

Exhibit 11b.9: Nomi Health Amended & Restated Certificate of Incorporation

Delaware

The First State

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I, CHARUNI PATIBANDA-SANCHEZ, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "NOMI HEALTH, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, FILED THE TWENTY-NINTH DAY OF JUNE, A.D. 2023, AT 2:47 O`CLOCK P.M.



7411582 8100X
SR# 20251899565

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

A handwritten signature in black ink that reads "C. P. Sanchez". The signature is written in a cursive style.

Charuni Patibanda-Sanchez, Secretary of State

Authentication: 203572965
Date: 04-30-25

HCMO_CERPASSRX_000069

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:47 PM 06/29/2023
FILED 02:47 PM 06/29/2023
SR 20232891872 - File Number 7411582

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
NOMI HEALTH, INC.**

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

Nomi Health, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Nomi Health, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on May 1, 2019.

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

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

FIRST: The name of this corporation is Nomi Health, Inc. (the “**Corporation**”).

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

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 38,400,000 shares of Common Stock, \$0.0001 par value per share (“**Common Stock**”), 28,400,000 of which shares are designated as “**Class A Common Stock**” and 10,000,000 of which shares are designated as “**Class B Common Stock**” and (ii) 9,521,710 shares of Preferred Stock, \$0.0001 par value per share (“**Preferred Stock**”), 645,409 of which shares are designated as “**Series A Preferred Stock**”, 3,307,312 of which shares are designated as “**Series A-1 Preferred Stock**”, 425,608 of which shares are designated as “**Series A-2 Preferred Stock**”, 331,022 of which shares are designated as “**Series A-3 Preferred Stock**”, 21,924 of which shares are designated as “**Series A-4 Preferred Stock**”, 196,682 of which shares are designated as “**Series A-5 Preferred Stock**”, 1,717,437 of which shares are designated as “**Series B Preferred Stock**” and 2,876,316 of which shares are designated as “**FF Preferred Stock**”. The Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series A-5 Preferred Stock and Series B Preferred Stock shall collectively be referred to herein as the “**Investment Preferred Stock**.”

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The following is a statement of the designations and the powers, preferences and special rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General.

1.1 The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

1.2 The Common Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Except as otherwise provided in this Amended and Restated Certificate of Incorporation or required by applicable law, shares of Common Stock shall have the same rights and powers, rank equally (including as to dividends and distributions, and any liquidation, dissolution or winding up of the Corporation but excluding voting and other matters as described in Section 2 below), share ratably and be identical in all respects as to all matters. Unless otherwise indicated, references to “sections” or “Sections” in this Part A of this Article Fourth refer to sections and Sections of Part A of this Article Fourth.

2. Voting Rights.

2.1 **Class A Common Stock.** Each holder of shares of Class A Common Stock will be entitled to one (1) vote for each share thereof held at the record date for the determination of the stockholders entitled to vote on such matters.

2.2 **Class B Common Stock.** Each holder of shares of Class B Common Stock will be entitled to ten (10) votes for each share thereof held at the record date for the determination of the stockholders entitled to vote on such matters.

2.3 **Class B Common Stock Protective Provisions.** At any time when shares of Class B Common Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) remain outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, without the prior written consent or affirmative vote of the holders representing a majority of the voting power of the then outstanding shares of Class B Common Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a single class, the Corporation shall not, either directly or by amendment, merger, consolidation, reclassification or in any other manner:

2.3.1 reclassify any outstanding shares of Class A Common Stock into shares having rights as to dividends or liquidation that are senior to the Class B Common Stock or the right to have more than one vote for each share thereof;

2.3.2 issue any shares of Class B Common Stock, including, for the avoidance of doubt, by dividend, distribution or otherwise;

2.3.3 authorize, or issue any shares of, any class or series of capital stock of the Corporation having the right to more than one vote for each share thereof;

2.3.4 amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation;

2.3.5 liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger, consolidation or Deemed Liquidation Event, or consent to any of the foregoing;

2.3.6 increase or decrease of the size of the Board of Directors of the Corporation; or

2.3.7 permit any subsidiary of the Corporation to do any of the foregoing.

2.4 **General.** Except as otherwise expressly provided herein or as required by law, the holders of Class A Common Stock and Class B Common Stock will vote together and not as separate series or classes.

2.5 **Authorized Shares.** The number of authorized shares of Common Stock or any class or series thereof and FF Preferred Stock may only be increased or decreased (but not below (i) the number of shares of Common Stock or, in the case of a class or series of Common Stock, such class or series, then outstanding plus (ii) with respect to Class A Common Stock, the number of shares reserved for issuance pursuant to Section 7 and Article Fourth, Part B, Section 4.3.2) by the affirmative vote of the holders of a majority of the voting power represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law; *provided*, that the number of authorized shares of Class B Common Stock shall not be increased or decreased without the affirmative vote of the holders of a majority of the outstanding shares of Class B Common Stock, voting as a separate class.

3. **Liquidation.** Subject to Article Fourth, Part B, Section 2, in the event of a liquidation event, the assets of the Corporation legally available for distribution to stockholders shall be distributed on an equal priority, pro rata basis (based on the number of shares of Common Stock held by each) to the holders of Common Stock, unless different treatment of the shares of each such class or series of Common Stock is approved by the affirmative vote of (i) the holders of a majority of the outstanding shares of Class A Common Stock, voting as a separate class, (ii) the holders of a majority of the outstanding shares of Class B Common Stock, voting as a separate class and (iii) the Requisite Holders (as defined below); *provided, however*, that for the avoidance of doubt, consideration to be paid or received by a holder of Common Stock in connection with any liquidation event pursuant to any bona fide employment, consulting, severance or similar services arrangement shall not be deemed to be “distribution to stockholders” for the purpose of this Section 3; *provided, further, however*, that shares of such classes may receive, or have the right to elect to receive, different or disproportionate consideration in connection with such consolidation, merger or other transaction if the only difference in the per share consideration to the holders of the Class A Common Stock and Class B Common Stock is that any securities distributed to the holder of a share of Class B Common Stock have ten times the voting power of any securities distributed to the holder of a share of Class A Common Stock.

4. **Conversion of the Class B Common Stock.** The Class B Common Stock will be convertible into Class A Common Stock as follows:

4.1 **Optional Conversion.** Each share of Class B Common Stock shall be convertible into one fully paid and nonassessable share of Class A Common Stock at the option of the holder thereof at any time upon written notice to the Corporation. Before any record holder of Class B

Common Stock shall be entitled to convert any of such holder's shares of Class B Common Stock into shares of Class A Common Stock, such holder shall deliver an instruction, duly signed and authenticated in accordance with any procedures set forth in the Bylaws of the Corporation or any policies of the Corporation then in effect, at the principal corporate office of the Corporation or of any transfer agent for the Class B Common Stock, and shall give written notice to the Corporation at its principal corporate office of such holder's election to convert the same and shall state therein the name or names in which the shares of Class A Common Stock issuable on conversion thereof are to be registered on the books of the Corporation. The Corporation shall, as soon as practicable thereafter, register on the Corporation's books ownership of the number of shares of Class A Common Stock to which such record holder of Class B Common Stock, or to which the nominee or nominees of such record holder, shall be entitled as aforesaid. Such conversion shall be deemed to have occurred immediately prior to the close of business on the date such notice of the election to convert is received by the Corporation, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock as of such date.

4.2 **Automatic Conversion.**

4.2.1 Each share of Class B Common Stock shall automatically be converted into one fully paid and nonassessable share of Class A Common Stock immediately prior to the close of business on the date specified by the affirmative vote of the holders of Class B Common Stock representing not less than a majority of the voting power of the then outstanding shares of Class B Common Stock, voting separately as a single class (such event, the "**Automatic Class B Conversion**").

4.2.2 The Corporation shall provide notice of the Automatic Class B Conversion of shares of Class B Common Stock pursuant to this Section 4.2 to record holders of such shares of Class B Common Stock as soon as practicable following the Automatic Class B Conversion; *provided, however,* that, the Corporation may satisfy such notice requirements by providing such notice prior to the Automatic Class B Conversion. Such notice shall be provided by any means then permitted by the General Corporation Law; *provided, however,* that, no failure to give such notice nor any defect therein shall affect the validity of the Automatic Class B Conversion. Upon and after an Automatic Class B Conversion, the person registered on the Corporation's books as the record holder of the shares of Class B Common Stock so converted immediately prior to such Automatic Class B Conversion shall be registered on the Corporation's books as the record holder of the shares of Class A Common Stock issued upon Automatic Class B Conversion of such shares of Class B Common Stock, without further action on the part of the record holder thereof. Immediately upon the effectiveness of an Automatic Class B Conversion, the rights of the applicable holders of shares of Class B Common Stock as such shall cease, and such holders shall be treated for all purposes as having become the record holder or holders of the shares of Class A Common Stock into which such shares of Class B Common Stock were converted.

4.3 **Conversion on Transfer.** Each share of Class B Common Stock shall automatically, without further action by the Corporation or the holder thereof, be converted into one fully paid and nonassessable share of Class A Common Stock, upon the occurrence of a Transfer (as defined below), other than a Permitted Transfer (as defined below), of such share of Class B Common Stock.

4.4 **Policies and Procedures.** The Corporation may, from time to time, establish such policies and procedures, not in violation of applicable law or this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, relating to the conversion of shares of the Class B Common Stock into shares of Class A Common Stock and the dual class common stock structure contemplated by this Amended and Restated Certificate of Incorporation, as it may deem necessary or advisable. If the Corporation has reason to believe that a Transfer that is not a Permitted Transfer has occurred, the Corporation may request that the purported transferor furnish affidavits or other evidence to

the Corporation as it reasonably deems necessary to determine whether a Transfer that is not a Permitted Transfer has occurred, and if such transferor does not within ten days after the date of such request furnish sufficient (as determined by the disinterested majority of the Board) evidence to the Corporation (in the manner provided in the request) to enable the Corporation to determine that no such Transfer has occurred, any such shares of Class B Common Stock, to the extent not previously converted, shall be automatically converted into shares of Class A Common Stock and such conversion shall thereupon be registered on the books and records of the Corporation. In connection with any action of stockholders taken at a meeting or by written consent, the stock ledger of the Corporation shall be presumptive evidence as to who are the stockholders entitled to vote in person or by proxy at a meeting of stockholders or in connection with any written consent and the classes of shares held by each such stockholder and the number of shares of each class held by such stockholder.

4.5 Definitions.

4.5.1 “**Family Member**” shall mean with respect to any natural person who is a Qualified Stockholder, the spouse, ex-spouse, domestic partner, parents, grandparents, lineal descendants, siblings and lineal descendants of siblings of such Qualified Stockholder. Lineal descendants shall include adopted persons, but only so long as they are adopted during minority.

4.5.2 “**Incompetency**” shall mean permanent and total disability such that a stockholder is unable to engage in any substantial gainful activity by reason of any medically determinable mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months as determined by a licensed medical practitioner. In the event of a dispute as to whether a stockholder suffers from Incompetency, no Incompetency of such stockholder shall be deemed to have occurred unless and until an affirmative ruling regarding such Incompetency has been made by a court of competent jurisdiction, and such ruling has become final and non-appealable.

4.5.3 “**Parent**” of an entity shall mean any entity that directly or indirectly owns or controls a majority of the voting power of the voting securities of such entity.

4.5.4 “**Permitted Entity**” shall mean with respect to a Qualified Stockholder (including, for the avoidance of doubt, natural persons described in clauses (ii) and (iii) of Section 4.5.7. below) (i) a Permitted Trust solely for the benefit of (A) such Qualified Stockholder, (B) one or more Family Members of such Qualified Stockholder, (C) any other Permitted Entity of such Qualified Stockholder and/or (D) such other beneficiaries as approved by a disinterested majority of the Board, (ii) any general partnership, limited partnership, limited liability company, corporation or other entity exclusively owned by (A) such Qualified Stockholder, (B) one or more Family Members of such Qualified Stockholder and/or (C) any other Permitted Entity of such Qualified Stockholder, (iii) any general partner, limited partner, manager, or member of (A) such Qualified Stockholder, (B) one or more Family members of such Qualified Stockholder and/or (C) any other Permitted Entity of such Qualified Stockholder or (iv) a revocable living trust, which revocable living trust is itself both a Permitted Trust and a Qualified Stockholder, during the lifetime of the natural person grantor of such trust.

4.5.5 “**Permitted Transfer**” shall mean, and be restricted to, any Transfer of a share of Class B Common Stock:

(a) by a Qualified Stockholder to (A) one or more Family Members of such Qualified Stockholder, (B) any Permitted Entity of such Qualified Stockholder; (C) such Qualified Stockholder’s revocable living trust, which trust is itself both a Permitted Trust and a Qualified Stockholder or (D) one or more other Qualified Stockholders; *provided* that the transferring Qualified

Stockholder must retain Voting Control of the shares of Class B Common Stock Transferred in accordance with this Section 4.5.5(a)(A), (B) and (C);

(b) by a Permitted Entity of a Qualified Stockholder to (A) such Qualified Stockholder or one or more Family Members of such Qualified Stockholder, or (B) any other Permitted Entity of such Qualified Stockholder; *provided* such Qualified Stockholder must retain Voting Control of the shares of Class B Common Stock Transferred in accordance with this Section 4.5.5(b); or

(c) approved by a disinterested majority of the Board.

4.5.6 “**Permitted Transferee**” shall mean a transferee of shares of Class B Common Stock received in a Transfer that constitutes a Permitted Transfer.

4.5.7 “**Permitted Trust**” shall mean a bona fide trust where each trustee is (i) a Qualified Stockholder, (ii) a Family Member of a Qualified Stockholder or (iii) a professional in the business of providing trustee services, including private professional fiduciaries, trust companies and bank trust departments.

4.5.8 “**Qualified Stockholder**” shall mean (i) the record holder of a share of Class B Common Stock; and (ii) a Permitted Transferee.

4.5.9 “**Transfer**” of a share of Class B Common Stock shall mean, directly or indirectly, any sale, exchange, issuance, assignment, distribution, encumbrance, gift, pledge, retirement, resignation, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law (including by merger, consolidation or otherwise), including, without limitation, (i) assignment and distribution resulting from death, Incompetency, bankruptcy, liquidation and dissolution, (ii) following an initial public offering by the Corporation, a transfer of a share of Class B Common Stock to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or (iii) following an initial public offering by the Corporation, the transfer of, or entering into a binding agreement with respect to, Voting Control (as defined below) over such share by proxy or otherwise, but excluding any proxy given by a stockholder pursuant to the Corporation’s form of stock option agreement or stock option exercise agreement; *provided, however*, that the following shall not be considered a “**Transfer**” within the meaning of this Section 4.5:

(a) the granting of a revocable proxy to officers or directors of the Corporation at the request of the Board in connection with actions to be taken at an annual or special meeting of stockholders or in connection with any action by written consent of the stockholders solicited by the Board (if action by written consent of stockholders is permitted at such time under the Certificate of Incorporation);

(b) entering into a voting trust, agreement or arrangement (with or without granting a proxy) solely with stockholders who are holders of Class B Common Stock that (A) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (B) either has a term not exceeding one (1) year or is terminable by the holder of the shares subject thereto at any time and (C) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner; or

(c) the pledge of shares of Class B Common Stock by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder continues to exercise Voting Control over such pledged shares; *provided, however*, that a foreclosure on such shares or other similar action by the pledgee shall constitute a Transfer.

A “**Transfer**” shall also be deemed to have occurred with respect to a share of Class B Common Stock beneficially held by (i) an entity that is a Permitted Entity, if there occurs any act or circumstance that causes such entity to no longer be a Permitted Entity or (ii) an entity that is a Qualified Stockholder, if there occurs a Transfer on a cumulative basis of a majority of the voting power of the voting securities of such entity or any direct or indirect Parent of such entity, other than a Transfer to parties that are holders of voting securities of any such entity or Parent of such entity.

4.5.10 “**Voting Control**” shall mean, with respect to a share of Class B Common Stock, the power (whether exclusive or shared) to vote or direct the voting of such share by proxy, voting agreement, or otherwise.

4.6 **Status of Converted Stock.** In the event that any shares of Class B Common Stock are converted into shares of Class A Common Stock pursuant to this Section 4, the shares of Class B Common Stock so converted shall be retired and cancelled and shall not be reissued by the Corporation, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Class B Common Stock accordingly.

5. **Effect of Conversion on Payment of Dividends.** Notwithstanding anything to the contrary in Sections 4.1, 4.2 or 4.3, if the date on which any share of Class B Common Stock is converted into Class A Common Stock pursuant to the provisions of Sections 4.1, 4.2 or 4.3 occurs after the record date for the determination of the holders of Class B Common Stock entitled to receive any dividend or distribution to be paid on the shares of Class B Common Stock, the holder of such shares of Class B Common Stock as of such record date will be entitled to receive such dividend or distribution on such payment date; *provided, however*, that, notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, to the extent that any such dividend or distribution is payable in shares of Class B Common Stock (or in the voting securities or exchangeable securities payable on shares of Class B Common Stock), such dividend or distribution shall be deemed to have been declared, and shall be payable in, shares of Class A Common Stock (or, if applicable, the voting securities or exchangeable securities payable on shares of Class A Common Stock) and no shares of Class B Common Stock (or the voting securities or exchangeable securities payable on shares of Class B Common Stock) shall be issued in payment thereof.

6. **Subdivision or Combinations.** If the Corporation in any manner (including pursuant to stock dividends or distributions of securities) subdivides or combines the outstanding shares of Class A Common Stock or Class B Common Stock, then the outstanding shares of Class A Common Stock and Class B Common Stock shall be subdivided or combined in the same manner (including, if applicable, by receiving an equivalent stock dividend or distribution of securities).

7. **Reservation.** The Corporation shall at all times reserve and keep available, out of its authorized and unissued shares of Class A Common Stock, solely for the purpose of effecting conversions of shares of Class B Common Stock into Class A Common Stock, such number of duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of Class B Common Stock. If at any time the number of authorized and unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then

outstanding shares of Class B Common Stock, the Corporation shall promptly take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, obtaining the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. All shares of Class A Common Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and non-assessable shares. The Corporation shall take all such action as may be necessary to ensure that all such shares of Class A Common Stock may be so issued without violation of any applicable law or regulation.

8. **Redemption.** Neither the Class A Common Stock nor the Class B Common Stock is redeemable at the option of the holder thereof.

9. **No Reissuance of Class B Common Stock.** No share or shares of Class B Common Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares that the Corporation shall be authorized to issue.

10. **Preemptive Rights.** No stockholder of the Corporation shall have a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation except to the extent that such a right may from time to time be set forth in a written agreement between the Corporation and a stockholder.

11. **Administration.** The Corporation may, from time to time, establish such policies and procedures relating to the conversion of the Class B Common Stock to Class A Common Stock and the general administration of this dual class Common Stock structure, including the issuance of stock certificates with respect thereto, as it may deem necessary or advisable, and may request that holders of shares of Class B Common Stock furnish affidavits or other proof to the Corporation as it deems necessary to verify the ownership of Class B Common Stock and to confirm that a conversion to Class A Common Stock has not occurred. A determination by the Corporation as to whether or not a Transfer has occurred that results in a conversion to Class A Common Stock shall be conclusive and binding. For clarification, nothing in this Section 11 authorizes the Corporation to alter the powers, preferences or special rights of, or restrictions provided for the benefit of the Class B Common Stock without the consent of the holders of a majority of outstanding Class B Common Stock.

B. **PREFERRED STOCK**

The Preferred Stock shall have the following rights, preferences, powers and restrictions, qualifications and limitations. Unless otherwise indicated, references to “sections” or “Sections” in this Part B of this Article Fourth refer to sections and Sections of Part B of this Article Fourth.

The “**Original Issue Price**” shall mean (i) \$63.8353 per share for the Series A Preferred Stock, (ii) \$0.8511 per share for the Series A-1 Preferred Stock, (iii) \$15.9588 per share for the Series A-2 Preferred Stock, (iv) \$31.9177 per share for the Series A-3 Preferred Stock, (v) \$51.0682 per share for the Series A-4 Preferred Stock, (vi) \$57.4518 per share for the Series A-5 Preferred Stock, (vii) \$68.8519 per share for the Series B Preferred Stock and (viii) \$0.005 per share for the FF Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock.

1. **Dividends.** The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock or dividends on shares of FF Preferred Stock payable

in shares of FF Preferred Stock pursuant to Section 4.6) unless (in addition to the obtaining of any consents required elsewhere in this Amended and Restated Certificate of Incorporation) the holders of the Investment Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Investment Preferred Stock in an amount at least equal to in the case of a dividend on Common Stock, FF Preferred Stock or any class or series that is directly or indirectly convertible into Class A Common Stock, that dividend per share of the Investment Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Class A Common Stock and (B) the number of shares of Class A Common Stock issuable upon conversion of a share of such Investment Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend; *provided that*, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of a series of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest dividend for such series of Preferred Stock.

2. **Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.**

2.1 **Senior Preferential Payments to Holders of Series B Preferred Stock.**

In the event of (a) any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock then outstanding (the “**Senior Preferred Stock**”) shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and (b) a Deemed Liquidation Event (as defined below), the holders of shares of Senior Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, on a *pari passu* basis among each other, the greater of (i) an amount per share equal to one times the applicable Original Issue Price, plus any dividends declared but unpaid thereon, payable before any payment shall be made to the holders of Common Stock, FF Preferred Stock, and Junior Preferred Stock (as defined below) by reason of their ownership thereof (the amounts payable pursuant to this clause (i) are hereinafter referred to as the “**Senior Preferred Liquidation Amounts**”), or (ii) such amount per share as would have been payable had all shares of Senior Preferred Stock (and all shares of all other series of Investment Preferred Stock that would receive a larger distribution per share if the Senior Preferred Stock and all such other series of Investment Preferred Stock were converted into Class A Common Stock) been converted into Class A Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event; *provided that*, notwithstanding anything to the contrary contained herein, the Senior Preferred Liquidation Amounts payable in respect of each share of Senior Preferred Stock shall be reduced by an amount equal to the aggregate cash dividends paid on account of such share of Senior Preferred Stock (including cash dividends paid after the filing date hereof). If, upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Senior Preferred Stock the full amount to which they shall be entitled under this Section 2.1, the holders of shares of Senior Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 **Junior Preferential Payments to Certain Other Holders of Preferred Stock.**

In the event of (a) any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of all Senior Preferred Liquidation Amounts required to be paid to the holders of shares of Senior Preferred Stock, the holders of shares of Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, and Series A-5 Preferred Stock (collectively, the “**Junior Preferred Stock**”) then outstanding shall be entitled

to be paid out of the assets of the Corporation available for distribution to its stockholders and not payable to the holders of shares of Senior Preferred Stock pursuant to Section 2.1, and (b) a Deemed Liquidation Event (as defined below), after the payment in full of all Senior Preferred Liquidation Amounts required to be paid to the holders of shares of Senior Preferred Stock, the holders of shares of Junior Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders and not payable to the holders of shares of Senior Preferred Stock pursuant to Section 2.1 in such Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, on a pari passu basis among each other, the greater of (i) an amount per share equal to one times the applicable Original Issue Price, plus any dividends declared but unpaid thereon, payable before any payment shall be made to the holders of Common Stock and FF Preferred Stock by reason of their ownership thereof (the amounts payable pursuant to this clause (i) are hereinafter referred to as the “**Junior Preferred Liquidation Amounts**”), or (ii) such amount per share as would have been payable had all shares of such series of Junior Preferred Stock (and all shares of all other series of Investment Preferred Stock that would receive a larger distribution per share if such series of Investment Preferred Stock and all such other series of Investment Preferred Stock were converted into Class A Common Stock) been converted into Class A Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event; *provided that*, notwithstanding anything to the contrary contained herein, the Junior Preferred Liquidation Amounts payable in respect of each share of Junior Preferred Stock shall be reduced by an amount equal to the aggregate cash dividends paid on account of such share of Junior Preferred Stock (including both (x) cash dividends paid prior to the filing date hereof paid on account of Simple Agreements for Future Equity or SAFEs or other convertible instruments which were subsequently converted to shares of Junior Preferred Stock and (y) cash dividends paid after the filing date hereof); *provided that* the calculation of any such reduction shall be without duplication of any cash dividends paid for which the Junior Preferred Liquidation Amounts were already reduced. If, upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Junior Preferred Stock the full amount to which they shall be entitled under this Section 2.2, the holders of shares of Junior Preferred Stock shall share ratably in any distribution of the assets available for distribution and not payable to the holders of shares of Senior Preferred Stock pursuant to Section 2.1 in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.3 Remaining Payments to Holders of FF Preferred Stock and Common Stock. In the event of (a) any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of both the Senior Preferred Liquidation Amounts and Junior Preferred Liquidation Amounts required to be paid to the holders of shares of Senior Preferred Stock and Junior Preferred Stock, respectively, the holders of shares of FF Preferred Stock and Common Stock shall be entitled to be paid out of the remaining assets of the Corporation available for distribution to its stockholders and not payable to the holders of shares of Senior Preferred Stock and Junior Preferred Stock pursuant to Sections 2.1 and 2.2, respectively, and (b) a Deemed Liquidation Event, after the payment in full of both the Senior Preferred Liquidation Amounts and Junior Preferred Liquidation Amounts required to be paid to the holders of shares of Senior Preferred Stock and Junior Preferred Stock, respectively, the consideration available for distribution to the stockholders of the Corporation and not payable to the holders of shares of Senior Preferred Stock and Junior Preferred Stock pursuant to Sections 2.1 and 2.2 or the Available Proceeds (as defined below) not payable to the holders of shares of Senior Preferred Stock and Junior Preferred Stock pursuant to Sections 2.1 and 2.2, respectively, as the case may be, shall be distributed among the holders of shares of FF Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder (on an as-converted to Class A Common Stock basis).

2.4 Deemed Liquidation Events.

2.4.1 **Definition.** Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding shares of Investment Preferred Stock, voting together as a single class on an as-converted to Class A Common Stock basis (the “**Requisite Holders**”) elect otherwise by written notice sent to the Corporation at least ten days prior to the effective date of any such event (*provided, however*, that such a waiver shall not waive the Deemed Liquidation Event with respect to the Series B Preferred Stock unless the holders of at least a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class, shall also have elected to waive the treatment of such transaction as a Deemed Liquidation Event with respect to Series B Preferred Stock):

- (a) a merger or consolidation in which
 - (i) the Corporation is a constituent party or
 - (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

Notwithstanding the foregoing, in no event shall either the sale of the Corporation’s equity securities in a bona fide venture financing transaction for capital raising purposes or a Public Listing (as defined below) constitute a “Deemed Liquidation Event.”

2.4.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.4.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Sections 2.1, 2.2 and 2.3.

(b) In the event of a Deemed Liquidation Event referred to in Section 2.4.1(a)(ii) or 2.4.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (ii) if the Requisite Holders so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “**Available Proceeds**”), on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable amount per share that the holders of each series of Preferred Stock are entitled to receive under Sections 2.1, 2.2 and 2.3. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall redeem a pro rata portion of each holder’s shares of Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or redemption provided for in this Section 2.4.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except (i) as contemplated by such Deemed Liquidation Event or to discharge expenses incurred in connection with such Deemed Liquidation Event or (ii) in the ordinary course of business.

2.4.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board.

2.4.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Section 2.4.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1, 2.2 and 2.3 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1, 2.2 and 2.3 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 2.4.4, consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. **Voting.**

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of a meeting), each holder of outstanding shares of Preferred Stock shall be entitled

to cast the number of votes equal to the number of whole shares of Class A Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Amended and Restated Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class and, with respect to Preferred Stock only, on an as-converted to Class A Common Stock basis.

3.2 Directors.

3.2.1 **Election of Directors.** The holders of record of the shares of Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock, exclusively and voting together as a single and separate class, shall be entitled to elect one director of the Corporation (the “**Series A Director**”); the holders of record of the shares of Series B Preferred Stock, exclusively and voting as a separate class, shall be entitled one director of the Corporation (the “**Series B Director**”, and together with the Series A Director, each a “**Preferred Director**” and, collectively, the “**Preferred Directors**”); and the holders of record of the shares of Common Stock and FF Preferred Stock, exclusively and voting together as a single and separate class, shall be entitled to elect three directors of the Corporation (each, a “**Common Director**”); *provided, however*, that for administrative convenience, the initial vacancy of the Series B Director existing at the Series B Original Issue Date (as defined below) may be filled by the sitting members of the Board, regardless of whether any such sitting directors are elected by any particular class or classes or series of capital stock, without any action by the holders of such class or classes or series of Investment Preferred Stock. Any director elected (or appointed) as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Investment Preferred Stock or Common Stock and FF Preferred Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a single and separate class, pursuant to the first sentence of this Section 3.2 (and to the extent any of such directorships is not otherwise filled by a director appointed by the Board in accordance with the first sentence of this Section 3.2), then any directorship not so filled shall remain vacant until such time as the holders of the shares of Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock, Series B Preferred Stock or Common Stock and FF Preferred Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a single and separate class. The holders of record of (i) a majority of the shares of Common Stock and FF Preferred Stock, exclusive of any Class A Common Stock issued or issuable upon conversion of the Investment Preferred Stock, and (ii) a majority of any other class or series of voting stock (including the Investment Preferred Stock and any Class A Common Stock issued or issuable upon conversion thereof), in each case of subsection (i) and (ii) each voting as a separate class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 3.2, a vacancy in any directorship elected by the holders of any class or classes or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or classes or series or by any remaining director or directors elected by the holders of such class or classes or series pursuant to this Section 3.2. The rights of the holders of Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, and Series A-5 Preferred Stock under the first sentence of this Section 3.2 shall terminate if there are collectively less than 313,306

shares of Series A Preferred Stock, Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock (in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization). The rights of the holders of Series B Preferred Stock under the first sentence of this Section 3.2 shall terminate if there are collectively less than 157,140 shares of Series B Preferred Stock then outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization).

3.2.2 Director Voting.

(a) Notwithstanding anything in Section 3.2.1 or elsewhere in this Amended and Restated Certificate of Incorporation or Bylaws to the contrary, at any time in which:

(i) Mark Newman (the “**Founder**”) is serving as a Common Director, then the Founder shall be entitled to cast a total of five (5) votes with respect to all matters presented to the Board (or any authorized committee thereof), and all other members of the Board, including the Preferred Directors, shall each be entitled to one (1) vote on all matters presented to the Board (or any authorized committee thereof);

(ii) Subsection 3.2.2(a)(i) is not applicable and there is a vacancy or vacancies on the Board such that less than all of the Common Directors authorized are then serving, then a Common Director designated by the holders of Common Stock (excluding Class A Common Stock issued or issuable upon conversion of Preferred Stock) and FF Preferred Stock, exclusively and voting together as a single and separate class, shall be entitled to cast a number of additional votes on all matters presented to the Board (or any authorized committee thereof) equal to the number of vacant or unfilled seats allocated to the Common Directors, while all other members of the Board, including the Preferred Directors, shall be entitled to one (1) vote each on each matter presented to the Board (or any authorized committee thereof).

(b) Each reference in this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation to a majority or other proportion of the director with respect to the requisite vote for action by directors or the Board or its committees shall refer to a majority or other proportion, as applicable, of the votes entitled to be cast by such directors. Each reference in this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation to a majority or other proportion of the directors with respect to the establishing a quorum for meetings of the Board or its committees shall refer to a majority or other proportion, as applicable, of the number of votes entitled to be cast by directors then serving on the Board; *provided* that, pursuant to Section 141(b) and Section 141(d) of the Delaware General Corporation Law, in no event shall the presence of less than one-third of the total authorized directors constitute a quorum.

3.3 **Aggregated Investment Preferred Stock Protective Provisions.** At any time when at least 1,142,732 shares of Investment Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Investment Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect.

3.3.1 (i) liquidate, dissolve or wind-up the business and affairs of the Corporation, or (ii) effect any merger, consolidation, Public Listing (other than a Qualified Public Listing), or other transaction or series of related transactions, in each case in which any individual, corporation, partnership, trust, limited liability company, association or other entity (a “**Person**”), or a group of related Persons, acquires from stockholders of the Corporation shares representing more than 50% of the outstanding voting power of the Corporation, or any other Deemed Liquidation Event, or consent to any of the foregoing;

3.3.2 amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation or similar governance documents of the Corporation in a manner that adversely affects the powers, preferences or rights of the Investment Preferred Stock; *provided* that, for the avoidance of doubt, any amendment to effect a bona fide equity financing shall not in and of itself constitute an amendment that adversely affects the powers, preferences or rights of the Investment Preferred Stock;

3.3.3 except in the event of any stock dividend, stock split or combination, change the authorized number of shares of any existing series of Investment Preferred Stock;

3.3.4 redeem or repurchase any shares of capital stock of the Corporation other than (i) redemptions or repurchases expressly authorized herein, (ii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with cessation of such employment or service at no greater than the original purchase price thereof, or (iii) as approved by at least one Preferred Director (to the extent there is at least one Preferred Director then serving);

3.3.5 make, or permit any subsidiary to make, any loan or advance to any person, including, without limitation, any employee or director of the Corporation or any subsidiary, except to the extent that such loans or advances (i) are made in the ordinary course of business (including pursuant to the ordinary course practice of permitting the financing of employee exercises of equity awards), (ii) are approved by at least one Preferred Director (to the extent there is at least one Preferred Director then serving), or (iii) are less than \$1,000,000 in the aggregate;

3.3.6 enter into any agreement providing for payment by the Corporation of more than \$10,000,000 in connection with any settlement of any action, suit, proceeding or litigation without the approval of the Board of Directors, including the approval of at least one Preferred Director (if there is at least one Preferred Director then serving); or

3.3.7 permit any subsidiary of the Corporation to do any of the foregoing.

3.4 Series by Series Investment Preferred Stock Protective Provisions.
The Corporation shall not, either directly or by amendment, merger, consolidation or otherwise, do any of the following without the written consent or affirmative vote of the holders of a majority of the then outstanding shares of the affected series of Investment Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

3.4.1 amend any provision of this Amended and Restated Certificate of Incorporation or Bylaws of the Corporation which adversely alters or changes the powers, preferences or special rights of such series of Investment Preferred Stock; *provided* that, for the avoidance of doubt, any

amendment to effect a bona fide equity financing shall not in and of itself constitute an amendment that adversely affects the powers, preferences or rights of a series of Investment Preferred Stock;

3.4.2 except in the event of any stock dividend, stock split or combination, increase or decrease the total number of authorized shares of such series of Investment Preferred Stock;

3.4.3 reclassify, alter or amend any existing security of the Corporation that is junior to such series of Investment Preferred Stock in any respect, if such reclassification, alteration or amendment would render such other security senior to or pari passu with such series of the Investment Preferred Stock in any respect; or

3.4.4 create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks pari passu with or junior to the Senior Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption (for purposes of clarity and the avoidance of doubt, the written consent or affirmative vote of the holders of any stock other than the Series B Preferred Stock shall not be required for any purposes under this Subsection 3.3.4).

4. **Optional Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

4.1 **Right to Convert.**

4.1.1 **Conversion Ratio.** Each share of Preferred Stock (including the FF Preferred Stock) shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Class A Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as defined below) in effect at the time of conversion. The “**Conversion Price**” shall initially be equal to (i) \$63.8353 for the Series A Preferred Stock, (ii) \$0.8511 for the Series A-1 Preferred Stock, (iii) \$15.9588 for the Series A-2 Preferred Stock, (iv) \$31.9177 for the Series A-3 Preferred Stock, (v) \$51.0682 for the Series A-4 Preferred Stock, (vi) \$57.4518 for the Series A-5 Preferred Stock, (vii) \$68.8519 for the Series B Preferred Stock and (viii) \$0.005 for the FF Preferred Stock. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Class A Common Stock, shall be subject to adjustment as provided below. With respect to the FF Preferred Stock only, any transfer of shares of FF Preferred Stock that is neither (i) made in connection with an Equity Financing (as defined below), nor (ii) authorized by a majority of the Board, shall be deemed an election of an option to convert such shares into Class A Common Stock and each such transferred share of FF Preferred Stock shall automatically convert into such number of fully paid and nonassessable shares of Class A Common Stock as is determined by dividing the FF Preferred Stock Original Issue Price by the FF Preferred Stock Conversion Price effective immediately prior to such transfer.

4.1.2 **Conversion of FF Preferred Stock into Preferred Stock.** If a share of FF Preferred Stock is purchased in connection with an Equity Financing (as defined below) (including any such purchase that closes within 60 days following date of the consummation of such Equity Financing (or such later date as may be determined by the Board of Directors, including at least one Preferred Director (if there is at least one Preferred Director then serving))), then immediately upon the closing of such purchase, each such share of FF Preferred Stock transferred shall automatically convert into fully paid and non-assessable shares of such series of preferred stock issued in connection with such Equity Financing (or if the purchase is not happening concurrently with the consummation of an Equity Financing,

the series of preferred stock sold for cash in connection with the most recent Equity Financing) (“**Subsequent Preferred Stock**”) of the Corporation at the Conversion Ratio (as defined below), unless the holder of such shares of FF Preferred Stock has notified the Corporation in writing of its election to automatically convert such shares of FF Preferred Stock to shares of Class A Common Stock pursuant to Section 4.1.1 herein immediately prior to, or concurrently with, the consummation of such purchase of FF Preferred Stock, in which case the provisions of Section 4.1.1 shall control. “**Conversion Ratio**” shall mean, for each Equity Financing, one divided by the number of shares into which a share of Subsequent Preferred Stock issued in such Equity Financing is convertible into Class A Common Stock of the Corporation, and “**Equity Financing**” shall mean an equity financing of the Corporation in which the Corporation signs a purchase agreement and sells and issues Subsequent Preferred Stock of the Corporation. By way of example only, in the event that one share of Subsequent Preferred Stock issued in the Equity Financing is convertible into two shares of Class A Common Stock, the Conversion Ratio shall be one-half.

4.1.3 **Termination of Conversion Rights.** In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock; *provided* that the foregoing termination of Conversion Rights shall not affect the amounts otherwise paid or payable in accordance with Section 2.1 to the holders of Investment Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

4.2 **Fractional Shares.** No fractional shares of Class A Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the number of shares of Class A Common Stock to be issued upon conversion of the Preferred Stock shall be rounded down to the nearest whole share.

4.3 **Mechanics of Conversion.**

4.3.1 **Notice of Conversion.** In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Class A Common Stock, such holder shall (a) provide written notice to the Corporation’s transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder’s shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b) if such holder’s shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder’s name or the names of the nominees in which such holder wishes the shares of Class A Common Stock to be issued. If required by the Corporation, any certificate or certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the “**Conversion Time**”), and the shares of Class A Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and may, upon written request, issue and deliver a certificate for the number of full shares of Class A Common Stock

issuable upon such conversion in accordance with the provisions hereof and, may, if applicable and upon written request, issue and deliver a certificate for the number (if any) of the shares of Preferred Stock represented by any surrendered certificate that were not converted into Class A Common Stock, and (ii) pay all declared but unpaid dividends on the shares of Preferred Stock converted. With respect to the FF Preferred Stock only, if the conversion is in connection with a firm commitment underwritten public offering of securities, the conversion may, at the option of any holder tendering such FF Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event any persons entitled to receive shares of Class A Common Stock upon conversion of such FF Preferred Stock shall not be deemed to have converted such FF Preferred Stock until immediately prior to the closing of such sale of securities.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in reasonable best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation. Before taking any action that would cause an adjustment reducing the applicable Conversion Price below the then par value of the shares of Class A Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Class A Common Stock at such adjusted Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Class A Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of such series of Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the applicable Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Class A Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Class A Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Class A Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Series Preferred Stock Conversion Price for Diluting Issues.

4.4.1 **Special Definitions.** For purposes of this Article Fourth, the following definitions shall apply:

(a) **“Additional Shares of Common Stock”** shall mean all shares of Class A Common Stock issued (or, pursuant to Section 4.4.3 below, deemed to be issued) by the Corporation after the Series B Original Issue Date (as defined below), other than (1) the following shares of Class A Common Stock and (2) shares of Class A Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, **“Exempted Securities”**):

- (i) as to any particular series of Preferred Stock, shares of Class A Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock;
- (ii) shares of Class A Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Class A Common Stock that is covered by Section 4.5, 4.6, 4.7 or 4.8;
- (iii) shares of Class A Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors, including the approval of at least one Preferred Director (if there is at least one Preferred Director then serving);
- (iv) shares of Class A Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
- (v) shares of Class A Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors;
- (vi) shares of Class A Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors;

- (vii) shares of Class A Common Stock, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; *provided* that such issuances are approved by the Board of Directors;
- (viii) shares of Class A Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; or
- (ix) shares of Class A Common Stock issued pursuant to a Public Listing.

(b) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Class A Common Stock, but excluding Options.

(c) “**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Class A Common Stock or Convertible Securities.

(d) “**Series B Original Issue Date**” shall mean the date on which the first share of Series B Preferred Stock was issued.

4.4.2 **No Adjustment of Senior Preferred Stock Conversion Price.**

No adjustment in the Conversion Price of Senior Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from a majority of the then-outstanding shares of Senior Preferred Stock that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 **Deemed Issue of Additional Shares of Common Stock.**

(a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Class A Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) 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 issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4,

are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Class A Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4 (either because the consideration per share (determined pursuant to Section 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B Original Issue Date), are revised after the Series B Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Class A Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto determined in the manner provided in Section 4.4.3(a) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4, the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Class A Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Section 4.4.3). If the number of shares of Class A Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 4.4.3 at the time of

such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price of Senior Preferred Stock Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series B Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.4.3), without consideration or for a consideration per share less than the Conversion Price in effect for the Senior Preferred Stock immediately prior to such issuance or deemed issuance, then the Conversion Price of the Senior Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

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

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

(a) “**CP₂**” shall mean the Conversion Price of the Senior Preferred Stock in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock;

(b) “**CP₁**” shall mean the Conversion Price of the Senior Preferred Stock in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(c) “**A**” shall mean the number of shares of Class A Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Class A Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

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

(e) “**C**” shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Section 4.4, the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

- (a) **Cash and Property.** Such consideration shall:
- (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

- (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and
- (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(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 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

- (i) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) 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
- (ii) the maximum number of shares of Class A Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable 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.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4 then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to

all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B Original Issue Date effect a subdivision of the outstanding Class A Common Stock, Class B Common Stock or FF Preferred Stock, the Conversion Price of each series of Investment Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Class A Common Stock (and Subsequent Preferred Stock, in the case of FF Preferred Stock) issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock or FF Preferred Stock outstanding. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Class A Common Stock, Class B Common Stock or FF Preferred Stock, then the Conversion Price of each series of Investment Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Class A Common Stock (and Subsequent Preferred Stock, in the case of FF Preferred Stock) issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock or FF Preferred Stock outstanding. Any adjustment under this Section 4.4 shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Class A Common Stock, Class B Common Stock or FF Preferred Stock entitled to receive, a dividend or other distribution payable on the Class A Common Stock, Class B Common Stock or FF Preferred Stock in additional shares of Common Stock (and Subsequent Preferred Stock, in the case of FF Preferred Stock), then and in each such event the Conversion Price of each series of Investment Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price of each such series of Investment Preferred Stock then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock and FF Preferred Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock and FF Preferred Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock and FF Preferred Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price of each series of Investment Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price of each series of Investment Preferred Stock shall be adjusted pursuant to this Section 4.6 as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made if the holders of such series of Investment Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock or FF Preferred Stock in a number equal to the number of shares of Common Stock or FF Preferred Stock as they would have received if all outstanding shares of such series of Investment Preferred Stock had been converted into Class A Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Class A Common Stock, Class B Common Stock or FF Preferred Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock or FF Preferred Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Investment Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock and FF Preferred Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Investment Preferred Stock had been converted into Class A Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Class A Common Stock, Class B Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Class A Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Class A Common Stock of the Corporation issuable upon conversion of one share of such Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price of each series of Preferred Stock) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which such series of Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect for each series of Preferred Stock held by such holder, and (ii) the number of shares of Class A Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of each such series of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least ten days prior to the record date or effective date for the event specified in such notice.

5. **Mandatory Conversion.**

5.1 **Trigger Events.** All outstanding shares of Preferred Stock shall automatically be converted into shares of Class A Common Stock, at the then effective conversion rate as calculated pursuant to Section 4.1.1, (a) immediately prior to the closing of the sale of shares of Class A Common Stock (or other equity securities of the Corporation) to the public, in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (an “**IPO**”), resulting in at least \$30,000,000 of gross proceeds, net of the underwriting discount and commissions, to the Corporation and in connection with such offering the Common Stock (or such other equity securities) are listed for trading on the Nasdaq Stock Market, the New York Stock Exchange or another exchange or marketplace approved by the Board (a “**Qualified IPO**”); (b) immediately prior to the effectiveness of the registration statement in connection with the initial listing of the Class A Common Stock (or other equity securities of the Corporation) on the Nasdaq Stock Market, the New York Stock Exchange or another exchange or marketplace approved by the Board by means of an effective registration statement filed by the Corporation with the Securities and Exchange Commission, without a related underwritten offering of such Class A Common Stock (or other equity securities) (a “**Direct Listing**”); (c) immediately prior to the consummation of a transaction or series of related transactions by merger, consolidation, share exchange or otherwise of the Corporation with a publicly-traded “special purpose acquisition company” or its subsidiary (collectively, a “**SPAC**”), immediately following the consummation of which the common stock or share capital of the SPAC or its successor entity is listed on the Nasdaq Stock Market, the New York Stock Exchange or another exchange or marketplace approved by the Board (such transaction or series of related transactions, the “**SPAC Transaction**”) but solely if, as of immediately following the closing of such transaction or series of related transactions, the surviving entity of such SPAC Transaction holds at least \$100,000,000 in cash or cash equivalents, including any proceeds from a financing but net of redeemed shares (a “**Qualified SPAC Transaction**” and, together with a Qualified IPO and a Direct Listing, a “**Qualified Public Listing**” and an IPO (including a Qualified IPO), a Direct Listing and a SPAC Transaction (including a Qualified SPAC Transaction), collectively, a “**Public Listing**”); and (d) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Holders (the time of such closing or the date and time specified or the time of the event specified in any of (a), (b), (c) or (d), the “**Mandatory Conversion Time**”); *provided* that the Series B Preferred Stock shall not be automatically converted pursuant to the foregoing subclause (d) except to the extent a majority of the Series B Preferred Stock then outstanding has also consented to such conversion. Such automatically converted shares of Preferred Stock may not be reissued by the Corporation. For the

avoidance of doubt, upon automatic conversion of all outstanding shares of Preferred Stock into shares of Class A Common Stock immediately prior to a SPAC Transaction pursuant to clause (c) of the first sentence of this Section 5.1, all rights of the Investment Preferred Stock under Section 2 with respect to preferential payments (or any other payments that may otherwise differ from distributions to Common Stock) will terminate, and no such rights shall apply with respect to the SPAC Transaction.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof or issue and deliver to such holder, or to his, her or its nominees, a notice of issuance of uncertificated shares and may, upon written request, issue and deliver a certificate for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof; and (b) pay any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption. The shares of Preferred Stock shall not be redeemable by any holder thereof.

7. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed, converted or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption, conversion or acquisition.

8. Authorized Shares. The number of authorized shares of Investment Preferred Stock or any series thereof may only be increased or decreased (but not below the number of shares of Investment Preferred Stock or, in the case of a series of Investment Preferred Stock, such series, then outstanding) by (in addition to any vote of the holders of one or more series of Investment Preferred Stock that may be required by the terms of this Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the voting power

represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

9. **Waiver.** Except as otherwise set forth herein or required by law, (a) any of the rights, powers, preferences and other terms of the Investment Preferred Stock set forth herein may be waived on behalf of all holders of Investment Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the then outstanding shares of Investment Preferred Stock, voting together as a single class; and (b) any of the rights, powers, preferences and other terms of a series of Investment Preferred Stock set forth herein may be waived on behalf of all holders of such series of Investment Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the then outstanding shares of such series of Investment Preferred Stock; *provided, however*, that if the waiver would affect more than one series in the same way, then such waiver may also be effected by the affirmative written consent or vote of the holders of at least a majority of the then outstanding shares of such similarly affected series of Investment Preferred Stock, voting together as a single class.

10. **Notices.** Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: Subject to any additional vote required by this Amended and Restated Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

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

EIGHTH: Meetings of stockholders may be held within or outside of the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept (subject to any provision of applicable law) outside of the State of Delaware at such place or places or in such manner or manners as may be designated from time to time by the Board or in the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

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

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

Any amendment, repeal, modification or elimination of the foregoing provisions of this Article Tenth shall not (a) adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal, modification or elimination; or (b) increase the liability of any director, officer or agent of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such amendment, repeal, modification or elimination.

ELEVENTH: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee, affiliate or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, the persons referred to in clauses (i) and (ii) are “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Eleventh will only be prospective and will not affect the rights under this Article Eleventh in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Restated Certificate of Incorporation, the affirmative vote of the holders of a majority of the shares of Investment Preferred Stock then outstanding, will be required to amend or repeal, or to adopt any provisions inconsistent with this Article Eleventh.

TWELFTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the General Corporation Law or the Corporation’s Amended and Restated Certificate of Incorporation or Bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

THIRTEENTH: For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Amended and Restated Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board (in addition to any other consent required under this Amended and Restated Certificate of Incorporation), such repurchase may be made without regard to any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined therein) shall be deemed to be zero (0).

* * *

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

4. That this Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation’s Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

(signature page follows)

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on June 29, 2023.

By: /s/ Mark Newman
Mark Newman, President