

Delaware

The First State

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I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ALTO PHARMACY HOLDINGS, INC.", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF NOVEMBER, A.D. 2024, AT 8:29 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

3973738 8100
SR# 20244302971

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

Authentication: 204957689
Date: 11-25-24

30 Minute Filing Memo for On-line Agents

Agent Name: THE CORPORATION TRUST COMPANY Date: 11/25/2024

Attention: Robert Sholl Agent Account #: 9000010

Phone #: (866) 777-3366

Entity Name: ALTO PHARMACY HOLDINGS, INC.

SRV#: 20244302971 File#: 3973738 Reservation # Josh

Document Type: Amended/Restated Method of Return:

Certified Copy(s): 1 Status Certificate: # Status Cert

Any other information (i.e., merging entity name(s) and file #(s))

Please note – the 30 minute time frame stops if the document is suspended to customer service.

Please check off each of the following criteria before submitting your document:

- Document precleared with a clear letter (no errors).
- Document precleared is exact document submitted.
- All Annual Reports have been filed and Franchise Taxes are paid.
- Entity is in good standing (excluding Renewals).
- Document does not exceed 50 pages.
- Phone call was made to CSR, Cash Management or Filing Section making a live person aware that the 30 minute filing is being submitted. Josh

REVISED 11/16/11

ALTO PHARMACY HOLDINGS, INC.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

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

Alto Pharmacy Holdings, 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 as follows:

1. The name of this corporation is Alto Pharmacy Holdings, Inc. This corporation was originally incorporated pursuant to the General Corporation Law on October 26, 2020 under the name Alto Pharmacy Holdings, Inc.

2. The Board of Directors of this corporation duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation in its entirety to read as set forth on Exhibit A attached hereto, 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, and Exhibit A is hereby incorporated herein by this reference.

3. This Amended and Restated Certificate of Incorporation 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. This Amended and Restated 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.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 24th day of November, 2024.

By: /s/ Jamie Cohen

Jamie Cohen
Chief Financial Officer

Exhibit A

ALTO PHARMACY HOLDINGS, INC.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

ARTICLE I: NAME.

The name of this corporation is Alto Pharmacy Holdings, Inc. (the “*Corporation*”).

ARTICLE II: REGISTERED OFFICE.

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

ARTICLE III: PURPOSE.

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.

ARTICLE IV: AUTHORIZED SHARES.

Automatic Conversion and Reverse Stock Split. Effective immediately prior to the filing of this Restated Certificate, each share of the Corporation’s then outstanding Series AA Preferred Stock, Series AA-1 Preferred Stock, Series BB Preferred Stock, Series CC-1 Preferred Stock, Series CC-2 Preferred Stock, Series CC-3 Preferred Stock, Series CC-4 Preferred Stock, Series DD Preferred Stock, Series EE Preferred Stock, Series EE-1 Preferred Stock, and Series F Preferred Stock (collectively, the “*Prior Preferred Stock*”) was, pursuant to Section 4.2(b) of Part B of Article V of the Amended and Restated Certificate of Incorporation of the Corporation then in effect, automatically converted into shares of the Corporation’s Common Stock (and for avoidance of doubt, no adjustment of any shares of Common Stock or of such Prior Preferred Stock shall occur prior to or concurrently with such conversion (the “*Automatic Conversion*”). Effective immediately upon the effectiveness of the filing of this Amended and Restated Certificate of Incorporation (this “*Restated Certificate*”) with the Secretary of State of the State of Delaware (the “*Filing Time*”), every fifteen (15) shares of capital stock of the Corporation issued and outstanding as of the Filing Time are hereby combined and changed, automatically and without further action, into one (1) share of Common Stock (the “*Reverse Stock Split*”). Each certificate that immediately prior to the Filing Time represented shares of capital stock of the Corporation (“*Old Certificates*”) shall, until surrendered to the Corporation in exchange for a certificate representing the appropriate number of shares of Common Stock of the Corporation resulting from the Automatic Conversion and Reverse Stock Split, automatically represent that number of shares of Common Stock of the Corporation into which the shares of capital stock represented by the Old Certificates shall have been combined and changed. No fractional shares of capital stock will be issued pursuant to the Reverse Stock Split, and in lieu thereof, any fractional shares of capital stock that would otherwise be issued (or issuable) shall be rounded down to the nearest whole share (after aggregating all shares of the same class and/or series for each stockholder, and to each stockholder the Corporation will pay cash equal to such fraction multiplied by the then fair market value of such shares as determined by the Board of Directors).

No further adjustment of any preference or price set forth in this Restated Certificate shall be made as a result of the Automatic Conversion or Reverse Stock Split, as all share amounts, amounts per share and

per share numbers set forth in this Amended and Restated Certificate of Incorporation have been adjusted to reflect the Automatic Conversion and Reverse Stock Split.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is (a) 145,000,000 shares of Common Stock, \$0.00001 par value per share (“**Common Stock**”), and (b) 98,337,655 shares of Preferred Stock, \$0.00001 par value per share (the “**Preferred Stock**”). The Preferred Stock is divided into the following series: 4,879,912 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series AAA Preferred Stock**”, 774,722 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series AAA-1 Preferred Stock**”, 5,902,610 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series BBB Preferred Stock**”, 8,616,165 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series CCC-1 Preferred Stock**”, 2,316,805 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series CCC-2 Preferred Stock**”, 4,830,751 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series CCC-4 Preferred Stock**” (together with the Series CCC-1 Preferred Stock and Series CCC-2 Preferred Stock the “**Series CCC Preferred Stock**”), 25,130,023 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series DDD Preferred Stock**”, 13,922,636 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series EEE Preferred Stock**”, and 290,121 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series EEE-1 Preferred Stock**” and 31,673,910 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series FF Preferred Stock**”.

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

A. COMMON STOCK

1. **General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and privileges of the holders of the Preferred Stock set forth herein.

2. **Voting.** The holders of the Common Stock are entitled to one vote for each share of Common Stock held as of the applicable record date for all meetings of stockholders (and written actions in lieu of meetings). Unless required by law, there shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Restated Certificate): the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes 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 and without a separate class vote of the holders of the Common Stock.

B. PREFERRED STOCK

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

1. Dividends.

1.1 **Non-Cumulative Preferred Stock Dividend Preference.** The Corporation shall not 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) in any calendar year unless (in

addition to the obtaining of any consents required elsewhere in this Restated Certificate) the holders of the Preferred Stock then outstanding, on a pari passu basis, shall first receive, or simultaneously receive, out of funds legally available therefor, a dividend on each outstanding share of Preferred Stock in an amount equal to 6% of the Original Issue Price (as defined below) per share of such Preferred Stock. The foregoing dividends shall not be cumulative and shall be paid when, as and if declared by the Board of Directors of the Corporation (the “**Board**”). The “**Original Issue Price**” shall mean, (i) with respect to the Series FF Preferred Stock, \$6.1432 per share, (ii) with respect to the Series EEE-1 Preferred Stock, \$17.0000 per share, (iii) with respect to the Series EEE Preferred Stock, \$15.4600 per share, (iv) with respect to the Series DDD Preferred Stock, \$9.8050 per share, (v) with respect to the Series CCC-1 Preferred Stock, \$4.7614 per share, (vi) with respect to the Series CCC-2 Preferred Stock, \$4.0472 per share, (vii) with respect to the Series CCC-4 Preferred Stock, \$6.2102 per share, (viii) with respect to the Series BBB Preferred Stock, \$2.9051 per share, (ix) with respect to the Series AAA Preferred Stock, \$1.2203 per share, and (x) with respect to the Series AAA-1 Preferred Stock, \$0.8390 per share, each subject to appropriate adjustment in the event of any stock splits and combinations of shares and for dividends paid with respect to the applicable Preferred Stock in shares of such stock, and reorganizations, recapitalizations and the like.

1.2 **Participation.** If, after dividends in the full preferential amount specified in Section 1.1 for the Preferred Stock have been paid or set apart for payment in any calendar year of the Corporation, the Board shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on a part passu basis according to the number of shares of Common Stock held by such holders. For the purpose of declaring such dividends, each holder of shares of Preferred Stock is to be treated as holding the greatest whole number of shares of Common Stock then ultimately issuable upon conversion of all shares of Preferred Stock held by such holder pursuant to Sections 4 and 5. For the avoidance of doubt, references throughout this Article IV to Common Stock “ultimately issuable upon conversion of Preferred Stock”, “ultimately converted into Common Stock” and similar phrases includes shares of Common Stock issuable upon conversion of shares of Preferred Stock.

1.3 **Non-Cash Dividends.** Whenever a dividend provided for in this Section 1 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

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

2.1 **Payments to Holders of Preferred Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or any Deemed Liquidation Event (as defined below), and except as stated in Section 2.4 below, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, the holders of shares of each series of Preferred Stock then outstanding, on a pari passu basis, shall be entitled to be paid out of the funds and assets available for distribution to its stockholders, an amount per share equal to the greater of (a) (i) (X) solely in the case of the shares of Series FF Preferred Stock issued to lenders in exchange for the reduction in amounts outstanding under the Credit Agreement and Guaranty, dated as of October 14, 2022 among the Corporation and the subsidiary guarantors, lenders and agent party thereto, as amended from time to time (the “**Credit Agreement**”), in connection with any Deemed Liquidation Event consummated on or prior to December 31, 2025 that constitutes a Change of Control (as defined in the Credit Agreement), the Original Issue Price for Series FF Preferred Stock, and (y) in every other circumstance, two times (2x) the Original Issue Price for Series FF Preferred Stock, and (ii) one times (1x) the Original Issue Price for such other series of Preferred Stock, plus any dividends declared but unpaid thereon, or (b) such amount per share as would have been payable had all shares of such series of Preferred Stock been ultimately converted into Common Stock pursuant to Sections 4 and 5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amounts payable pursuant to this sentence are hereinafter referred to as the

“**Liquidation Amounts**”). If upon any such liquidation, dissolution, winding up or Deemed Liquidation Event of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Preferred Stock the full Liquidation Amounts to which they are entitled under this Section 2.1, the holders of shares of Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution, winding up or Deemed Liquidation Event of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock as provided in Section 2.1, the remaining funds and assets available for distribution to the stockholders of the Corporation shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless (i) the holders of a majority of the outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis (the “**Requisite Preferred Holders**”) and (ii) the holders of a majority of the outstanding shares of Series FF Preferred Stock, voting together as a single class on an as-converted basis, which must include the affirmative vote of the Specified Investor (as such term is defined in that certain Series F Preferred Stock Purchase Agreement, dated as of June 27, 2023, (as the same may be amended, modified, supplemented or restated from time to time) ((i) and (ii), collectively, the “**Series FF Majority**”) elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(a) a merger or consolidation (each a “**Combination**”) 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 Combination, except any such Combination involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such Combination continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such Combination, a majority, by voting power, of the equity securities of (1) the surviving or resulting party or (2) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such Combination, the parent of such surviving or resulting party; provided that, for the purpose of this Section 2.3.1, all shares of Common Stock issuable upon exercise of Options (as defined in Section 5.1 below) outstanding immediately prior to such Combination or upon conversion of Convertible Securities (as defined in Section 5.1 below) outstanding immediately prior to such Combination shall be deemed to be outstanding immediately prior to such Combination and, if applicable, deemed to be converted or exchanged in such Combination on the same terms as the actual outstanding shares of Common Stock are converted or exchanged;

(b) the sale, lease, transfer, exclusive license, or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary or subsidiaries of the Corporation, of all or substantially all the assets, intellectual property, technology or business of the Corporation and its subsidiaries taken as a whole, (or, if substantially all of the assets, intellectual property, technology or business of the Corporation and its subsidiaries taken as a whole are held by one or more subsidiaries, the sale or disposition (whether by consolidation, merger, conversion or otherwise) of such subsidiaries of the Corporation), except where such sale, lease, transfer, exclusive license or other disposition is made to the Corporation or one or more wholly owned subsidiaries of the Corporation (an “**Asset Disposition**”); provided, for the avoidance of doubt, that the granting of a lien, collateral assignment,

charge, encumbrance or other security interest on the assets of the Corporation shall not constitute a sale, lease, transfer, exclusive license, or disposition for purposes of this clause (b); or

(c) the closing of the transfer (whether by merger, consolidation or otherwise), by means of any transaction or series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such person or group of affiliated persons would hold fifty percent (50%) or more of the outstanding voting stock of the Corporation (or the surviving or acquiring entity).

2.3.2 Effecting a Deemed Liquidation Event.

(a) Unless waived pursuant to Section 2.3.1 above, the Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.3.1(a) 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 shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Section 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (1) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (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 Preferred Holders so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event (a "**Redemption Request**"), 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, including a majority of the then appointed Preferred Directors (as defined below)), 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 one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Liquidation Amount. 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 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

(i) Redemption Notice. Within ten (10) days after the Corporation's receipt of a Redemption Request, the Corporation shall send written notice (the "**Redemption Notice**") of the redemption to each holder of record of Preferred Stock. Each Redemption Notice shall state: (1) the date of the redemption (the "**Redemption Date**") and the price per share that the holder will receive (the "**Redemption Price**"); (2) the number of shares of Preferred Stock held by the holder that the Corporation shall redeem; (3) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4.1); and (4) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

(ii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate (collectively, the “*Lost Certificate Documentation*”)) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate, instrument or book entry representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

(iii) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the Redemption Date, the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered (or if applicable, Lost Certificate Documentation shall not have been provided), all rights with respect to such shares of Preferred Stock shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor, or, if applicable, delivery to the Corporation of Lost Certificate Documentation.

2.3.3 Amount Deemed Paid or Distributed. The funds and assets deemed paid or distributed to the holders of capital stock of the Corporation upon any such Combination or Asset Disposition shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. If the amount deemed paid or distributed under this Section 2.3.3 is made in property other than in cash, the value of such distribution shall be the fair market value of such property, as determined in good faith by the Board, including a majority of the then appointed Preferred Directors; *provided, however*, that the following shall apply. For securities not subject to investment letters or other similar restrictions on free marketability:

(a) if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three days prior to the closing of such transaction;

(b) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing of such transaction; or

(c) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by (A) the Board, including a majority of the then appointed Preferred Directors, (B) the Requisite Preferred Holders and (C) the Series FF Majority.

The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder’s status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board) from the market value as determined pursuant to clause (i) above so as to reflect the approximate fair market

value thereof, as mutually determined in good faith by (A) the Board, including a majority of the then appointed Preferred Directors, (B) the Requisite Preferred Holders and (C) the Series FF Majority.

The foregoing methods for valuing non-cash consideration to be distributed in connection with a Combination or Asset Disposition shall, with the appropriate approval of the definitive agreements governing such Combination or Asset Disposition by the stockholders under the General Corporation Law and Section 3.3, be superseded by the determination of such value set forth in the definitive agreements governing such Combination or Asset Disposition.

2.4 Optimized Payments to Holders of Preferred Stock. In the event that the Corporation is a party to a Combination or Asset Disposition, then each holder of Preferred Stock shall be entitled to receive, for each share of Preferred Stock then held, out of the proceeds of such Combination or Asset Disposition, the greater of the amount of cash, securities or other property to which such holder would be entitled to receive in a liquidation, dissolution, or winding up of the Corporation pursuant to (i) Section 2.1 above or (ii) the amount of cash, securities or other property to which such holder would be entitled to receive in a liquidation, dissolution, or winding up of the Corporation with respect to such shares if such shares had been ultimately converted to Common Stock immediately prior to such liquidation, dissolution, or winding up of the Corporation.

2.5 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Section 2.3.1(a), 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 and 2.2 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 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 2.5, consideration placed into escrow or retained as 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 and amounts or similar consideration payable based on future performance shall also 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 meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Fractional votes shall not be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Except as provided by law or by the other provisions of this Restated Certificate, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class on an as-converted basis, shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders’ meeting in accordance with the bylaws of the Corporation.

3.2 Election of Directors.

3.2.1 Election. For so long as an aggregate of at least 2,189,171 shares of Series CCC Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the holders of Series CCC Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation at any election of directors (the “**Series CCC Director**”), and for so long as at least 1,436,516 shares of Series DDD Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the holders of Series DDD Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation at any election of directors (the “**Series DDD Director**” and together with the Series CCC Director, the “**Preferred Directors**”). The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “**Common Director**”), who must at all times be the Chief Executive Officer of the Corporation. For the avoidance of doubt, the preceding sentence is not intended to confer upon the holders of record of the shares of Common Stock the right to elect the Chief Executive Officer of the Corporation. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class on an as-converted basis, shall be entitled to elect the balance of the total number of directors of the Corporation (the “**Mutual Directors**”).

3.2.2 Vacancies Not Caused by Removal. If any vacancy or newly created directorship in the office of any Common Director, Mutual Director, or Preferred Director exists prior to the time on the date the first share of Series FF Preferred Stock is issued (the “**First Issuance Time**”), such vacancy or newly created directorship may be filled (either contingently or otherwise) by the stockholders as specified in this Section 3.2 or by a majority of the members of the Board then in office, although less than a quorum, or by a sole remaining member of the Board then in office, even if such directors or such sole remaining director were not elected by the holders of the class, classes or series that are entitled to elect a director or directors to office under the provisions of Section 3.2 (the “**Specified Stock**”) and such electing director or directors shall specify at the time of such election the specific unfilled directorship being filled. After the First Issuance Time, no vacancy or newly created directorship in the office of any director may be filled by the Board or by any director or directors elected by the holders of the Specified Stock, but may only be filled by the holders of the Specified Stock entitled to elect such director as provided in this Section 3.2.

3.2.3 Vacancies Caused by Removal. Any director elected as provided in Section 3.2.1 may be removed with or without cause by, and any vacancy in the office of any such removed director may be filled by, and only by, the affirmative vote of the holders of the shares of the Specified 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.

3.2.4 Procedure. 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 Specified Stock entitled to elect such director shall constitute a quorum for the purpose of electing such director and the candidate or candidates to be elected by such Specified Stock shall be those who receive the highest number of affirmative votes (on an as-converted basis) of the outstanding shares of such Specified Stock. In the case of an action taken by written consent without a meeting, the candidate or candidates to be elected by such Specified Stock shall be those who are elected by the written consent of the holders of a majority of such Specified Stock.

3.3 Preferred Stock Protective Provisions. For so long as at least 9,518,880 shares of Preferred Stock remain outstanding (as such number is adjusted for stock splits and combinations of shares and for dividends paid on the Preferred Stock in shares of such stock, and reorganizations, recapitalizations and the like), the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Restated Certificate) the written consent, or affirmative vote at a meeting and evidenced in writing, of the Requisite

Preferred Holders 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:

(a) amend, alter or repeal any provision of this Restated Certificate or bylaws of the Corporation;

(b) increase or decrease the authorized number of shares of Common Stock or Preferred Stock (or any series thereof);

(c) authorize or create (by reclassification or otherwise) any new class or series of capital stock having rights, powers or preferences set forth in the Restated Certificate, as then in effect, that are senior to or on a parity with any series of Preferred Stock or authorize or create (by reclassification or otherwise) any security convertible into or exercisable for any such new class or series of capital stock;

(d) redeem or repurchase any shares of Common Stock or Preferred Stock, other than (i) pursuant to an agreement with an employee, consultant, director or other service provider to the Corporation or any of its wholly owned subsidiaries (collectively, "***Service Providers***") giving the Corporation the right to repurchase shares at the original cost thereof upon the termination of services or (ii) an exercise of a right of first refusal in favor of the Corporation pursuant to an agreement with any Service Provider, which exercise has been approved by the Board, including a majority of the then appointed Preferred Directors;

(e) declare or pay any dividend or otherwise make a distribution to holders of Preferred Stock or Common Stock;

(f) increase the number of shares of Common Stock or Preferred Stock subject to issuance under any stock plan or arrangement for the benefit of Service Providers unless such increase is approved by the Board, including a majority of the then appointed Preferred Directors;

(g) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent, agree or commit to any of the foregoing without conditioning such consent, agreement or commitment upon obtaining the approval required by this Section 3.3;

(h) increase or decrease the authorized number of directors constituting the Board, or change the right of any class or classes of capital stock entitled to elect directors on the Board under Section 3.2;

(i) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary, unless approved by the Board, including a majority of the then appointed Preferred Directors;

(j) create, or authorize the creation of, or issue, or authorize the issuance of any debt security or create any lien or security interest or incur other indebtedness for borrowed money, including but not limited to obligations and contingent obligations under guarantees, if the aggregate indebtedness of the Corporation for borrowed money following such action would exceed \$10,000,000;

(k) authorize or effect the acquisition or purchase of another entity, business line or assets of another entity or business line (in each case, other than from a subsidiary of the Corporation) if the aggregate consideration for the acquisition of such entity, business line or assets would exceed \$5,000,000;

(l) engage in any transaction with any related person or any immediate family member or affiliates of any related person (excluding reasonable employment compensation, equity incentives and benefits approved by the Board in exchange for services);

(m) take any action, directly or indirectly, through a subsidiary or cause or permit a subsidiary to take any action, directly or indirectly, that is prohibited, restricted, or constrained by this Section 3.3; or

(n) amend, waive or terminate this Section 3.3.

3.4 Series AAA Preferred Stock and Series AAA-1 Preferred Stock Protective Provisions. For so long as at least 1,130,927 shares of Series AAA Preferred Stock and Series AAA-1 Preferred Stock (collectively) remain outstanding (as such number is adjusted for stock splits and combinations of shares and for dividends paid on the Series AAA Preferred Stock and/or Series AAA-1 Preferred Stock in shares of such stock), the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Restated Certificate) the written consent, or affirmative vote at a meeting and evidenced in writing, of the holders of a majority of the then outstanding shares of Series AAA Preferred Stock and Series AAA-1 Preferred Stock, consenting or voting together as a single class:

(a) amend, alter or repeal the rights, powers or preferences of the Series AAA Preferred Stock or the Series AAA-1 Preferred Stock set forth in this Restated Certificate or bylaws of the Corporation, as then in effect, in a way that adversely affects the rights, powers or preferences of the Series AAA Preferred Stock or the Series AAA-1 Preferred Stock in a manner not generally applicable to all series of Preferred Stock; *provided, however*, that any authorization, issuance or creation of, or obligation of the Corporation to authorize, issue or create any equity security convertible into or exercisable for any equity security, having rights, preferences or privileges superior to, or on a parity with, or junior to the Series AAA Preferred Stock or Series AAA-1 Preferred Stock shall not alone be deemed to be adverse to the Series AAA Preferred Stock or the Series AAA-1 Preferred Stock; or

(b) amend, waive or terminate this Section 3.4.

3.5 Series CCC Preferred Stock Protective Provisions. For so long as at least 2,189,171 shares of Series CCC Preferred Stock remain outstanding (as such number is adjusted for stock splits and combinations of shares and for dividends paid on the Series CCC Preferred Stock in shares of such stock, and reorganizations, recapitalizations and the like), the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Restated Certificate) the written consent, or affirmative vote at a meeting and evidenced in writing, of the holders of a majority of the then outstanding shares of Series CCC Preferred Stock, consenting or voting together as a single class on an as-converted basis:

(a) amend, alter or repeal the rights, powers or preferences of any series of the Series CCC Preferred Stock set forth in this Restated Certificate or bylaws of the Corporation, as then in effect, in a way that adversely affects the rights, powers or preferences of such series of Series CCC Preferred Stock; *provided, however*, that any authorization, issuance or creation of, or obligation of the Corporation to authorize, issue or create any equity security convertible into or exercisable for any equity

security, having rights, preferences or privileges senior to, or on a parity with, or junior to the Series CCC Preferred Stock shall not alone be deemed to be adverse to the Series CCC Preferred Stock; or

(b) amend, waive or terminate this Section 3.5.

3.6 Series DDD Preferred Stock Protective Provisions. For so long as any shares of Series DDD Preferred Stock remain outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Restated Certificate) the written consent, or affirmative vote at a meeting and evidenced in writing, of the holders of a majority of the then outstanding shares of Series DDD Preferred Stock, consenting or voting together as a single class on an as-converted basis, 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:

(a) amend, alter or repeal the rights, powers or preferences of the Series DDD Preferred Stock set forth in this Restated Certificate or bylaws of the Corporation, as then in effect, in a way that adversely affects the rights, powers or preferences of the Series DDD Preferred Stock; *provided, however,* that that any authorization, issuance or creation of, or obligation of the Corporation to authorize, issue or create any equity security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to, or on a parity with, or junior to the Series DDD Preferred Stock shall not alone be deemed to be adverse to the Series DDD Preferred Stock;

(b) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing and including the initiation thereof, where the per share non-contingent consideration to be received in such merger or consolidation or Deemed Liquidation Event by the Series DDD Preferred Stock is less than two (2) times the Original Issue Price of the Series DDD Preferred Stock (as adjusted for stock splits, dividends and the like); or

(c) amend, waive or terminate this Section 3.6,

3.7 Series EEE Preferred Stock and Series EEE-1 Preferred Stock Protective Provisions. For so long as at least 4,000,000 shares of Series EEE Preferred Stock and Series EEE-1 Preferred Stock (collectively) remain outstanding (as such number is adjusted for stock splits and combinations of shares and for dividends paid on the Series EEE Preferred Stock and/or Series EEE-1 Preferred Stock in shares of such stock), the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Restated Certificate) the written consent, or affirmative vote at a meeting and evidenced in writing, of the holders of a majority of the then outstanding shares of Series EEE Preferred Stock and Series EEE-1 Preferred Stock, consenting or voting together as a single class on an as-converted basis 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::

(a) amend, alter or repeal the rights, powers or preferences of the Series EEE Preferred Stock or Series EEE-1 Preferred Stock set forth in this Restated Certificate or bylaws of the Corporation, as then in effect, in a way that adversely affects the rights, powers or preferences of the Series EEE Preferred Stock or Series EEE-1 Preferred Stock; *provided, however,* that that any authorization, issuance or creation of, or obligation of the Corporation to authorize, issue or create any equity security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to, or on a parity with, or junior to the Series EEE Preferred Stock or Series EEE-1 Preferred Stock shall not alone be deemed to be adverse to the Series EEE Preferred Stock or Series EEE-1 Preferred Stock; or

- (b) amend, waive or terminate this Section 3.7.

3.8 Series FF Preferred Stock Protective Provisions. For so long as at least 3,461,643 shares of Series FF Preferred Stock remain outstanding (as such number is adjusted for stock splits and combinations of shares and for dividends paid on the Series FF Preferred Stock in shares of such stock), the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Restated Certificate) the written consent, or affirmative vote at a meeting and evidenced in writing, of the Series FF Majority, 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:

(a) amend, alter or repeal the rights, powers or preferences of the Series FF Preferred Stock set forth in this Restated Certificate or bylaws of the Corporation, as then in effect, in a way that adversely affects the rights, powers or preferences of the Series FF Preferred Stock;

(b) increase or decrease the authorized number of shares of the Series FF Preferred Stock;

(c) waive or amend the liquidation preference of any share or series of the Series FF Preferred Stock under Section 2.1;

(d) waive or amend the treatment of any event as a Deemed Liquidation event pursuant to Section 2.3.1;

(e) amend or waive any provision of Section 5.1 in a manner that would result in there being no adjustment made to the Conversion Price applicable to the Series FF Preferred Stock in connection with an event or series of related events, in each case if such event or series of related events would result in an adjustment to the Conversion Price applicable to the Series FF Preferred Stock absent such amendment or waiver;

(f) convert the Series FF Preferred Stock to Common Stock pursuant to Section 4.2.1, except in the event of a Qualified Public Offering;

(g) authorize or create (by reclassification or otherwise) any new class or series of capital stock having rights, powers or preferences set forth in the Restated Certificate, as then in effect, that are senior to or on a parity with the Series FF Preferred Stock or authorize or create (by reclassification or otherwise) any security convertible into or exercisable for any such new class or series of capital stock;

(h) reclassify, alter or amend any existing class or series of capital stock to become senior to or on a parity with the Series FF Preferred Stock with respect to its rights, powers or preferences set forth in the Restated Certificate;

(i) redeem or repurchase any shares of Common Stock or Preferred Stock, other than (i) pursuant to an agreement with a Service Provider giving the Corporation the right to repurchase shares at the original cost thereof upon the termination of services or (ii) an exercise of a right of first refusal in favor of the Corporation pursuant to an agreement with any Service Provider, which exercise has been approved by the Board, including a majority of the then appointed Preferred Directors;

(j) declare or pay any dividend or otherwise make a distribution to holders of Preferred Stock or Common Stock;

(k) take any action, directly or indirectly, through a subsidiary or cause or permit a subsidiary to take any action, directly or indirectly, that is prohibited, restricted, or constrained by Section 3.3 and this Section 3.9; or

(l) amend, waive or terminate this Section 3.8.

4. Conversion Rights. 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 a series of Preferred Stock shall be convertible, at the option of the holder thereof, at any time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and no assessable shares of Common Stock as is determined by dividing the Original Issue Price for such series of Preferred Stock by the Conversion Price (as defined below) for such series of Preferred Stock in effect at the time of conversion. The “*Conversion Price*” for each series of Preferred Stock shall initially mean the Original Issue Price for such series of Preferred Stock. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided in Section 5.

4.1.2 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, however,* that the forgoing termination of Conversion Rights shall not affect the amount(s) otherwise paid or payable in accordance with Section 2.1, and 2.2 to holders of Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

4.1.3 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that any 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), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent (a “*Contingency Event*”). Such notice shall state such holder’s name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holder or such holder’s 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 certificates (or lost certificate affidavit and agreement) and notice (or, if later, the time when all Contingency Events have occurred) shall be the time of conversion (the “*Conversion Time*”), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such time. The Corporation shall, as soon as practicable after the Conversion Time, (a) issue and deliver to such holder of Preferred Stock, or to such holder’s nominee(s), a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into

Common Stock, (b) pay in cash such amount as provided in Section 5.7.3 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (c) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.1.4 Effect of Voluntary Conversion. All shares of Preferred Stock that 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 Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 5.7.3 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.

4.2 Mandatory Conversion.

4.2.1 Automatic Conversion. Upon either (a) immediately prior to the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “*Securities Act*”), at a price per share of Common Stock equal to or greater than two (2) times the Original Issue Price for the Series EEE Preferred Stock and resulting in at least \$100 million of proceeds, net of the underwriting discount and commissions, to the Corporation and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market’s National Market, the New York Stock Exchange or another exchange or marketplace approved by the Board, including a majority of the then appointed Preferred Directors (collectively, a “*Qualified Public Offering*”) or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Preferred Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “*Mandatory Conversion Time*”), then (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the applicable ratio described in Section 4.1.1 as the same may be adjusted from time to time in accordance with Section 5, *provided* that the conversion of the outstanding shares of Series FF Preferred Stock pursuant to clause (b) of this Section 4.2.1 shall require the separate prior written consent of the Series FF Majority and (ii) such shares may not be reissued by the Corporation.

4.2.2 Mandatory Conversion Procedural Requirements.

(a) 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 Sections 4.2.1 and 9. Unless otherwise provided in this Restated Certificate, 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 shall surrender such holder’s 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, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 4.2.

(b) If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holder or by such holder’s attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to this Section 4.2, 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 the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 4.2.2(b). As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall issue and deliver to such holder, or to such holder's nominee(s), a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 5.7.3 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of 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, 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 (and the applicable series thereof) accordingly.

5. Adjustments to Conversion Price.

5.1 Adjustments for Diluting Issuances.

5.1.1 Special Definitions. For purposes of this Article IV, the following definitions shall apply:

(a) “*Option*” shall mean any right, option or warrant to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities from the Corporation.

(b) “*Original Issue Date*” shall mean, with respect to any series of Preferred Stock, the Filing Time.

(c) “*Convertible Securities*” shall mean any evidences of indebtedness, shares or other securities issued by the Corporation and outstanding as of the Original Issue Date that are directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) “*Additional Shares of Common Stock*” with respect to a series of Preferred Stock shall mean all shares of Common Stock issued (or, pursuant to Section 5.1.3 below, deemed to be issued) by the Corporation after the Original Issue Date, other than the following shares of Common Stock and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively as to all such shares and shares deemed issued, “*Exempted Securities*”):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on or subdivision of shares of Common Stock that is covered by Section 5.2, 5.3, 5.4, 5.5 or 5.6;

(iii) shares of Common Stock or Options to acquire shares of Common Stock, including but not limited to stock appreciation rights payable in shares of Common Stock or in Options or Convertible Securities, issued to Service Providers pursuant to a plan, agreement or arrangement approved by the Board (including a majority of the then appointed Preferred Directors); *provided, however*, the aggregate number of shares hereunder shall not exceed 25,468,676 shares (as adjusted for stock splits, stock dividends, or combinations of Common Stock) (for the avoidance of doubt, any Options for such shares that expire or terminate unexercised or any restricted stock repurchased by the Corporation at cost

shall not be counted toward such maximum number set forth above unless and until such shares are re-granted as new stock grants (or as new Options) pursuant to the terms of any such plan, agreement or arrangement) unless an increase is approved by the Board, including a majority of the then appointed Preferred Directors;

(iv) shares of 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 (excluding the Notes (as defined below)), in each case *provided* that such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued pursuant to any debt financing arrangement or equipment leasing transaction; *provided* such financing is primarily for non-equity financing purposes and is approved by the Board, including a majority of the then appointed Preferred Directors;

(vi) shares of Common Stock, Options or Convertible Securities issued pursuant to a bona fide acquisition of another entity by the Corporation by Combination with, purchase of substantially all of the assets of, or purchase of more than fifty percent of the outstanding equity securities of, the other entity, *provided* that such issuances are approved by the Board, including a majority of the then appointed Preferred Directors;

(vii) shares of Common Stock, Options or Convertible Securities issued as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of Section 5.1.4;

(viii) shares of Series EEE Preferred Stock, Series FF Preferred Stock or Common Stock issued pursuant to the exercise of warrants outstanding at the Filing Time;

(ix) shares of Common Stock or Preferred Stock issued or exchanged pursuant to those certain Series EEE Preferred Stock and Series FF Preferred Stock Purchase Agreements, dated on or about the date hereof; or

(x) the Notes issued pursuant to those certain Note Purchase Agreements, dated on or about the date hereof (as the same may be amended, modified, supplemented or restated from time to time, the “**Note Purchase Agreements**”), by and among the Corporation and the other parties thereto (but not the shares of capital stock issued upon conversion of the Notes).

5.1.2 No Adjustment of Conversion Price.

(a) Other than the Series FF Preferred Stock, no adjustment in the Conversion Price applicable to a series of 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 the holders of a majority of the outstanding shares of such series of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(b) No adjustment in the Conversion Price of the Series FF Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock solely to the extent the Corporation receives written notice from the Series FF Majority agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock

5.1.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Original Issue Date (the "**Purchase 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 Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability (including the passage of time) but without regard to any provision contained therein for a subsequent adjustment of such number including by way of anti-dilution adjustment) 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 of a series of Preferred Stock pursuant to the terms of Section 5.1.4, 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 (i) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (ii) 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 of a series of Preferred Stock 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 of such series of Preferred Stock 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 Section 5.1.3(b) shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount which exceeds the lower of (1) the Conversion Price for such series of Preferred Stock in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (2) the Conversion Price for such series of Preferred Stock 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 that are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price of a series of Preferred Stock pursuant to the terms of Section 5.1.4 (either because the consideration per share (determined pursuant to Section 5.1.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price of such series of Preferred Stock then in effect, or because such Option or Convertible Security was issued before the Purchase Date), are revised after the Purchase 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 (i) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (ii) 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 5.1.3(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) that resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price of a series of Preferred Stock pursuant to the terms of Section 5.1.4, the Conversion Price of such series of Preferred Stock shall be readjusted to such Conversion Price of such series of Preferred Stock as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of 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 of a series of Preferred Stock provided for in this Section 5.1.3 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 Sections 5.1.3(b) and 5.1.3(c)). If the number of shares of 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 such Conversion Price that would result under the terms of this Section 5.1.3 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 such Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

5.1.4 Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Purchase Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5.1.3), without consideration or for a consideration per share less than the Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance, then such Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one-thousandth of a cent) determined in accordance with the following formula:

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

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

“CP₂” shall mean the applicable Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock

“CP₁” shall mean the applicable Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

“A” shall mean the number of shares of 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 Common Stock issuable upon exercise of Options outstanding immediately prior to such 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);

“B” shall mean the number of shares of Common Stock that would have been issued or deemed issued if such Additional Shares of Common Stock had been issued at a price per share equal to

CP, (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP,); and

“C” shall mean the number of such Additional Shares of Common Stock actually issued or deemed issued in such transaction.

5.1.5 Determination of Consideration. For purposes of this Section 5.1, 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, including a majority of the then appointed Preferred 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, including a majority of the then appointed Preferred 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 5.1.3, 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 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.

5.1.6 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 of a series of Preferred Stock pursuant to the terms of Section 5.1.3 and such issuance dates occur within a period of no more than 120 days after the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price of such series of Preferred Stock 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 that are a part of such transaction or series of related transactions).

5.2 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price for such series of Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common 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 outstanding. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for such series of Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common 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 outstanding. Any adjustment under this Section 5.2 shall become effective at the close of business on the date the subdivision or combination becomes effective.

5.3 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price for such series of 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 such Conversion Price then in effect by a fraction:

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

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

Notwithstanding the foregoing, (i) 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, such Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Price shall be adjusted pursuant to this Section 5.3 as of the time of actual payment of such dividends or distributions; and (ii) no such adjustment shall be made if the holders of such series of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of such series of Preferred Stock had been ultimately converted into Common Stock on the date of such event.

5.4 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock), then and in each such event the holders of such series of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of such series of Preferred Stock had been ultimately converted into Common Stock on the date of such event.

5.5 Adjustment for Reclassification, Exchange and Substitution. If, at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of such series of

Preferred Stock is changed into the same or a different number of shares of any class or classes of stock of the Corporation, whether by recapitalization, reclassification or otherwise (other than by a stock split or combination, dividend, distribution, merger or consolidation covered by Sections 5.2, 5.3, 5.4 or 5.6 or by Section 2.3 regarding a Deemed Liquidation Event), then in any such event each holder of such series of Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Preferred Stock could have been ultimately converted immediately prior to such recapitalization, reclassification or change.

5.6 Adjustment for Merger or Consolidation. Subject to the provisions of Section 2.3, if there shall occur any consolidation or merger involving the Corporation in which the Common Stock (but not a series of Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 5.3, 5.4 or 5.5), then, following any such consolidation or merger, provision shall be made that each share of such series of Preferred Stock shall thereafter be convertible in lieu of the 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 Common Stock of the Corporation issuable upon conversion of one share of such series of Preferred Stock immediately prior to such 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 5 with respect to the rights and interests thereafter of the holders of such series of Preferred Stock, to the end that the provisions set forth in this Section 5 shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such series of Preferred Stock.

5.7 General Conversion Provisions.

5.7.1 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 5, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 15 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series 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 any series of Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (a) the Conversion Price of such series of Preferred Stock then in effect and (b) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such series of Preferred Stock.

5.7.2 Reservation of Shares. The Corporation shall at all times while any share of 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 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 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 Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate. Before taking any action that would cause an adjustment reducing the Conversion Price of a series of Preferred Stock below the then par value of the shares of Common Stock

issuable upon conversion of such series of 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 nonassessable shares of Common Stock at such adjusted Conversion Price.

5.7.3 Fractional Shares. No fractional shares of 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 Corporation shall pay cash equal to such fraction multiplied by the fair value of a share of Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

5.7.4 No Further Adjustment after Conversion. Upon any conversion of shares of Preferred Stock into Common Stock, no adjustment to the Conversion Price of the applicable series of Preferred Stock shall be made with respect to the converted shares for any declared but unpaid dividends on such series of Preferred Stock or on the Common Stock delivered upon conversion.

5.7.5 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 Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 5. 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 Common Stock in a name other than that in which the shares of Preferred Stock so ultimately 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.

6. No Reissuance of Redeemed or Otherwise Acquired Preferred Stock. Any shares of Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately retired and shall not be reissued, sold or transferred.

7. Waiver. Except as otherwise set forth herein, (a) any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of (i) the Requisite Preferred Holders and (ii) the Series FF Majority, (b) at any time more than one (1) series of Preferred Stock is issued and outstanding, any of the rights, powers, preferences and other terms of any series of Preferred Stock (other than the Series FF Preferred Stock) set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of at least of a majority of the shares of such series of Preferred Stock then outstanding and (c) any of the rights, powers, preferences and other terms of the Series FF Preferred Stock set forth herein may be waived on behalf of all holders of Series FF Preferred Stock by the affirmative written consent or vote of the Series FF Majority. Notwithstanding the above, if a waiver adversely affects one or more series of Preferred Stock in a manner disproportionate to other series of Preferred Stock, the affirmative written consent or vote of the holders of a majority of the then outstanding shares of such adversely affected series of Preferred Stock will be required.

8. Notice of Record Date. In the event:

(a) the Corporation shall set a record date for 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 subscription right, and the amount and character of such dividend, distribution or subscription 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 (A) at least ten (10) days prior to the earlier of the record date or effective date for the event specified in such notice or (B) such fewer number of days as may be approved by (x) the holders of a majority of the outstanding shares of Preferred Stock acting as a single class on an as-converted basis.

9. **Notices.** Except as otherwise provided herein, any notice required or permitted by the provisions of this Article IV 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 for such holder, given by the holder to the Corporation for the purpose of notice 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. If no such address appears or is given, notice shall be deemed given at the place where the principal executive office of the Corporation is located.

ARTICLE V: 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 any stockholder.

ARTICLE VI: STOCK REPURCHASES.

In connection with repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, Section 500 of the California Corporations Code shall not apply in all or in part with respect to such repurchases. In the case of any such repurchases, and subject to any approvals otherwise required by this Restated Certificate, distributions by the Corporation may be made without regard to any preferential dividends arrear amount or any preferential rights amount (as such terms are defined in Section 500(b) of the Corporations Code of the State of California).

ARTICLE VII: BYLAW PROVISIONS.

A. AMENDMENT OF BYLAWS. Subject to any additional vote required by this Restated Certificate or bylaws of the Corporation, 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.

B. NUMBER OF DIRECTORS. Subject to any additional vote required by this Restated Certificate, the number of directors of the Corporation shall be determined in the manner set forth in the bylaws of the Corporation.

C. BALLOT. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

D. MEETINGS AND BOOKS. Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the bylaws of the Corporation.

ARTICLE VIII: DIRECTOR AND OFFICER LIABILITY.

A. LIMITATION. To the fullest extent permitted by law, a director or officer 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 or officer. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article VIII by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of, or increase the liability of any director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to, such repeal or modification.

B. INDEMNIFICATION. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees 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.

C. MODIFICATION. Any amendment, repeal or modification of the foregoing provisions of this Article VIII shall not adversely affect any right or protection of any director, officer, employee or other agent of the Corporation existing at the time of such amendment, repeal or modification.

ARTICLE IX: CORPORATE OPPORTUNITIES.

In the event that a director of the Corporation who is also a partner, member, director, stockholder, employee or agent of any holder of Preferred Stock or any of its affiliates and that is in the business of investing and reinvesting in other entities (each, a “*Fund*”), acquires knowledge of a potential transaction or matter in such person’s capacity as a partner, member, director, stockholder, employee or agent of the Fund and that may be a corporate opportunity for both the Corporation and such Fund, such director shall to the fullest extent permitted by law have fully satisfied and fulfilled such director’s fiduciary duty to the Corporation and its stockholders with respect to such corporate opportunity, and the Corporation to the fullest extent permitted by law waives any claim that such business opportunity constituted a corporate opportunity that should have been presented to the Corporation or any of its affiliates, if such director acts

in good faith in a manner consistent with the following policy: a corporate opportunity offered to any person who is a director of the Corporation, and who is also a partner, member, director, stockholder, employee or agent of a Fund shall belong to such Fund, unless such opportunity was expressly offered to such person solely in his or her capacity as a director of the Corporation.

ARTICLE X: FORUM

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, stockholder, 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, stockholders, officers or employees arising pursuant to any provision of the General Corporation Law or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, stockholders, officers or employees governed by the internal affairs doctrine or that otherwise relates to the internal affairs of the Corporation, 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 10 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.

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