

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM675458

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ENTITY CONVERSION		
<b>SEQUENCE:</b>	1		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Halbert Spirits Company, LLC		03/07/2016	Limited Liability Company: TEXAS
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Halbert Spirits Company, Inc.		
<b>Street Address:</b>	6655 North MacArthur Blvd.		
<b>City:</b>	Irving		
<b>State/Country:</b>	TEXAS		
<b>Postal Code:</b>	75039		
<b>Entity Type:</b>	Corporation: TEXAS		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	88901386	BRINGING THE BAR TO YOU	
<b>Serial Number:</b>	88900956	BRINGING THE BAR TO YOU	
<b>Serial Number:</b>	86572693	OTR - ON THE ROCKS PREMIUM COCKTAILS	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>			
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
<b>Phone:</b>	3127018637		
<b>Email:</b>	IPDocket@mayerbrown.com		
<b>Correspondent Name:</b>	William R. Siegel, Mayer Brown LLP		
<b>Address Line 1:</b>	P.O. BOX 2828		
<b>Address Line 4:</b>	CHICAGO, ILLINOIS 60690-2828		
<b>ATTORNEY DOCKET NUMBER:</b>	21676233		
<b>NAME OF SUBMITTER:</b>	William R. Siegel		
<b>SIGNATURE:</b>	/william r siegel/		
<b>DATE SIGNED:</b>	09/20/2021		
<b>Total Attachments: 24</b>			
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## Office of the Secretary of State

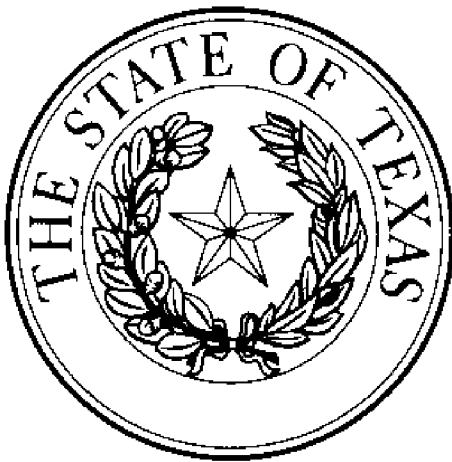
The undersigned, as Deputy Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

OTR Premium Cocktails, Inc.  
Filing Number: 802409159

Certificate of Conversion

March 07, 2016

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on June 30, 2021.



A handwritten signature in black ink, appearing to read "Jose A. Esparza".

Jose A. Esparza  
Deputy Secretary of State

Form 636  
(Revised 05/11)

Return in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512 463-5709

Filing Fee: See Instructions



This space reserved for office use.

Certificate of Conversion  
of a  
Limited Liability Company  
Converting  
to a  
Corporation

FILED  
In the Office of the  
Secretary of State of Texas  
MAR 07 2016

Corporations Section

Converting Entity Information

The name of the converting limited liability company is:  
Halbert Spirits Company, LLC

The jurisdiction of formation of the limited liability company is: Texas

The date of formation of the limited liability company is: February 20, 2015

The file number, if any, issued to the limited liability company by the secretary of state is: 802164205

Plan of Conversion—Alternative Statements

The limited liability company named above is converting to a:  for-profit corporation  
 professional corporation  nonprofit corporation. The name of the corporation is:  
Halbert Spirits Company, Inc.

The corporation will be formed under the laws of: Texas

The plan of conversion is attached.

*If the plan of conversion is not attached, the following statements must be completed.*

Instead of attaching the plan of conversion, the limited liability company certifies to the following statements:

A signed plan of conversion is on file at the principal place of business of the limited liability company, the converting entity. The address of the principal place of business of the limited liability company is:

6655 North MacArthur Irving TX US 75039  
*Street or Mailing Address City State Country Zip Code*

A signed plan of conversion will be on file after the conversion at the principal place of business of the corporation, the converted entity. The address of the principal place of business of the corporation is:

6655 North MacArthur Irving TX US 75039  
*Street or Mailing Address City State Country Zip Code*

A copy of the plan of conversion will be furnished on written request without cost by the converting

entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

**Certificate of Formation for the Converted Entity**

The converted entity is a Texas corporation. The certificate of formation of the Texas corporation is attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

**Approval of the Plan of Conversion**

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

**Effectiveness of Filing (Select either A, B, or C.)**

- A.  This document becomes effective when the document is accepted and filed by the secretary of state.
  - B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
  - C.  This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_
- The following event or fact will cause the document to take effect in the manner described below:
- \_\_\_\_\_
- \_\_\_\_\_

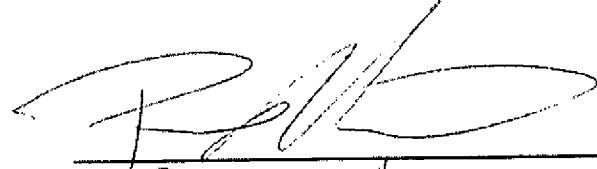
**Tax Certificate**

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the limited liability company.
- In lieu of providing the tax certificate, the corporation as the converted entity is liable for the payment of any franchise taxes.

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: March 7, 2016

  
\_\_\_\_\_  
PATRICK HALBERT

Signature and title of authorized person on behalf of the converting entity

MAR 07 2016

CERTIFICATE OF FORMATION  
OF  
HALBERT SPIRITS COMPANY, INC.

Corporations Section

The undersigned, acting in accordance with the Business Organizations Code of the State of Texas (the "*TBOC*"), hereby adopts the following Certificate of Formation (this "*Certificate*") incorporating Halbert Spirits Company, Inc. pursuant to a plan of conversion (the "*Plan of Conversion*") that converts Halbert Spirits Company, LLC, a Texas limited liability company, into a Texas corporation. Halbert Spirits Company, LLC, 6655 N. MacArthur Blvd., Irving, Texas 75039, was formed as a Texas limited liability company on February 25, 2015.

ARTICLE I.  
NAME AND TYPE OF ENTITY

The name of the corporation is Halbert Spirits Company, Inc. (the "*Corporation*"). The Corporation is a for-profit corporation.

ARTICLE II.  
PURPOSE

The purpose for which the Corporation is organized is the transaction of any or all lawful business for which a for-profit corporation may be formed under the TBOC.

ARTICLE III.  
REGISTERED AGENT

The street address of the initial registered office of the Corporation in the State of Texas is 6655 N. MacArthur Blvd., Irving, Texas 75039, and the name of the Corporation's initial registered agent at such address is Patrick D. Halbert.

ARTICLE IV.  
CAPITALIZATION

**Section 4.1. Classes of Stock.** The Corporation is authorized to issue two classes of capital stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of capital stock that this Corporation is authorized to issue is 5,000,000 shares. 2,500,000 shares shall be Common Stock, par value \$0.001 per share, and 2,500,000 shares shall be Preferred Stock, par value \$0.001 per share, of which 699,150 shares shall be designated as "Series A Convertible Preferred Stock" (the "*Series A Preferred Stock*").

The Corporation may from time to time in accordance with the laws of the State of Texas increase or decrease the authorized amount of its Common Stock (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as converted basis) if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock.

The remaining shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "*Board*") is hereby expressly authorized, within the limitations and restrictions stated in this Certificate, to provide for the issuance of shares of Preferred Stock in one or more series and to establish from time to time the number of shares to be included in each

such series and to fix the designation, powers, preferences and relative, participating, optional and other special rights, if any, of each such series and the qualifications, limitations and restrictions thereof as shall be stated in the resolution(s) adopted by the Board providing for the issuance of such series and included in a statement of resolutions (a "*Preferred Stock Resolution*").

The powers, preferences and relative, participating, optional and other special rights of the respective classes of the Corporation's capital stock or the holders thereof and the qualifications, limitations and restrictions thereof are as follows:

#### **Section 4.2. Dividends.**

(a) Subject to the rights of any series of Preferred Stock that may from time to time come into existence, the holders of Series A Preferred Stock, in preference to the holders of any other capital stock of the Corporation ("*Junior Stock*"), shall be entitled to receive, when, as and if declared by the Board, but only out of assets of the Corporation that are legally available therefor, cash dividends at the rate of seven percent (7%) of the original issuance price per share per annum, computed on the basis of a three-hundred sixty (360)-day year consisting of twelve thirty (30)-day months (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares; *provided, however,* that the Corporation may, at the election of the holders of a majority of the outstanding shares of Series A Preferred Stock, subject to and in accordance with the provisions herein, duly authorize and issue additional fully paid and nonassessable shares of Series A Preferred Stock ("*Additional Series A Shares*") in lieu of the payment in cash of all or any portion of the dividend otherwise payable on any dividend payment date. If the holders of a majority of the outstanding shares of Series A Preferred Stock elect to receive Additional Series A Shares in lieu of the payment in cash of all or any portion of the dividend otherwise payable on any dividend payment date: (1) such electing holders of shares of Series A Preferred Stock shall give notice of such election not less than seven (7) nor more than sixty (60) days prior to such dividend payment date to the Corporation and each other holder of record of the shares of Series A Preferred Stock appearing on the stock books of the Corporation as of the date of such notice at the address of said holder shown therein; (2) the Corporation shall execute, issue and deliver on such dividend payment date to each holder of record on the related record date, a stock certificate dated such dividend payment date representing such number of Additional Series A Shares equal to the quotient of such portion of the dividend payable to such holder divided by the Initial Series A Issuance Price (as defined below); and (3) the due issuance of such Additional Series A Shares shall constitute full payment of such portion of such dividend; *provided, however,* that, in lieu of the issuance of any fractional Additional Series A Shares, the Corporation shall pay, on such dividend payment date, to each holder of shares of Series A Preferred Stock who would otherwise be entitled to a fractional Additional Series A Share as a dividend on the aggregate number of shares of Series A Preferred Stock held by such holder on the related record date, an amount in cash equal to the product of such fraction and the Initial Series A Issuance Price). All such dividends pursuant to this Section 4.2(a) shall accrue on a daily basis from the date of issuance and shall be cumulative, whether or not declared by the Board.

(b) All dividends that accrue on the Series A Preferred Stock shall be payable only upon the earlier of (i) a Liquidation Event or (ii) a redemption pursuant to Section 4.4 hereof (the "*Dividend Payment Dates*").

(c) So long as any shares of Series A Preferred Stock are outstanding, without the consent of the holders of a majority of the outstanding shares of the Series A Preferred Stock, no dividend, whether in cash, securities or other property, shall be declared or paid, nor shall any other distribution be made on any Junior Stock, nor shall any Junior Stock of the Corporation be purchased, repurchased, redeemed, retired or otherwise acquired for value by the Corporation or any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or

other entity (each, a "**Person**") that the Corporation owns or controls at least a majority of the voting shares or voting equity interests of, directly or indirectly ("**Subsidiaries**") (except for acquisitions of Common Stock by the Corporation pursuant to (i) agreements with employees, advisors, consultants or service providers that permit the Corporation to repurchase such shares upon termination of services to the Corporation or (ii) the exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 4.2(a) above) on the Series A Preferred Stock shall have been paid. In the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property), the Corporation shall also declare or pay, as the case may be, to the holders of the Series A Preferred Stock on a *pari passu* basis, at the same time it declares or pays, as the case may be, such dividends to the holders of Common Stock, the dividends that would have been declared or paid, as the case may be, with respect to the Common Stock issuable upon conversion of the shares of the Series A Preferred Stock had all of such shares of Series A Preferred Stock been converted into shares of Common Stock 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.

### **Section 4.3. Liquidation Rights.**

(a) **Preference.** Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (each, a "**Liquidation Event**"), before any distribution or payment shall be made to the holders of any Junior Stock, subject to the rights of any series of Preferred Stock that may from time to time come into existence and the rights of the holders of Series A Preferred Stock under Section 4.3(e) below, each holder of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation, an amount in cash per share equal to the sum of \$1.00 for each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) (the "**Initial Series A Issuance Price**"), and an amount equal to all accrued but unpaid dividends on such shares (collectively, the "**Liquidation Preference**"). If, upon any Liquidation Event, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series A Preferred Stock of the Liquidation Preference, subject to the rights of any series of Preferred Stock that may from time to time come into existence that is senior to, or *pari passu* with, the Series A Preferred Stock upon a Liquidation Event, then the entire assets of the Corporation legally available for distribution shall be distributed, ratably among the holders of Series A Preferred Stock then outstanding in proportion to the full Liquidation Preference to which each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** After the payment of the full Liquidation Preference as set forth in Section 4.3(a) above and any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence, the assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

(c) **Additional Liquidation Events.** The following events shall each be considered a Liquidation Event under this Section 4.3:

(i) any consolidation or merger of the Corporation with or into any other corporation or Person, or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger, reorganization, or any similar corporate transaction, own less than 50% of the Corporation's voting power (determined on an as-converted basis) immediately after such consolidation, merger or reorganization, or any other transaction or series of related transactions to which the Corporation is a party in which in excess of 50% of the Corporation's voting power (determined on an as-converted basis) is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the



Corporation and excluding any investment or transaction involving PDH Resources, LLC or any of its affiliates (each, an "*Acquisition*"); or

(ii) any sale, transfer, lease, assignment, conveyance or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries on a consolidated basis (measured either by book value in accordance with U.S. generally accepted accounting principles consistently applied or by Fair Market Value (as defined below) at the time of the transaction) to a third party in any transaction or series of related transactions (an "*Asset Transfer*").

(d) **Valuation of Consideration.** If the consideration received by the Corporation is other than cash in connection with any of the events set forth above, its value will be deemed its fair market value ("*Fair Market Value*") on the closing date of any such event, determined as follows:

(i) The Fair Market Value of certain securities shall be determined as follows:

(A) If such securities are traded on a securities exchange, the Fair Market Value shall be deemed to be the average of the closing prices of such securities on such exchange as of 4:00 p.m. New York time, or, if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all exchanges as of 4:00 p.m. New York time, or, if such securities are not listed on a securities exchange, the average of the representative bid and asked prices quoted on the Nasdaq Stock Market as of 4:00 p.m., New York time, or, if on any day such security is not quoted on the Nasdaq Stock Market, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau, Incorporated or any similar successor organization, in each such case averaged over a period of thirty (30) days consisting of the business day as of which Fair Market Value is being determined and the twenty-nine (29) consecutive business days prior to such day; and

(B) The method of valuation of securities subject to an investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate of the issuer of such securities) shall be to make an appropriate discount from the market value determined as above in (i)(A) to reflect the approximate Fair Market Value thereof, as unanimously determined by the Board.

(ii) The Fair Market Value of all other property shall be the fair value thereof, as unanimously determined by the Board. If the Board is unable to unanimously reach agreement within a reasonable period of time, such fair value shall be determined by an independent third party appraiser selected by a majority of the Board and experienced in valuing the property at issue. In the case of an appraisal of the Corporation's own securities, the third party appraiser shall have valuation experience in the publishing industry. The determination of the appraiser shall be final and binding upon the parties and the Corporation shall pay the fees and expenses of such appraiser.

(e) **Alternative Amount.** Notwithstanding Section 4.3(a) above, if the aggregate per share amount that a holder of Series A Preferred Stock would be entitled to receive had such holder's Series A Preferred Stock been converted into Common Stock immediately prior to such Liquidation Event (including any Liquidation Event under Section 4.3(c)), inclusive of the payment of all accrued but unpaid dividends on such Series A Preferred Stock that would be payable to the holder thereof upon the

conversion of such Series A Preferred Stock into Common Stock (the “*Alternative Amount*”), exceeds the aggregate amount that such holder would be entitled to receive under Section 4.3(a), then, upon such Liquidation Event (including a Liquidation Event under Section 4.3(c)), such holder shall receive the Alternative Amount per share of Series A Preferred Stock in lieu of the amounts provided for in Section 4.3(a) above, payable prior to any distributions to holders of the Junior Stock.

(f) **Notice of Liquidation Event.** The Corporation shall give each record holder of Series A Preferred Stock written notice of any impending Liquidation Event no later than twenty (20) days prior to the shareholders’ meeting called to approve such transaction, or twenty (20) days prior to the closing of such Liquidation Event, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Event. The first of such notices shall describe the material terms and conditions of the impending Liquidation Event (including, without limitation, the amount of proceeds to be paid to each share in connection with the Liquidation Event) and the provisions of this Section 4.3, and the Corporation shall thereafter give such holders prompt notice of any material changes to the information set forth in such notice. The Liquidation Event shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than twenty (20) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock that are entitled to such notice rights or similar rights and that represent at least a majority of the voting power (determined on an as-converted basis) of all then outstanding shares of Series A Preferred Stock and that are entitled to such notice rights or similar notice rights.

(g) **Effect of Noncompliance.** If the requirements of Section 4.3(f) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 4.3(f) hereof.

#### **Section 4.4. Redemption.**

(a) **Series A Redemption.** At any time after January 1, 2023, the holders of at least a majority of the then outstanding Series A Preferred Stock may elect to require the Corporation to redeem, from any source of funds legally available therefor, all, or any portion of, the Series A Preferred Stock (the “*Series A Redemption Option*”). Such redemption of the Series A Preferred Stock shall be effected at a price (the “*Series A Redemption Price*”), paid in cash, equal to the greater of (1) the sum of the Initial Series A Issuance Price plus any and all accrued and unpaid dividends or (2) the Fair Market Value of the Common Stock underlying the Series A Preferred Stock.

(b) **Mechanics of Redemption.** Subject to Section 4.4(c), the Series A Redemption Option shall be exercised by written notice to the Corporation setting forth the proposed date for such redemption, which date (the “*Redemption Date*”) shall not be fewer than 45 nor more than sixty (60) days from the date of such notice. Within fifteen (15) days of the Corporation’s receipt of such notice, the Corporation shall mail, at least fifteen (15) days but not more than thirty (30) days prior to the Redemption Date, a notice (a “*Redemption Notice*”) by means of first class mail, postage paid, addressed to the holders of record of the shares of Series A Preferred Stock to be redeemed, at their respective addresses then appearing on the books of the Corporation. The Redemption Notice shall specify (i) such holder’s right to redemption, (ii) the applicable Redemption Date, (iii) the applicable Redemption Price and (iv) the place at which such holder shall surrender its shares of Series A Preferred Stock to be redeemed. Each holder of shares of Series A Preferred Stock to be redeemed shall specify by written notice not more than twenty (20) days after the date of receipt of the Redemption Notice, such number of

shares of Series A Preferred Stock such holder desires to be redeemed; provided, however, that if upon the occurrence of the Redemption Date, the assets of the Corporation legally available to be distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then all of the assets of the Corporation legally available for distribution shall be distributed, subject to paragraph (c) below, ratably among the holders of Series A Preferred Stock in proportion to the applicable Redemption Price amount each such holder is otherwise entitled to receive. At any time thereafter when additional assets of the Corporation are legally available for the redemption of Series A Preferred Stock, such assets shall immediately be used to redeem the balance of Series A Preferred Stock that the Corporation has become obligated to redeem on the Redemption Date but which it has not redeemed.

(c) **Priority of Redemption.** The Corporation shall not redeem shares of Common Stock or any other shares of its capital stock, if any, prior to the redemption of all outstanding shares of Series A Preferred Stock. Any redemption effected pursuant to this Section 4.4 shall be made on a pro rata basis among the holders of Series A Preferred Stock to be redeemed, in proportion to the number of shares of Series A Preferred Stock held by such holders.

(d) **Delivery of Certificates.** The holder of any shares of Series A Preferred Stock to be redeemed pursuant to the provisions of this Section 4.4 shall not be entitled to receive payment of the applicable Redemption Price for such shares until such holder shall cause to be delivered, to the place specified in the Redemption Notice (i) the certificates representing such shares of Series A Preferred Stock (or delivery of a customary affidavit of loss with an indemnity reasonably satisfactory to the Corporation) and (ii) stock powers or other transfer instrument(s) reasonably satisfactory to the Corporation and sufficient to transfer such shares of Series A Preferred Stock to the Corporation free of any adverse interest.

(e) **Deposit.** At least ten (10) days prior to a Redemption Date, the Corporation shall deposit the Series A Redemption Price for the shares of Series A Preferred Stock to be redeemed with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Series A Redemption Price, for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered its share certificate to the Corporation pursuant to Section 4.4(d) above. As of the date of such deposit (even if prior to the Redemption Date but after the date the Redemption Notice is given), the deposit shall constitute full payment of the shares to their holders plus all accrued and unpaid dividends thereon, and from and after the date of the deposit the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be shareholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the Series A Redemption Price, of the shares, upon surrender of their certificates therefor, and the right to convert such shares as provided in Section 4.5 hereof. Such instructions shall also provide that any money deposited by the Corporation pursuant to this Section 4.4(e) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4.5 hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any money deposited by the Corporation pursuant to this Section 4.4(e) remaining unclaimed at the expiration of one year following the applicable Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board and holders of shares of Series A Preferred Stock called for redemption who have not claimed such funds shall be entitled to receive payment of the Series A Redemption Price only from the Corporation.

(f) **Termination of Preferred Stock.** Upon the redemption of any share of Series A Preferred Stock pursuant to this Section 4.4, such share shall (provided the applicable Redemption Price payable upon redemption of such share has been paid or properly provided for) be deemed to cease to be outstanding, and all rights of any Person other than the Corporation in such share shall be extinguished on the Redemption Date (including all rights to receive future dividends with respect to such share), except for the right to receive the applicable Redemption Price, in accordance with the provisions of this Section 4.4, subject to applicable escheat laws.

(g) **Conversion of Preferred Stock.** In the event that any shares of Series A Preferred Stock shall be converted into Common Stock prior to the close of business on any Redemption Date, (i) the Corporation shall not be obligated nor have the right to redeem such shares and (ii) any funds that shall have been deposited for the payment of the applicable Redemption Price shall be returned to the Corporation forthwith upon such conversion.

**Section 4.5. Conversion.** The holders of Series A Preferred Stock shall have the following conversion rights (the "*Conversion Rights*"):

(a) **Optional Conversion.** At any time and from time to time after the original issuance of the Series A Preferred Stock, shares of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at the principal corporate office of the Corporation or any transfer agent for such shares, into such number of validly issued, fully paid and nonassessable shares of Common Stock as is determined, with respect to each share of Series A Preferred Stock, by dividing the (A) Initial Series A Issuance Price by (B) the Series A Conversion Price (as defined herein) in effect on the date the certificate representing such share is surrendered for conversion. The initial conversion price per share for the Series A Preferred Stock (the "*Series A Conversion Price*") shall be the Initial Series A Issuance Price; provided, however, that the Series A Conversion Price shall be subject to adjustment as set forth in Section 4.5(d), (e) and (f) below.

(b) **Automatic Conversion.** Each share of Series A Preferred Stock shall automatically be converted by the Corporation into shares of Common Stock at the Series A Conversion Price in effect immediately prior thereto upon the earlier of: (i) except as provided in Section 4.5(c) below, the Corporation's sale of Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "*Securities Act*") resulting in aggregate gross proceeds (after deducting applicable underwriting discounts and commissions) of at least \$30 million; provided, however, that the per share offering price is at least five times the Initial Series A Issuance Price (a "*Qualified Public Offering*") (subject to adjustment for all stock dividends, stock splits, reorganizations, recapitalizations and the like with respect to the Common Stock occurring after the Initial Series A Issuance Date, as defined below), or (ii) the date specified by written consent or agreement of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock. The date on which such conversion is required pursuant to this Section 4.5(b) shall hereinafter be referred to as the "*Mandatory Conversion Date*."

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 4.5(a) above or upon the occurrence of the events specified in Section 4.5(b) above, as the case may be, such holder shall surrender the certificate or certificates therefor, duly endorsed (or deliver a customary affidavit of loss with indemnity satisfactory to the Corporation) at the principal corporate office of the Corporation or any transfer agent for the Series A Preferred Stock, and in the case of Section 4.5(a) above, shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; provided, however, that any failure by a holder to comply with these provisions shall not have

any effect on the automatic conversion of such holder's shares, which shall in any event convert in accordance with Section 4.5(b) above. The Corporation shall, as soon as practicable thereafter, pay all accrued and unpaid dividends on such shares of Series A Preferred Stock through the date of conversion and issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. The issuance of certificates for shares of Common Stock upon conversion of the Series A Preferred Stock shall be made without charge to the holders of Series A Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of the Common Stock. Such conversion shall be deemed to have been made, in the case of a conversion pursuant to Section 4.5(a), immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and, in the case of a conversion pursuant to Section 4.5(b), as of the opening of business on the Mandatory Redemption Date, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. The Corporation shall not close its books against the transfer of Series A Preferred Stock or of shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock in any manner that interferes with the timely conversion of the Series A Preferred Stock. The Corporation shall assist and cooperate with any holder of Series A Preferred Stock required to make any governmental filings or obtain any governmental approval prior to or in connection with the conversion of shares of Series A Preferred Stock (including, without limitation, making any filings required to be made by the Corporation). Upon conversion of shares of Series A Preferred Stock into Common Stock, the Corporation shall take all such actions as are necessary in order to ensure that such shares of Common Stock are validly issued, fully paid and nonassessable, and are free and clear of all liens, taxes, charges or encumbrances with respect to the issuance thereof. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the Person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) **Adjustments to the Conversion Prices for Certain Dilutive Issuances.**

(i) **Special Definitions.** For purposes of this Section 4.5(d), the following definitions shall apply:

(A) **"Additional Shares of Common Stock"** shall mean all shares of Common Stock issued (or, pursuant to Section 4.5(d)(iii) below, deemed to be issued) by the Corporation after the date on which the first shares of Series A Preferred Stock were issued (the **"Initial Series A Issuance Date"**), other than shares of Common Stock issued or issuable:

- (1) upon conversion of shares of Series A Preferred Stock;
- (2) to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by a majority of the Board, which majority shall include the directors elected by the Series A Preferred Stock; provided that any such issuances, in the aggregate, equal less than 10% of the current outstanding shares of Common Stock of the Corporation (calculated on a fully diluted basis, subject to adjustment for all stock dividends, stock splits, reorganizations, recapitalizations and the like), unless otherwise unanimously approved by the Board;

(3) as a dividend or distribution on Series A Preferred Stock;

(4) by reason of a dividend, stock split, combination, recapitalization, reclassification, reorganization, merger, consolidation or other change that is covered by Section 4.5(e), 4.5(f), 4.5(g), 4.5(h) or 4.5(i) below; or

(5) for which adjustment of the Series A Conversion Price has previously been made pursuant to Section 4.5(d)(iv).

(B) "*Convertible Securities*" shall mean any evidences of indebtedness, shares (other than Common Stock and Series A Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(C) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) **No Adjustment of Conversion Prices.** Notwithstanding any provision herein to the contrary, no adjustment in the Series A Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4.5(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Fair Market Value of the Common Stock in effect on the date of, and immediately prior to, such issuance.

(iii) **Deemed Issuance of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Initial Series A Issuance Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, further, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustments in the Series A Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price

shall affect Common Stock previously issued upon conversion of the Series A Preferred Stock); and

(C) no readjustment pursuant to clause (A) or (B) above shall have the effect of increasing the Series A Conversion Price to an amount that exceeds the lesser of (1) the Series A Conversion Price on the Series A Issuance Date and (2) the Series A Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the Series A Issuance Date and such readjustment date.

(iv) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Initial Series A Issuance Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.5(d)(iii)) without consideration or for consideration per share less than the Fair Market Value of the Common Stock, in effect on the date of and immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Price, then in effect by a fraction, (A) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Fair Market Value of the Common Stock, in effect immediately prior to such issuance, and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such Additional Shares of Common Stock so issued. For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated on a fully diluted basis, as if all Convertible Securities had been fully converted into shares of Common Stock and any outstanding Options bearing an exercise price that is lower than the price at which the Additional Shares of Common Stock were issued had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(v) **Determination of Consideration.** For purposes of this Section 4.5(d), the consideration received by the Corporation in connection with the issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

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

(3) in the event Additional Shares of Common Stock are issued together with other securities or property of the Corporation for consideration which covers both cash and property, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.5(d)(iii) relating to Options and Convertible Securities shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(e) **Adjustment for Stock Splits and Combinations.** In the event the Corporation at any time or from time to time after the Initial Series A Issuance Date effects a subdivision (by any stock split or otherwise) of the outstanding Common Stock without a corresponding subdivision of the Series A Preferred Stock, the Series A Conversion Price in effect immediately before such subdivision shall be proportionately decreased. Conversely, in the event the Corporation at any time or from time to time after the Initial Series A Issuance Date combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series A Preferred Stock, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4.5(e) shall become effective at the close of business on the date such subdivision or combination becomes effective.

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

(g) **Adjustments for Other Dividends and Distributions.** In the event the Corporation at any time or from time to time after the Initial Series A Issuance Date shall make or issue,



or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock) or in cash or other property (other than cash out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the holder of each share of Series A Preferred Stock shall receive upon conversion of such share of Series A Preferred Stock, in addition to the number of shares of Common Stock issuable in connection therewith, the kind and amount of securities of the Corporation and/or cash and other property that such holder would have been entitled to receive had such share of Series A Preferred Stock been converted into Common Stock on the date of such event and had such holder thereafter, during the period from the date of such event to and including the date of conversion, retained any such securities and/or other property receivable, giving application to all adjustments called for during such period under this Section 4.5 with respect to the rights of such holder.

(h) **Adjustments for Recapitalizations, Reclassifications or Other Changes.** If at any time after the Initial Series A Issuance Date, the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer or a subdivision, combination, or reorganization provided for elsewhere in this Section 4.5), in any such event each holder of Series A Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property that would be receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(i) **Adjustments for Reorganizations, Mergers or Consolidations.** If at any time after the Initial Series A Issuance Date, there is a capital reorganization of the Common Stock or a merger or consolidation of the Corporation with or into another Person (other than an Acquisition or Asset Transfer) as a part of such capital reorganization, merger or consolidation, provision shall be made so that the holders of the Series A Preferred Stock 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, merger or consolidation, 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 4.5 with respect to the rights of the holders of Series A Preferred Stock after such capital reorganization, merger or consolidation to the end that the provisions of this Section 4.5 (including adjustment of the Series A Conversion Price) then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(j) **Adjustment Threshold and Recording.** No adjustment in a Conversion Price need be made if such adjustment would result in a change in a Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Conversion Price. All calculations under this Section 4.5 shall be made to the nearest one hundredth of a cent (\$0.0001) or to the nearest one hundredth (1/100) of a share, as the case may be.

(k) **Other Distributions.** In the event that the Corporation at any time or from time to time after the Initial Series A Issuance Date declares a distribution payable in securities of other Persons, evidences of indebtedness issued by the Corporation or other Persons, or assets of the Corporation (excluding cash dividends), then in each such case for the purpose of this Section 4.5(k), the

holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(l) **No Impairment.** The Corporation shall not, by amendment of this Certificate (by merger, consolidation or otherwise) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or otherwise, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Section 4.5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series A Preferred Stock against impairment.

(m) **No Fractional Shares.** No fractional shares shall be issued upon the conversion of any share or shares of Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock which the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(n) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price, pursuant to this Section 4.5, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Series A 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 Series A Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (A) such adjustment and readjustment, (B) the Series A Conversion Price at the time in effect and (C) the number of shares of Common Stock and the amount of other property, if any, which at the time would be received upon the conversion of a share of Series A Preferred Stock.

(o) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(p) **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 Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary, in the reasonable opinion of its counsel, to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, using its best efforts to obtain the requisite shareholder approval of any necessary amendment to this Certificate. The

Corporation shall also use its best efforts to take all such actions as may be necessary to ensure that all shares of Common Stock issuable upon conversion of the Series A Preferred Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any securities exchange or quotation system upon which shares of Common Stock may be listed or quoted, as the case may be; provided, however, that this sentence shall not require the Corporation to register any of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock under the federal securities laws. The Corporation shall use its best efforts to not take any action that would cause the number of authorized but unissued shares of Common Stock to be less than the number of such shares required to be reserved hereunder for conversion of all shares of Series A Preferred Stock.

(q) **Certain Events.** If any event occurs of the type contemplated by the provisions of this Section 4.5 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board shall make an appropriate adjustment in the Series A Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided, that no such adjustment shall increase the Series A Conversion Price as otherwise determined pursuant to this Section 4.5 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock.

(r) **Notices.** Any notice, request, demand or other communication required or permitted to be given to a holder of Series A Preferred Stock pursuant to the provisions of this Certificate will be in writing and will be effective and deemed given under this Section 4.5 on the earliest of: (i) the date of personal delivery, (ii) the date of transmission by facsimile, with confirmed transmission and receipt, (iii) two (2) days after deposit with a nationally-recognized courier or overnight service and (iv) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the party to be notified at the address set forth for such party in the records of the Corporation. Any holder of Series A Preferred Stock (and such holder's permitted assigns) may change such holder's address for receipt of future notices hereunder by giving written notice to the Corporation.

#### **Section 4.6. Voting Rights.**

(a) **General.** Except as otherwise provided herein or required by law, holders of the Series A Preferred Stock shall be entitled to vote together with the shares of the Common Stock of the Corporation and not as a separate class on all matters submitted to a vote of the holders of shares of Common Stock, and may act by written consent in the same manner as the Common Stock, with each holder of shares of Series A Preferred Stock entitled to the number of votes as shall be equal to the number of shares of Common Stock into which such holder's aggregate number of shares of Series A Preferred Stock are convertible pursuant to Section 4.5 immediately after the close of business on the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken. Each holder of Series A Preferred Stock shall be entitled, notwithstanding any provision hereof to the contrary, to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation (the "**Bylaws**"). Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula shall be rounded to the nearest whole number (with one-half rounded upward to one).

(b) **Preferred Stock Protective Provisions.** In addition to any other vote or consent required herein or by law, for so long as the holders of Series A Preferred Stock own at least 50% of the shares of Series A Preferred Stock held by them as of March 7, 2016 (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like with respect to the Series A Preferred Stock), and unless the action or decision has been approved by both of the directors elected by the Series A

Preferred Stock, the Corporation shall not, without first obtaining the approval of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, voting together as a single class:

(i) take any action that results in (A) the purchase, repurchase, redemption, retirement or other acquisition for value by the Corporation or any Subsidiary of any Junior Stock or (B) the purchase, repurchase, redemption, retirement or other acquisition for value of any shares of Series A Preferred Stock, other than (x) by a redemption made in accordance with this Certificate, (y) acquisitions of Common Stock by the Corporation pursuant to agreements with employees, advisors, consultants or service providers that permit the Corporation to repurchase such shares upon termination of services to the Corporation or (z) acquisitions of Common Stock by the Corporation upon the exercise of the Corporation's right of first refusal upon a proposed transfer;

(ii) effect an Asset Transfer or Acquisition, or enter into any agreement to effect an Asset Transfer or Acquisition, relating to the Corporation or any of its Subsidiaries;

(iii) take any action that results in the payment or declaration of any dividend or distribution on any of its capital stock or other equity securities (other than the Series A Preferred Stock, pursuant to the terms of this Certificate);

(iv) effect any voluntary dissolution, liquidation or winding up of the Corporation or other discontinuance of the business of the Corporation;

(v) take any action, whether by merger, consolidation or otherwise, that amends, repeals, alters or waives any provisions of this Certificate or the Bylaws;

(vi) other than in connection with a Qualified Public Offering, authorize, create or issue any debt or equity securities or any rights or securities directly or indirectly convertible into or exercisable or exchangeable for such securities (other than stock options pursuant to the Corporation's existing stock option plans);

(vii) effect any increase or decrease in the authorized number of members of the Board;

(viii) amend or modify any stock option plan or employee stock ownership plan, adopt any new stock option plan or employee stock ownership plan or issue any shares of capital stock of the Corporation to the Corporation's employees other than pursuant to the Corporation's existing stock option or employee stock ownership plans;

(ix) amend or modify the compensation arrangements or other terms of employment for members of the Corporation's senior management;

(x) enter into the ownership, active management or operation of any business other than the business of the Corporation as it is described in the Corporation's business plan in effect as of the Initial Series A Issuance Date;

(xi) become a party or subject to any agreement or instrument that by its terms would, under any circumstances, restrict the Corporation's right or ability to comply with the terms of the Investors' Rights Agreement, Co-Sale and First Refusal Agreement, and Voting Agreement, in each case dated on or about the date of this Certificate, by and among the

Corporation and certain investors, as such agreements may from time to time be amended in accordance with their respective terms;

(xii) enter into a material transaction or series of transactions outside the ordinary course of business consistent with past practice (including with respect to quantity, quality and frequency) with any shareholder, director or officer of the Corporation;

(xiii) enter into a material transaction or series of transactions outside the ordinary course of business consistent with past practice (including with respect to quantity, quality and frequency) with any consultant, agent, advisor, employee, representative or affiliate (including, but not limited to, any wholly-owned Subsidiary) of the Corporation;

(xiv) dispose of or acquire any interest in any Person or business (whether by purchase of assets, purchase of stock, merger or otherwise) or enter into any joint venture or make any investment in another Person involving consideration in excess of \$100,000;

(xv) incur or assume any liability, indebtedness or enter into any other payment obligation that commits the Corporation to pay \$1,000,000 or more, either individually or in the aggregate;

(xvi) make or commit to make any expenditure in excess of a ten percent variance over the Corporation's annual budget;

(xvii) pledge or otherwise encumber any of the securities of the Corporation or any of its Subsidiaries;

(xviii) initiate or settle litigation or other claims, in each case other than suits involving amounts less than \$25,000;

(xix) appoint a lead manager in any underwritten debt or equity offering of the Corporation or any subsidiary;

(xx) grant any rights to register shares of capital stock of the Corporation under the Securities Act of 1933;

(xxi) approve the Corporation's annual budget;

(xxii) enter into any contract or agreement, including any license agreement, that involves total annual guaranteed consideration in excess of \$100,000 and would likely have a material impact on the Corporation's business, results of operations or financial condition; or

(xxiii) amend any of the provisions set forth in this Section 4.6(b).

(c) **Series A Protective Provisions.** The Corporation shall not, without first obtaining the approval of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock:

(i) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable or exchangeable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock with respect to voting, dividends, redemption, conversion or liquidation rights;

(ii) take any action, whether by merger, consolidation or otherwise, that alters or changes the powers, preferences, privileges or special rights of the shares of Series A Preferred Stock if such alteration or change would adversely affect the holders of the Series A Preferred Stock; or

(iii) increase or decrease (other than by redemption or conversion as provided herein) the aggregate number of authorized shares of Series A Preferred Stock.

(d) **Election of Directors.**

(i) The holders of the Common Stock, voting as a separate class, shall be entitled to elect one member of the Board (which director shall be reasonably acceptable to the holders of the Series A Preferred Stock) at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. Such director shall hold office until the next meeting or the next consent of the Corporation's shareholders for the election of directors and until such director's successor is duly elected and qualified, or until such director's earlier resignation or removal.

(ii) The holders of the Series A Preferred Stock, voting as a separate series, shall be entitled to elect four members of the Board at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. Such director shall hold office until the next meeting or the next consent of the Corporation's shareholders for the election of directors and until such director's successor is duly elected and qualified, or until such director's earlier resignation or removal.

**Section 4.7. Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided, that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series A Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

**Section 4.8. Common Stock.**

(a) **Dividend Rights.** Subject to the provisions of Section 4.2, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board, but only out of assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

(b) **Liquidation Rights.** Upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 4.3.

(c) **Redemption.** The Common Stock is not redeemable.

(d) **Voting Rights.**

(i) The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws, and shall be entitled to vote upon such matters and in such manner as may be provided by this Certificate and by law.

(ii) The holders of the outstanding shares of Common Stock shall be entitled to vote as a class upon any proposed amendment to this Certificate if such proposed amendment would increase or decrease the aggregate number of authorized shares of Common Stock, or alter or change the powers, preferences, or special rights of the shares of Common Stock so as to affect them adversely; provided, however, that notwithstanding anything herein to the contrary, nothing herein this Section 4.8(d)(ii) shall expand the rights of the Common Stock provided by Section 21.364(d) of the TBOC.

**ARTICLE V.  
INITIAL DIRECTOR**

The number of directors constituting the initial Board is 1, and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are duly elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Patrick D. Halbert	6655 N. MacArthur Blvd. Irving, Texas 75039

**ARTICLE VI.  
LIMITED LIABILITY; INDEMNIFICATION**

**Section 6.1. Limitation of Liability.** No person who is or was a director of the Corporation shall be personally liable to the Corporation or any of its shareholders for monetary damages for an act or omission in such person's capacity as a director of the Corporation, except to the extent such limitation or elimination of liability is not permitted by applicable law, as the same exists or hereafter may be changed. If applicable law is hereafter changed to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to the Corporation or its shareholders shall be limited or eliminated to the fullest extent permitted by applicable law, as so changed. Any repeal or amendment of this Section 6.1 by the shareholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 6.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

**Section 6.2. Indemnification.**

(a) Each person who was or is a party or is threatened to be made a party to, or testifies or otherwise participates in, any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such an action, suit or

proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (any of the foregoing hereinafter called a "*proceeding*"), whether or not by or in the right of the Corporation, because such person is or was a director of the Corporation or, while a director of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, administrator, agent or similar functionary of another foreign or domestic corporation, partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, proprietorship, trust, employee benefit plan, other enterprise or other organization (hereinafter a "*Covered Person*") shall be indemnified by the Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be changed, against all judgments (including arbitration awards), court costs, penalties, excise and similar taxes, fines, settlements, reasonable attorneys' fees and other expenses (all of the foregoing hereinafter called "*expenses*") actually incurred by such person in connection with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, partner, venturer, proprietor, trustee, employee, administrator, agent or similar functionary and shall inure to the benefit of his or her heirs, executors and administrators. The right to indemnification conferred by this Section 6.2 shall be a contract right and shall include the right to be paid or reimbursed by the Corporation the reasonable expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition upon receipt by the Corporation of a written affirmation by the Covered Person of the Covered Person's good faith belief that the person has met the standard of conduct necessary for indemnification under the TBOC and a written undertaking by or on behalf of the person to repay all amounts so advanced if it shall be ultimately determined by final judicial decision from which there is no further right to appeal that the Covered Person has not met that standard or that indemnification of the Covered Person against expenses incurred by such person in connection with that proceeding is prohibited by the TBOC.

(b) The rights conferred on any Covered Person by this Section 6.2 shall not be exclusive of any other rights which any Covered Person may have or hereafter acquire under law, this Certificate, the Bylaws, an agreement, vote of shareholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 6.2 by the shareholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 6.2, will, unless otherwise required by law, be prospective only (except to the extent such amendment, change in law or adoption permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 6.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Covered Persons.

## ARTICLE VII ACTIONS BY SHAREHOLDERS WITHOUT A MEETING

Any action required to be taken at any annual or special meeting of shareholders, and any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which holders of all shares entitled to vote on the action were present and voted.



**ARTICLE VIII.  
SHAREHOLDER VOTE ON CERTAIN MATTERS**

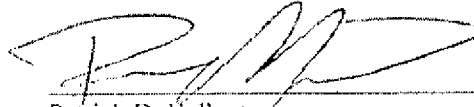
Except as otherwise provided in this Certificate (including any Preferred Stock Resolution), the vote of shareholders required for approval of any action for which the TBOC requires a shareholder vote, shall, if a greater vote of shareholders is provided for by the TBOC, instead be the affirmative vote of the holders of a majority of the outstanding shares entitled to vote thereon, unless any class or series of shares is entitled to vote as a class thereon, in which event the vote required shall be the affirmative vote of the holders of a majority of the outstanding shares within each class or series of shares entitled to vote thereon as a class and a majority of the outstanding shares otherwise entitled to vote thereon.]

**ARTICLE IX.  
EFFECTIVE TIME**

This Certificate shall become effective upon the effectiveness of the conversion as set forth in the certificate of conversion to effect the conversion as filed with the Secretary of State of the State of Texas. This Certificate shall be deemed effected for accounting purposes only as of January 1, 2016.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Formation to be duly executed on the 7 day of March . 2016.



Patrick D. Halbert

*Signature Page to  
Certificate of Incorporation*