Series C-2 Preferred;

(B) to increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

(C) to redeem, purchase or otherwise acquire any shares of any class or series of capital stock, except for (i) purchases from directors, officers, employees, consultants, advisors of, and persons performing services for, the Corporation or its subsidiaries pursuant to a written agreement by and between any such person and the Corporation, and (ii) purchases or exchanges pursuant to a written agreement by and among the Corporation and one or more holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, the Series C-3 Preferred, or Common Stock, as applicable; or

(D) declare or pay dividends on or make any distributions with respect to Common Stock (other than upon the occurrence of a Liquidation Event, as defined in Article 4, Section 3(c)(i)).

(viii) **Special Voting Rights of the Series C-3 Preferred.** In addition to any other vote or consent required herein or by law, as long as the Series C-3 Preferred remains outstanding, the vote or written consent of the holders of a majority of the outstanding shares of Series C-3 Preferred, voting as a single class, is required:

(A) for any waiver, amendment, alteration or repeal of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation that adversely affects the voting powers, the preferences, or other rights or qualifications, limitations, or restrictions of the Series C-3 Preferred;

(B) to increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

(C) to redeem, purchase or otherwise acquire any shares of any class or series of capital stock, except for (i) purchases from directors, officers, employees, consultants, advisors of, and persons performing services for, the Corporation or its subsidiaries pursuant to a written agreement by and between any such person and the Corporation, and (ii) purchases or exchanges pursuant to a written agreement by and among the Corporation and one or more holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, the Series C-3 Preferred, or Common Stock, as applicable; or

(D) declare or pay dividends on or make any distributions with respect to Common Stock (other than upon the occurrence of a Liquidation Event, as defined in Article 4, Section 3(c)(i)).

(c) **LIQUIDATION RIGHTS**

(i) Upon (A) any liquidation, dissolution, or winding up of the Corporation, whether voluntary or not, (B) the sale, lease, assignment, transfer, conveyance, or disposal of all or substantially all of the assets of the Corporation, or (C) the acquisition of the Corporation by another entity by means of consolidation, corporate reorganization, merger, or other transaction or series of related transactions in which stockholders of the Corporation immediately before such transaction(s) do not own at least a majority of the outstanding voting securities of the successor entity (excluding a bona fide equity financing) (each of the above, a “**Liquidation Event**”), after provision for the payment of the Corporation’s debts and other liabilities and before any distribution or payment is made to the holders of the Series A Preferred, to the holders of the Series B Preferred, or to the holders of Common Stock, the holders of the Series C Preferred, the holders of the Series C-1 Preferred, the holders of the Series C-2 Preferred, and the holders of the Series C-3 Preferred, *pari passu* with each other, are entitled to be paid out of the assets of the Corporation in cash an amount per share equal to the Series C Purchase Price, the Series C-1 Purchase Price, the Series C-2 Purchase Price, or the Series C-3 Purchase Price, respectively, plus declared and unpaid dividends thereon, if any (the “**Series C Liquidation Preference**”). If, upon any Liquidation Event, the assets of the Corporation are insufficient to make payment in full to all holders of the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred then such assets will be distributed among the holders of the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be entitled with respect to their relative aggregate Series C Liquidation Preferences. The “**Series C Purchase Price**” means \$2.7669 per share, the “**Series C-1 Purchase Price**” means \$3.5323 per share, the “**Series C-2 Purchase Price**” means \$4.7096795 per share, and the “**Series C-3 Purchase Price**” means \$5.5742603 per share (each subject to appropriate adjustment in the event of a stock split, stock dividend, combination, reclassification, or similar event).

(ii) After payment of the Series C Liquidation Preference, the Series B Preferred and the Series A Preferred, *pari passu* with each other, are entitled to be paid out of the assets of the Corporation in cash an amount per share equal to the Series B Purchase Price or the Series A Purchase Price, respectively, plus any declared but unpaid dividends thereon, if any. If, upon any Liquidation Event, the assets of the Corporation are insufficient to make payment in full to all holders of the Series A Preferred and the Series B Preferred, then such assets will be distributed among the holders of the Series A Preferred and the Series B Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled hereunder. The “**Series A Purchase Price**” means \$0.6663 per share, and the “**Series B Purchase Price**” means \$1.2669 per share (each subject to appropriate adjustment in the event of a stock split, stock dividend, combination, reclassification, or similar event).

(iii) After payment of the full liquidation preference of (1) the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred and the Series C-3 Preferred, and (2) the Series A Preferred and the Series B Preferred, as set forth in Article 4, Section 3(c)(i) and Article 4, Section 3(c)(ii), respectively, the remaining assets of the Corporation legally available for distribution, if any, will be distributed ratably to the holders of the Common Stock.

(d) **REDEMPTION RIGHTS**

The Common Stock, the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred have no redemption rights.

(e) **CONVERSION RIGHTS**

The holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred have the following rights with respect to the conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred into shares of Common Stock:

(i) **Conversion at Holder's Option.**

(A) Subject to and in compliance with the provisions of this Article 4, Section 3(e), any shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred may, at the option of the holder, be converted into fully paid and nonassessable shares of Common Stock at the Conversion Rate (determined as provided in Article 4, Section 3(e)(iii) below) then in effect for such series.

(B) Each holder of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred who desires to convert the same into shares of Common Stock pursuant to this Article 4, Section 3(e)(i) will surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or its transfer agent or will notify the Corporation or its transfer agent that such certificate(s) 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 certificate(s), and will give written notice to the Corporation at such office that the holder elects to convert the same. Such notice will state the number of shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred being converted. The Corporation will then promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and will promptly pay in cash any declared and unpaid dividends on the shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred being converted. Such conversion will be deemed to have been made at the close of business on the date of such surrender of the certificate(s), or the date of execution and delivery of a satisfactory indemnity agreement with respect to any lost, stolen or destroyed certificate(s), representing the shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion will be treated for all purposes as the record holder of such shares of Common Stock on such date.

(ii) **Automatic Conversion.**

(A) Each share of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred will be automatically converted into fully paid and nonassessable shares of Common Stock at the Conversion Rate then in effect for such series on the earlier of, as to each of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred:

(1) the declaration of effectiveness by the Securities and Exchange Commission of a registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in a firmly underwritten public offering with gross proceeds of at least ten million dollars (\$10,000,000), net of any underwriting discount and commissions, and shares listed on a nationally recognized securities exchange (“**Qualified Public Offering**”); or

(2) the affirmative vote or written consent of at least a majority of the then-outstanding shares of such series (i.e., a majority of Series A Preferred, Series B Preferred, Series C Preferred, Series C-1 Preferred, the Series C-2 Preferred, or Series C-3 Preferred).

(B) Upon the occurrence of an event specified in Article 4, Section 3(e)(ii)(A) above as to each series, all outstanding shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred, as applicable, will 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, however*, that the Corporation will not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred are either delivered to the Corporation or its transfer agent, 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. Thereupon, the Corporation will promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and will promptly pay in cash all declared and unpaid dividends on the shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred being converted, to and including the date of such conversion.

(iii) **Conversion Rate.** The conversion rate (the “**Conversion Rate**”) in effect at any time for conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred is the quotient obtained by dividing the Series A Purchase Price, the Series B Purchase Price, the Series C Purchase Price, the Series C-1 Purchase Price, the Series C-2 Purchase Price, or the Series C-3 Purchase Price, respectively, by the conversion price for such series, calculated as provided in Article 4, Section 3(e)(iv) below. The Conversion Rate for each of the Series A

Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred in effect on the date hereof is one-to-one (1:1).

(iv) **Conversion Price.** The conversion price for the Series A Preferred (the "**Series A Conversion Price**") will initially be the Series A Purchase Price. The conversion price for the Series B Preferred (the "**Series B Conversion Price**") will initially be the Series B Purchase Price. The conversion price for the Series C Preferred (the "**Series C Conversion Price**") will initially be the Series C Purchase Price. The conversion price for the Series C-1 Preferred (the "**Series C-1 Conversion Price**") will initially be the Series C-1 Purchase Price. The conversion price for the Series C-2 Preferred (the "**Series C-2 Conversion Price**") will initially be the Series C-2 Purchase Price. The conversion price for the Series C-3 Preferred (the "**Series C-3 Conversion Price**") will initially be the Series C-3 Purchase Price. The Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series C-1 Conversion Price, the Series C-2 Conversion Price, and the Series C-3 Conversion Price will be adjusted from time to time in accordance with this Article 4, Section 3(e). All references herein to the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series C-1 Conversion Price, the Series C-2 Conversion Price, or the Series C-3 Conversion Price means the conversion price of such series as so adjusted from time to time.

(v) **Adjustment for Subdivision and Combinations.** If the Corporation at any time or from time to time after the date that shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred are first issued (each, an "**Original Issue Date**") effects a subdivision, by stock split, stock dividend or otherwise of the outstanding Common Stock, the conversion price for such series in effect immediately before that subdivision will be decreased proportionately so that the number of shares of Common Stock issuable on conversion of any shares of such series is increased in proportion to such increase in outstanding shares. Conversely, if, after an Original Issue Date, the Corporation combines, consolidates or reclassifies the outstanding shares of Common Stock into a smaller number of shares, the conversion price for the applicable series in effect immediately before the combination will be increased proportionately so that the number of shares of Common Stock issuable on conversion of any shares of such series is decreased in proportion to such decrease in outstanding shares. Any adjustment under this Article 4, Section 3(e)(v) will become effective as of the close of business on the date the subdivision or combination becomes effective.

(vi) **Adjustment for Reclassification, Exchange and Substitution.** If the Common Stock issuable upon conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred is changed into the same or a different number of shares of any other class or classes of stock or into any other securities or property, whether by capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction (other than a subdivision or combination of shares provided for above) (each, a "**Reorganization**"), each share of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred will thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock deliverable

upon conversion of such share(s) of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred would have been entitled upon such Reorganization if immediately before such Reorganization, such holder had converted such holder's Series A Preferred, Series B Preferred, Series C Preferred, Series C-1 Preferred, the Series C-2 Preferred, or Series C-3 Preferred into Common Stock. The provisions of this Article 4, Section 3(e)(vi) will similarly apply to successive Reorganizations. The Corporation will not consummate any Reorganization that does not constitute a Liquidation Event, unless before or simultaneously with the consummation thereof, the successor corporation or purchaser, as the case may be, assumes by written instrument the obligation to deliver to the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred such shares of stock, securities or assets that each such holder is entitled to receive in accordance with this Amended and Restated Certificate of Incorporation.

(vii) Sale of Shares Below Conversion Price.

(A) Adjustments to Conversion Price.

(1) If at any time or from time to time after an Original Issue Date, the Corporation issues Additional Stock (as defined in Article 4, Section 3(e)(vii)(B) below) for a consideration per share less than the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series C-1 Conversion Price, the Series C-2 Conversion Price, or the Series C-3 Conversion Price then in effect on such date and immediately before such issue, then and in such event, the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series C-1 Conversion Price, the Series C-2 Conversion Price, or the Series C-3 Conversion Price, which is greater than the issue price for the Additional Stock, will be reduced concurrently with such issue, to a price (calculated to three decimal places) determined by multiplying the applicable series conversion price by a fraction (i) the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issue, plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for the total number of shares of Additional Stock so issued (or deemed to be issued) would purchase at such conversion price; and (ii) the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issue plus the total number of shares of Additional Stock so issued; provided that, for purposes of this Article 4, Section 3(e)(vii)(A), all shares of Common Stock issuable on conversion of the outstanding Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred, all shares of Common Stock issuable on exercise of outstanding stock options, and all shares of Common Stock issuable on exercise or conversion of any other outstanding security or debt instrument of the Corporation shall be deemed to be Common Stock outstanding.

(2) No adjustment in the conversion price for a series of Preferred Stock (i.e., Series A Preferred, Series B Preferred, Series C Preferred Stock, Series C-1 Preferred, the Series C-2 Preferred, or Series C-3 Preferred, each voting as a separate series) shall be made as the result of the issuance or deemed issuance of Additional Stock if (i) the consideration per share for such Additional Stock is equal to or greater than the conversion price in effect for such series immediately prior to the issuance or deemed issuance of such

Additional Stock, or (ii) the Corporation receives written notice from the holders of a majority of the then outstanding shares of such series of Preferred Stock agreeing that no such adjustment shall be made with respect to such series as the result of the issuance or deemed issuance of such Additional Stock.

(B) Definition of Additional Stock. For purposes of this Article 4, Section 3(e)(vii), “**Additional Stock**” shall mean all Common Stock, Preferred Stock or other securities issued or deemed to be issued by the Corporation other than (i) as described in subsections (v) or (vi) of this Article 4, Section 3(e); (ii) as a dividend or distribution with respect to the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred; (iii) to employees, directors, officers, consultants, and advisors of the Corporation, including restricted stock or options issued in accordance with the Corporation’s equity incentive plans, as designated and approved by the Board of Directors; (iv) in connection with the acquisition by the Corporation of another company or entity by consolidation, corporate reorganization, merger, or purchase of all or substantially all of the assets of such company or entity, as approved by the Board of Directors; (v) in connection with equipment leasing, real estate or bank financing approved by the Board of Directors; (vi) to non-affiliated third party vendors or customers as approved by the Board of Directors; (vii) on conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred; (viii) in a Qualified Public Offering in accordance with an effective registration statement under the Securities Act; (ix) in connection with strategic alliances, joint ventures, or other corporate partnerships, research and development agreements, product development or marketing agreements, or other similar agreements with third parties approved by the Board of Directors; (x) on terms approved by the holders of a majority of the then-outstanding shares of each series of Preferred Stock (Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred) voting as a separate series; and (xi) on terms approved by the Board of Directors ((i) through (xi) are defined as “**Exempt Securities**”), *provided, however*, that if such issuance involves the issuance of securities representing greater than ten percent (10%) of the then outstanding shares of capital stock of the Company (on an as-converted basis), the approval must be unanimous (multiple issuances of securities that are part of the same transaction or related transactions shall be aggregated for purposes of the ten percent (10%)). The issuance of any securities convertible into or exchangeable for Common Stock or any rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or securities convertible or exchangeable for Common Stock shall be a deemed issuance of Common Stock by the Corporation.

(C) Determination of Consideration. For the purpose of making any adjustment in the conversion price for a given series as provided above, the consideration received by the Corporation for any issue or sale of Common Stock shall be computed:

(1) to the extent that it consists of cash, as equal to the amount of cash received by the Corporation before deduction of any offering expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale,

(2) to the extent that it consists of property other than cash, at the fair market value of that property as determined in good faith by the Board of Directors; and

(3) if Common Stock is issued or sold together with other stock or securities or other assets of the Corporation for a consideration that covers both as equal to that portion of the consideration so received that may be reasonably determined by the Board of Directors to be allocable to such Common Stock.

(viii) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series C-1 Conversion Price, the Series C-2 Conversion Price, or the Series C-3 Conversion Price, the Corporation, at its expense, will compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and will furnish such certificate to each registered holder of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred or the Series C-3 Preferred at the holder's address as shown in the Corporation's books. The certificate will set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (A) the new Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series C-1 Conversion Price, the Series C-2 Conversion Price, or Series C-3 Conversion Price, as applicable, (B) the consideration received or deemed to be received by the Corporation for any Additional Stock issued or sold or deemed to have been issued or sold, (C) the conversion price for such series at the time in effect, and (D) the number of shares of Additional Stock and the type and amount if any, of other property which at the time would be received upon conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred.

(ix) **Notices of Record Date.** Upon (A) any taking by the Corporation of a record of the holders of any class of the securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or who are entitled to vote at meeting, or (B) any Liquidation Event being approved by the Board of Directors or the Corporation entering into any agreement with respect thereto, the Corporation will mail to each holder of the Series A Preferred, each holder of the Series B Preferred, each holder of the Series C Preferred, each holder of the Series C-1 Preferred, each holder of the Series C-2 Preferred, and each holder of the Series C-3 Preferred at least twenty (20) days before the record date specified therein a notice specifying (a) the date on which any such record is to be taken for the purpose of such dividend, distribution or vote and a description of such dividend, distribution or vote (b) the date on which any such Liquidation Event is expected to become effective, and (c) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) will be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Liquidation Event.

(x) **Fractional Shares; Partial Conversion.** No fractional shares of Common Stock will be issued upon conversion of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred. All shares of Common Stock (including fractions thereof) issuable upon

conversion of more than one share of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred by a holder thereof will be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation will, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered for conversion exceeds the number of shares converted, the Corporation must, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of the Series A Preferred, the number of shares of the Series B Preferred, the number of shares of the Series C Preferred, the number of shares of the Series C-1 Preferred, the number of shares of Series C-2 Preferred, or the number of shares of Series C-3 Preferred represented by the certificate or certificates surrendered that are not to be converted.

(xi) **Reservation of Stock Issuable Upon Conversion.** The Corporation will 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 issued or issuable Series A Preferred, Series B Preferred, Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred, such number of its shares of Common Stock as will from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred. If at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, and the Series C-3 Preferred, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as will be sufficient for such purpose.

(xii) **Notices.** Any notice required by the provisions of this Article 4, Section 3(e) will be in writing and will be deemed effectively given: (A) upon personal delivery to the party to be notified, (B) when sent by confirmed electronic mail or fax, (C) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (D) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices will be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

(xiii) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or the Series C-3 Preferred so converted were registered.

(xiv) **No Dilution or Impairment.** The Corporation may not amend this Amended and Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate to protect the liquidation, conversion and other rights of the holders of the Series A Preferred, the holders of the Series B Preferred, the holders of the Series C Preferred, the holders of the Series C-1 Preferred, the holders of the Series C-2 Preferred, and the holders of the Series C-3 Preferred against dilution or other impairment.

(xv) **No Reissuance of Preferred Stock.** No share or shares of the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred, the Series C-2 Preferred, or Series C-3 Preferred acquired by the Corporation by reason of purchase, conversion or otherwise will be reissued, and all such shares will acquire the status of undesignated shares of Preferred Stock.

ARTICLE 5

1. The liability of the directors of the Corporation for monetary damages is eliminated to the fullest extent permissible under Delaware law.

2. The Corporation is authorized to indemnify its agents (as defined in Section 145 of the DGCL) to the fullest extent permissible under Delaware law.

3. Any repeal or modification of this Article 5 will be prospective only and will not affect the rights under this Article in effect at the time of any alleged occurrence of any action or omission giving rise to liability.