

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

EPAS ID: PAT4152780

|                                                                                                                                                                                                 |                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| <b>SUBMISSION TYPE:</b>                                                                                                                                                                         | NEW ASSIGNMENT              |
| <b>NATURE OF CONVEYANCE:</b>                                                                                                                                                                    | MERGER                      |
| <b>EFFECTIVE DATE:</b>                                                                                                                                                                          | 08/30/2016                  |
| <b>CONVEYING PARTY DATA</b>                                                                                                                                                                     |                             |
| <b>Name</b>                                                                                                                                                                                     | <b>Execution Date</b>       |
| KITTY HAWK CORPORATION                                                                                                                                                                          | 08/30/2016                  |
| <b>RECEIVING PARTY DATA</b>                                                                                                                                                                     |                             |
| <b>Name:</b>                                                                                                                                                                                    | ZEE.AERO INC.               |
| <b>Street Address:</b>                                                                                                                                                                          | 2639 TERMINAL BLVD.         |
| <b>City:</b>                                                                                                                                                                                    | MOUNTAIN VIEW               |
| <b>State/Country:</b>                                                                                                                                                                           | CALIFORNIA                  |
| <b>Postal Code:</b>                                                                                                                                                                             | 94043                       |
| <b>PROPERTY NUMBERS Total: 1</b>                                                                                                                                                                |                             |
| <b>Property Type</b>                                                                                                                                                                            | <b>Number</b>               |
| <b>Application Number:</b>                                                                                                                                                                      | 15221446                    |
| <b>CORRESPONDENCE DATA</b>                                                                                                                                                                      |                             |
| <b>Fax Number:</b>                                                                                                                                                                              | (408)973-2595               |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> |                             |
| <b>Phone:</b>                                                                                                                                                                                   | 4089732585                  |
| <b>Email:</b>                                                                                                                                                                                   | enguyen@ip-patent.com       |
| <b>Correspondent Name:</b>                                                                                                                                                                      | VAN PELT, YI & JAMES LLP    |
| <b>Address Line 1:</b>                                                                                                                                                                          | 10050 N. FOOTHILL BLVD.     |
| <b>Address Line 2:</b>                                                                                                                                                                          | SUITE 200                   |
| <b>Address Line 4:</b>                                                                                                                                                                          | CUPERTINO, CALIFORNIA 95014 |
| <b>ATTORNEY DOCKET NUMBER:</b>                                                                                                                                                                  | KITTP006                    |
| <b>NAME OF SUBMITTER:</b>                                                                                                                                                                       | WILLIAM J. JAMES            |
| <b>SIGNATURE:</b>                                                                                                                                                                               | /william j. james/          |
| <b>DATE SIGNED:</b>                                                                                                                                                                             | 11/21/2016                  |
| <b>Total Attachments: 29</b>                                                                                                                                                                    |                             |
| source=Zee.Aero - Kitty Hawk - Certificate of Merger (filed) (2016-08-31)_(palib2_8110668_10)#page1.tif                                                                                         |                             |
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# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"KITTY HAWK CORPORATION", A DELAWARE CORPORATION,  
WITH AND INTO "ZEE.AERO INC." UNDER THE NAME OF "KITTY HAWK  
CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE  
LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS  
OFFICE ON THE THIRTY-FIRST DAY OF AUGUST, A.D. 2016, AT 9:14  
O`CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
KENT COUNTY RECORDER OF DEEDS.

  
Jeffrey W. Bullock, Secretary of State

4801572 8100M  
SR# 20165609714

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202922190  
Date: 09-01-16

**PATENT**  
**REEL: 040661 FRAME: 0393**

**CERTIFICATE OF MERGER**

**MERGING**

**KITTY HAWK CORPORATION,  
A DELAWARE CORPORATION**

**WITH AND INTO**

**ZEE.AERO INC.,  
A DELAWARE CORPORATION**

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Pursuant to Section 251 of the General Corporation Law of the State of Delaware

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Zee.Aero Inc., a Delaware corporation (the "**Company**"), does hereby certify as follows:

**FIRST:** The constituent corporations of the Merger (as defined below) are (i) the Company, which is a corporation duly organized and existing under the laws of the State of Delaware, and (ii) Kitty Hawk Corporation, a corporation duly organized and existing under the laws of the State of Delaware ("**Kitty Hawk**").

**SECOND:** An Agreement and Plan of Merger, dated as of August 30, 2016, (the "**Merger Agreement**"), setting forth the terms and conditions of the merger of Kitty Hawk with and into the Company (the "**Merger**"), has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with Section 251 of the Delaware General Corporation Law.

**THIRD:** The Company is the surviving corporation of the Merger (the "**Surviving Corporation**"), and upon effectiveness of the amendment and restatement of the Certificate of Incorporation of the Surviving Corporation as provided in item FOURTH below, the name of the Surviving Corporation shall be changed to "Kitty Hawk Corporation".

**FOURTH:** At the effective time of the Merger, the Certificate of Incorporation of the Surviving Corporation is amended and restated in its entirety to read as set forth on Exhibit A hereto (the "**Amended and Restated Certificate of Incorporation**").

**FIFTH:** An executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Corporation at the following address:

Kitty Hawk Corporation  
2639 Terminal Blvd.  
Mountain View, CA 94043

**SIXTH:** The Merger and the Amended and Restated Certificate of Incorporation shall each be effective upon the filing of this Certificate of Merger with the Secretary of the State of Delaware.

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

\* \* \* \* \*

IN WITNESS WHEREOF, the Company has caused this Certificate of Merger to be executed in its corporate name as of August 30, 2016.

**ZEE.AERO INC.**

By: /s/ Eric Allison

Name: Eric Allison

Title: Chief Executive Officer

## **EXHIBIT A**

### **AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

#### **ARTICLE I**

The name of the corporation is Kitty Hawk Corporation (hereinafter, the “***Corporation***”).

#### **ARTICLE II**

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, Delaware 19901. The name of the registered agent of the Corporation at that address is Incorporating Services, Ltd.

#### **ARTICLE III**

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

#### **ARTICLE IV**

##### **1. Authorized Shares.**

**1.1 Authorized Capital Stock.** The total number of shares of capital stock the Corporation is authorized to issue is **forty million five hundred seventy-eight thousand five hundred ninety (40,578,590)**, consisting of **thirty-three million and five (33,000,005)** shares of Common Stock, par value \$0.0000001 per share (“***Common Stock***”) and **seven million five hundred seventy-eight thousand five hundred eighty-five (7,578,585)** shares of Preferred Stock, par value \$0.0000001 per share (“***Preferred Stock***”). The first Series of Common Stock shall be designated “***Series A Common Stock***” and shall consist of **thirty-three million (33,000,000)** shares. The second Series of Common Stock shall be designated “***Series B Gold Common Stock***” and shall consist of five (5) shares. The first Series of Preferred Stock shall be designated “***Series A Preferred Stock***” and shall consist of **seven million five hundred seventy-eight thousand five hundred eighty-five (7,578,585)** shares.

**1.2 Stock Split / Reclassification.** Effective immediately upon the date and time of filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, (the “***Effective Time***”), each share of the Common Stock of the Corporation that is authorized and outstanding immediately prior to the Effective Time (“***Prior Common Stock***”) shall automatically be reclassified and converted into 3.02424875 shares of Series A Common Stock without the need for any further action on the part of the Corporation or the holder of such share (the “***Common Recapitalization***”). For such purpose all outstanding shares of Prior Common Stock held by each holder thereof immediately prior to the Effective Time shall be aggregated, and any fractional shares of Series A Common Stock resulting from the foregoing Common Recapitalization of the outstanding Prior Common Stock shall be rounded to the nearest whole share of Series A Common Stock. Upon the Effective Time, each person who was a holder of an outstanding share of Prior Common Stock immediately prior to the Effective Time shall be deemed to be the holder of the shares of Series A Common Stock into which such share of Prior Common Stock is converted and reclassified in the Common Recapitalization, notwithstanding that the certificates representing such shares of Prior Common Stock shall not have been

surrendered at the office of the Corporation. The Corporation shall, upon request of each record holder of a certificate of Prior Common Stock, issue and deliver to such holder in exchange for such certificate a new certificate representing the number of shares of Series A Common Stock into which the shares of Prior Common Stock represented by such certificate were converted and reclassified in the Common Recapitalization. All share and per share amounts set forth in this Certificate, including, without limitation, all such amounts set forth in this Article IV, have been revised to reflect the Common Recapitalization, and, accordingly, no further adjustment pursuant to the terms of this Certificate shall be made as a result of the Common Recapitalization.

**1.3** Change in Number of Authorized Shares of Series A Common Stock. The number of authorized shares of the Series A Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (a) the affirmative vote of the holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation then entitled to vote, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law and (b) any other vote of any other holders of capital stock of the Corporation that is required to increase or decrease the number of authorized shares of Series A Common Stock under the Corporation's Certificate of Incorporation.

## **ARTICLE V**

### **1. Voting Rights.**

#### **1.1 Series A Common Stock.**

**(a)** The shares of Series A Common Stock shall be non-voting shares and shall not be entitled to vote on any matter, except to the extent that the holders of Series A Common Stock are entitled to vote on a matter under applicable law or under the express terms of the Corporation's Certificate of Incorporation. With respect to any matter on which the holders of Series A Common Stock are entitled to vote under applicable law or under the express terms of the Corporation's Certificate of Incorporation, each holder of an outstanding share of Series A Common Stock shall be entitled to cast one (1) vote for each outstanding share of Series A Common Stock held.

**(b)** Notwithstanding the foregoing provision of paragraph (a) of this Section 1.1, during (and only during) any time period (if any) during which no shares of capital stock of the Corporation that are entitled to vote (including without limitation shares of Series B Gold Common Stock or Series A Preferred Stock) are outstanding, each holder of an outstanding share of Series A Common Stock shall be entitled to one (1) vote for each outstanding share of Series A Common Stock held on any matter on which stockholders are entitled to vote under applicable law.

**1.2** Series B Gold Common Stock. Each holder of an outstanding share of Series B Gold Common Stock shall be entitled to cast ten million (10,000,000) votes for each outstanding share of Series B Gold Common Stock held.

**1.3** Series A Preferred Stock. The Series A Preferred Stock shall be voting stock and each holder of an outstanding share of Series A Preferred Stock shall be entitled to cast, for each outstanding share of Series A Preferred Stock held, the number of votes equal to the number of shares of Series A Common Stock into which such share of Series A Preferred Stock is convertible as of the record date for determining stockholders entitled to vote on such matter (regardless of whether the Series A Common Stock is nonvoting stock). The holders of Series A Preferred Stock shall be entitled to vote on all matters on which any shares of capital stock of the Corporation are entitled to vote. Except as otherwise provided by law or by the other provisions of the Corporation's Certificate of Incorporation,

holders of Series A Preferred Stock shall vote on any matter together with the holders of Common Stock entitled to vote on such matter as a single class.

**1.4 Protective Provisions for Series B Gold Common Stock.** Following the K/Z Merger Effective Time (as defined in Section 7 of this Article V), so long as any shares of Series B Gold Common Stock are outstanding, the Corporation shall not (either directly or indirectly by amendment of the Corporation's Certificate of Incorporation or Bylaws, by merger, consolidation, conversion or otherwise), without first obtaining (in addition to obtaining any other vote required by applicable law or by the Certificate of Incorporation or the Bylaws of the Corporation) the affirmative approval, by vote or written consent, of the holders of a majority of all then outstanding shares of Series B Gold Common Stock, voting or consenting (as the case may be) separately as a single series:

(a) amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws of the Corporation;

(b) increase or decrease the authorized number of the members of the Corporation's Board of Directors;

(c) create, or authorize the creation of, any shares of any additional class or series of capital stock of the Corporation or increase or decrease the authorized number of shares of any then existing class or series of capital stock of the Corporation (including without limitation the Series A Common Stock, the Series B Gold Common Stock and the Series A Preferred Stock);

(d) issue or sell any shares of the capital stock or other equity interests in any subsidiary of the Corporation to any person or entity other than the Corporation;

(e) reclassify, alter or amend the rights, preferences, privileges or restrictions of any then existing class or series of capital stock of the Corporation or any other security of the Corporation;

(f) make or declare any dividend or other distribution payable in shares of Series B Gold Common Stock or Series A Common Stock;

(g) declare any dividend or make any distribution on, any shares of capital stock of the Corporation *other than* (i) dividends or distributions on the Preferred Stock as expressly authorized in the Corporation's Certificate of Incorporation, and (ii) dividends or other distributions payable on the Common Stock as permitted by, or otherwise made in accordance with, the Corporation's Certificate of Incorporation;

(h) close or consummate any public offering (whether or not underwritten) of any securities of the Corporation pursuant to a registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended (or any successor law thereto), or pursuant to any similar securities registration or qualification law or process under the laws of any other jurisdiction;

(i) liquidate, dissolve or wind-up the business and/or affairs of the Corporation, or consent to, or enter into any agreement to, liquidate, dissolve or wind-up the business and/or affairs of the Corporation;

(j) effect or consummate, consent to, or enter into any agreement or commitment providing for or approving, any Deemed Liquidation Event (as hereafter defined), any Merger Transaction (as hereafter defined) or any Company Sale Transaction (as hereafter defined);

(k) enter into any agreement or commitment providing for, consent to or approving, enabling or facilitating, any Company Share Exchange (as hereafter defined); or

(l) purchase or redeem (or permit any subsidiary of the Corporation to purchase or redeem) any shares of capital stock of the Corporation *other than* (i) repurchases of Common Stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary of the Corporation in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value of such shares as determined in good faith by the Corporation's Board of Directors, and (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in the Corporation's Bylaws or in agreements providing for such rights, provided such repurchase is approved by the Corporation's Board of Directors;

and any such action taken without such affirmative approval of the holders of a majority of the then outstanding shares of Series B Gold Common Stock shall be null and void *ab initio*, and of no force or effect.

**1.5** Protective Provisions for Series A Preferred Stock. Following the K/Z Merger Effective Time, so long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not (either directly or indirectly by amendment of the Corporation's Certificate of Incorporation or Bylaws, by merger, consolidation, conversion or otherwise), without first obtaining (in addition to obtaining any other vote required by applicable law or by the Certificate of Incorporation or the Bylaws of the Corporation) the affirmative approval, by vote or written consent, of the holders of a majority of all then outstanding shares of Series A Preferred Stock, voting or consenting (as the case may be) separately as a single series:

(a) amend, alter or repeal any provision of the Certificate of Incorporation or the Bylaws of the Corporation;

(b) increase or decrease the authorized number of the members of the Corporation's Board of Directors;

(c) create, or authorize the creation of, any shares of any additional class or series of capital stock of the Corporation or increase or decrease the authorized number of shares of any then existing class or series of capital stock of the Corporation (including without limitation the Series A Common Stock, the Series B Gold Common Stock and the Series A Preferred Stock);

(d) issue or sell any shares of the capital stock or other equity interests in any subsidiary of the Corporation to any person or entity other than the Corporation;

(e) reclassify, alter or amend the rights, preferences, privileges or restrictions of any then existing class or series of capital stock of the Corporation or any other security of the Corporation;

(f) make or declare any dividend or other distribution payable in shares of Series B Gold Common Stock or Series A Common Stock;

(g) declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) dividends or distributions on the Preferred Stock as expressly authorized in the Corporation's Certificate of Incorporation, and (ii) dividends or other distributions payable on the Common Stock as permitted by, or otherwise made in accordance with, the Corporation's Certificate of Incorporation;

(h) close or consummate any public offering (whether or not underwritten) of any securities of the Corporation pursuant to a registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended (or any successor law thereto), or pursuant to any similar securities registration or qualification law or process under the laws of any other jurisdiction;

(i) liquidate, dissolve or wind-up the business and/or affairs of the Corporation, or consent to, or enter into any agreement to, liquidate, dissolve or wind-up the business and/or affairs of the Corporation;

(j) effect or consummate, consent to, or enter into any agreement or commitment providing for or approving, any Deemed Liquidation Event (as hereafter defined), any Merger Transaction (as hereafter defined) or any Company Sale Transaction (as hereafter defined); or

(k) enter into any agreement or commitment providing for, consent to or approving, enabling or facilitating, any Company Share Exchange (as hereafter defined); or

(l) purchase or redeem (or permit any subsidiary of the Corporation to purchase or redeem) any shares of capital stock of the Corporation other than (i) repurchases of Common Stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary of the Corporation in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value of such shares as determined in good faith by the Corporation's Board of Directors, and (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in the Corporation's Bylaws or in agreements providing for such rights, provided such repurchase is approved by the Corporation's Board of Directors

and any such action taken without such affirmative approval of the holders of a majority of the then outstanding Series A Preferred Stock shall be null and void *ab initio*, and of no force or effect.

**1.6 Voting as a Class.** Solely with respect to any matter on which the holders of the outstanding shares of Series A Common Stock are entitled to vote under applicable law or by the express terms of the Corporation's Certificate of Incorporation as provided in Section 1.1 of this Article V, the holders of outstanding shares of Series B Gold Common Stock, the holders of the outstanding shares of Series A Common Stock and the holders of Series A Preferred Stock shall vote together as a single class (with each outstanding share of Series B Gold Common Stock having the number of votes per share specified in Section 1.2 of this Article V, each outstanding share of Series A Preferred Stock having the number of votes per share specified in Section 1.3 of this Article V, and each outstanding share of Series A Common Stock having one (1) vote per share); *provided however*, that nothing in this Section 1.6 will modify or alter any provision of applicable law or of the Corporation's Certificate of Incorporation or Bylaws requiring or otherwise providing for a separate series vote of either the Series B Gold Common Stock, Series A Preferred Stock or of the Series A Common Stock.

**1.7 California Section 2115.** To the extent that Section 2115 of the California General Corporation Law makes Section 708 subdivisions (a), (b) and (c) of the California General

Corporation Law applicable to the Corporation, the Corporation's stockholders shall have the right to cumulate their votes in connection with the election of directors as provided by Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law.

## **2. Dividends and Distributions.**

**2.1 Preferred Stock.** In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Corporation's Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of the applicable series of Preferred Stock payable in preference and priority to any declaration or payment of any dividend or other Distribution on any Common Stock of the Corporation in such calendar year. No dividend or other Distributions shall be made with respect to the Common Stock in any calendar year unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) dividends on the Preferred Stock have been declared in accordance with the preferences stated above in this Section and all such declared dividends on the Series A Preferred Stock have been paid or set aside for payment to the Series A Preferred Stock holders. If, after dividends in the full preferential amount specified above in this Section 2.1 for the Preferred Stock have been paid or set apart for payment in any calendar year, the Corporation's Board of Directors shall declare additional dividends out of funds legally available therefor in that same calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on an equal priority, *pari passu* basis according to the number of shares of Common Stock then held by each such holder (assuming for this purpose that each holder of Preferred Stock then holds the full number of shares of Series A Common Stock into which all such holder's shares of Preferred Stock can then be converted under the terms of the Corporation's Certificate of Incorporation). The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each series of Preferred Stock.

**2.2 Common Stock.** Subject to the rights and preferences applicable to any series or series' of Preferred Stock of the Corporation that may be outstanding at the time (if any) (including without limitation the provisions of Section 2.1 above), the shares of Series A Common Stock and Series B Gold Common Stock shall be treated equally, identically and ratably, on a per share basis, with respect to any dividends or Distributions that may be declared and paid from time to time by the Corporation's Board of Directors out of any assets of the Corporation legally available therefor in accordance with the Corporation's Certificate of Incorporation; *provided however*, that: **(a)** in the event that a dividend or other Distribution is paid in shares of Series A Common Stock or Series B Gold Common Stock (or rights to acquire such shares, as the case may be) then (i) the shares of Series A Common Stock (or rights to acquire shares of Series A Common Stock) to be paid or distributed in such dividend or distribution shall be paid or distributed only to holders of outstanding shares of Series A Common Stock, (ii) the shares of Series B Gold Common Stock (or rights to acquire shares of Series B Gold Common Stock) to be paid or distributed in such dividend or distribution shall be paid or distributed only to holders of outstanding shares of Series B Gold Common Stock and (iii) the number of shares of Series A Common Stock (or rights to acquire Series A Common Stock) payable pursuant to such dividend or distribution on each outstanding share of Series A Common Stock and the number of shares of Series B Gold Common Stock (or rights to acquire Series B Gold Common Stock) payable pursuant to such dividend or distribution on each outstanding share of Series B Gold Common Stock, respectively, shall be equal and identical; and **(b)** no dividend or distribution payable in (i) voting stock or any other voting securities of the Corporation ("***Voting Securities***") (other than shares of Series A Common Stock paid in a dividend or other distribution declared and paid on the outstanding Series A Common Stock in compliance with the preceding clause (a) of this Section 2.2 at any time when the Series A Common Stock has voting rights

under applicable law or the Corporation's Certificate of Incorporation), (ii) voting securities of any entity that is a subsidiary of the Corporation ("***Subsidiary Voting Securities***") or (iii) securities (including options, warrants or other rights) that are directly or indirectly convertible into, or exercisable or exchangeable for, Voting Securities and/or Subsidiary Voting Securities ("***Exchangeable Securities***"), may be declared and paid on shares of any series of Common Stock unless such dividend or distribution is first affirmatively approved by the vote or written consent of (i) the holders of a majority of all then outstanding shares of Series B Gold Common Stock, voting or consenting (as the case may be) separately as a single series, and (ii) the holders of a majority of all then outstanding shares of Series A Preferred Stock, voting or consenting (as the case may be) separately as a single class. Notwithstanding the foregoing, the Corporation's Board of Directors may pay or make a disparate dividend or distribution per share of Series A Common Stock or Series B Gold Common Stock (whether in the amount of such dividend or distribution payable per share, the form in which such dividend or distribution is payable, the timing of the payment, or otherwise) if (and only if) such disparate dividend or distribution is affirmatively approved in advance by (i) the vote or written consent of the holders of a majority of all then outstanding shares of Series B Gold Common Stock, voting or consenting (as the case may be) separately as a single series, (ii) the affirmative vote or written consent of the holders of a majority of all then outstanding shares of Series A Common Stock, voting or consenting (as the case may be) separately as a single series and (iii) the affirmative vote or written consent of the holders of a majority of all then outstanding shares of Series A Preferred Stock, voting or consenting (as the case may be) separately as a single class. For the avoidance of doubt, the provisions of this Section 2 shall not apply to (i) any distributions in connection with the liquidation, dissolution and winding up of the Corporation, which are governed by the provisions of Section 4 of this Article V ("***Liquidation and Deemed Liquidation Events***") or (ii) any distribution with respect to any Merger Transaction (as hereafter defined), which are governed by the provisions of Section 5 of this Article V).

**2.3    Non-Cash Distributions.** Whenever a Distribution provided for in Section 2 of this Article V shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Corporation's Board of Directors.

**2.4    Consent to Certain Distributions.** In accordance with Section 500 of the California Corporations Code, a distribution can be made without regard to any preferential dividends arrears amount (as defined in Section 500 of the California Corporations Code) or any preferential rights amount (as defined in Section 500 of the California Corporations Code) in connection with (i) repurchases of Common Stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value of such shares as determined in good faith by the Corporation's Board of Directors, pursuant to agreements providing for such right of repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or any subsidiary of the Corporation pursuant to rights of first refusal contained in agreements providing for such right, provided such repurchase is approved by the Corporation's Board of Directors, (iii) repurchases of Common Stock or Preferred Stock in connection with the settlement of disputes with any stockholder if such repurchase described in this clause (iii) is approved by the Corporation's Board of Directors and by the holders of a majority of the outstanding shares of Series B Gold Common Stock, or (iv) any other repurchase or redemption of Common Stock or Preferred Stock approved by the holders of a majority of the outstanding shares of Series B Gold Common Stock and the holders of a majority of the outstanding shares of Preferred Stock of the Corporation; provided, however, that nothing in this Section is intended to modify or waive any rights of any holders of stock to approve any such distribution or repurchase described above in this Section under any other provisions of the Corporation's Certificate of Incorporation as in effect at any time.

**3. Subdivision and Combination.** Shares of Series A Preferred Stock, Series B Gold Common Stock and Series B Common Stock may not be subdivided, combined or reclassified unless the outstanding shares of each class and series are concurrently therewith proportionately subdivided, combined or reclassified in a manner that maintains the same proportionate equity ownership and the same proportionate voting rights and voting power between the holders of the outstanding Series A Preferred Stock, Series B Gold Common Stock and Series B Common Stock on the record date for such subdivision, combination or reclassification as existed immediately prior to such subdivision, combination or reclassification; *provided, however*, that, notwithstanding the foregoing: (a) shares of Series A Preferred Stock, Series B Gold Common Stock and Series A Common Stock may be subdivided, combined or reclassified in a different or disproportionate manner if (and only if) such subdivision, combination or reclassification is affirmatively approved in advance by (i) the vote or written consent of the holders of a majority of all then outstanding shares of Series B Gold Common Stock, voting or consenting (as the case may be) separately as a single series, (ii) the vote or written consent of the holders of a majority of all then outstanding shares of Series A Common Stock, voting or consenting (as the case may be) separately as a single series and (iii) the vote or written consent of the holders of a majority of all then outstanding shares of Series A Preferred Stock, voting or consenting (as the case may be) separately as a single class; and (b) no shares of Series A Common Stock may be reclassified, otherwise changed or converted into any Voting Securities, any Subsidiary Voting Securities and/or any Exchangeable Securities unless such reclassification, change or conversion is first affirmatively approved by the vote or written consent of (i) the holders of a majority of all then outstanding shares of Series B Gold Common Stock, voting or consenting (as the case may be) separately as a single series and (ii) the holders of a majority of all then outstanding shares of Series A Preferred Stock, voting or consenting (as the case may be) separately as a single class.

**4. Liquidation and Deemed Liquidation Events.**

**4.1 Liquidation Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, or any Deemed Liquidation Event, each of the holders of the Preferred Stock shall be entitled to receive and be paid out of the assets of the Corporation legally available for distribution to its stockholders ("*Available Funds and Assets*"), prior and in preference to any payment or distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Preferred Stock held by such holder equal to the greater of (i) the sum of the Liquidation Preference specified for such share of Preferred Stock plus all declared but unpaid dividends (if any) on such share of Preferred Stock, or (ii) such amount per share as would have been payable to the holder of such share of Preferred Stock in respect of all the shares of Series A Common Stock or other securities into which such share of Preferred Stock is convertible immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event had all shares of Preferred Stock been converted into Series A Common Stock immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event. If upon the liquidation, dissolution or winding up of the Corporation or any Deemed Liquidation Event, the Available Funds and Assets are insufficient to permit the payment to such holders of Preferred Stock of the full amounts specified in this Section 4.1, then the entire Available Funds and Assets of the Corporation shall be distributed with equal priority, *pari passu* basis and *pro rata* among the holders of the Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 4.1.

**4.2 Remaining Assets.** In the event of the voluntary or involuntary liquidation, dissolution, or winding up of the Corporation or a Deemed Liquidation Event, subject to, and after, the payment in full of all preferential amounts required to be paid to the holders of shares of Preferred Stock of the Corporation under Section 4.1 above), the remaining Available Funds and Assets of the Corporation shall be distributed on an equal priority, *pari passu* basis to the holders of the then outstanding shares of Series A Common Stock and the holders of the then outstanding shares of Series B

Gold Common Stock *pro rata* based on the number of shares of Series A Common Stock and/or Series B Gold Common Stock held by each such holder.

**4.3**     Available Funds and Assets. For purposes of applying the provisions of this Section 4 to any Deemed Liquidation Event, the "***Available Funds and Assets***" of the Corporation shall mean and include the stock, securities, cash and other property issuable or payable to holders of the Corporation's capital stock in such Deemed Liquidation Event.

**4.4**     Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any Deemed Liquidation Event shall be the amount of 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. The value of such property, rights or securities shall be determined in good faith by the Corporation's Board of Directors, with reference to then-current market prices, where applicable.

**4.5**     Waiver. Notwithstanding anything herein to the contrary, the holders of at least a majority of the outstanding shares of the Corporation's Preferred Stock, voting together as a separate class on an as converted basis (either at a meeting or by action taken by written consent without a meeting), shall be entitled to waive and release, on behalf of all holders of the Corporation's outstanding Preferred Stock, the treatment of any Deemed Liquidation Event as provided under this Section 4 without any amendment of the Corporation's Certificate of Incorporation.

**5.**     Merger, Consolidation, etc. Subject to the provisions of Section 4 of this Article ("***Liquidation and Deemed Liquidation Events***"), in the case of any distribution or payment in respect of the outstanding shares of Series A Common Stock or Series B Gold Stock (or upon the conversion or exchange of such shares) pursuant to any Merger Transaction (as hereafter defined), such distribution or payment shall be made ratably on an equal per share and *pari passu* basis among the holders of the Series A Common Stock and Series B Gold Common Stock as a single class; provided, however, that notwithstanding the foregoing, shares of one such series of Common Stock may receive different or disproportionate distributions or payments in connection with such a Merger Transaction if (and only to the extent that) (a) the only difference in the per share distribution to the holders of the Series A Common Stock and the Series B Gold Common Stock is that any securities distributed to the holder of a share of Series B Gold Common Stock have the same proportionate voting power relative to the securities distributed to the holder of a share of Series A Common Stock as the Series B Gold Common Stock holds relative to Series A Common Stock, or (b) such Merger Transaction is approved by the affirmative vote or written consent of (i) the holders of a majority of all then outstanding shares of Series B Gold Common Stock, voting or consenting (as the case may be) separately as a single series and (ii) the holders of a majority of all then outstanding shares of Series A Common Stock, voting or consenting (as the case may be) separately as a single series, and (iii) the holders of a majority of all then outstanding shares of Series A Preferred Stock, voting or consenting (as the case may be) separately as a single class. For the avoidance of doubt, nothing in this Section 5 is intended to eliminate any requirement for any other vote, consent or approval of a Merger Transaction (as hereafter defined) by the holders of outstanding Series B Gold Common Stock, by the holders of outstanding Series A Common Stock or by the holders of outstanding Series A Preferred Stock required by applicable law or by any other provision of the Corporation's Certificate of Incorporation.

**6.**     No Transfer of a Fractional Series B Gold Common Share. No holder of a share or shares of Series B Gold Common Stock shall be entitled to sell, assign, convey, or otherwise transfer or dispose of any fraction of a whole share of Series B Gold Common Stock unless such sale, assignment, conveyance or other transfer or disposition is first approved in writing by holders of a majority of all then outstanding shares of Series B Gold Common Stock.

7. **Certain Defined Terms.** As used in this Certificate of Incorporation, the following terms shall have the following meanings:

7.1 ***“Common Stock”*** means the Corporation’s Common Stock, par value \$0.0000001 per share, and includes the Series A Common Stock and the Series B Gold Common Stock, individually or collectively.

7.2 ***“Company Sale Transaction”*** shall mean any of the following events:

(a) the sale, lease, transfer, exchange, encumbrance, exclusive license or other disposition by the Corporation and/or by any subsidiary or subsidiaries of the Corporation, in a single transaction or in a series of related transactions, of (x) all or substantially all of the assets of the Corporation or (y) all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole (other than (i) the grant of a license or licenses that do not constitute an effective disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole, and (ii) the bona fide grant by the Corporation of security interests its assets in the ordinary course of business); or

(b) any Merger Transaction.

7.3 ***“Company Share Exchange”*** shall mean the sale, exchange or transfer (in a single transaction or a series of related transactions, whether by tender offer, exchange offer or otherwise) by stockholders of the Corporation to a single purchaser, a group of affiliated purchasers or a group of purchasers acting in concert, of outstanding shares of the capital stock of the Corporation representing either (i) more fifty percent (50%) of the total voting power of all the Corporation’s then outstanding shares of capital stock or (ii) more than fifty percent (50%) of all the Corporation’s then outstanding shares of capital stock.

7.4 ***“Conversion Price”*** shall mean \$10.819962 per share for the Series A Preferred Stock (with such per share amount to be proportionally adjusted to reflect any stock splits, combinations, reclassifications and the like with respect to the outstanding Series A Preferred Stock, any dividends paid on the outstanding Series A Preferred Stock in shares of Series A Preferred Stock and other recapitalizations of the Series A Preferred Stock as set forth elsewhere herein).

7.5 ***“Convertible Securities”*** shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock or Preferred Stock.

7.6 ***“Custodian”*** means a custodian, conservator, trustee, guardian, administrator or other person appointed to act for an individual who is subject to Mental Incapacity.

7.7 ***“Deemed Liquidation Event”*** shall mean:

(a) any merger or consolidation in which (i) the Corporation is a constituent party, or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation; *except that*, notwithstanding the foregoing, the term “Deemed Liquidation Event” shall not include any such merger or consolidation involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to the consummation of such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock or other securities that represent, immediately following the consummation of such merger or consolidation, at least a majority, by voting power, of the capital stock or other securities of (A) the surviving or resulting entity of such merger or

consolidation, or (B) if the surviving or resulting entity of such merger or consolidation is a direct or indirect wholly owned subsidiary of another entity immediately following the consummation of such merger or consolidation, the parent entity of such surviving or resulting entity (where, in this Section 7, the term “*entity*” means any corporation, limited liability company, partnership or other entity or organization); or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or in a series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation (where, for purposes of this Section 7.7, the terms “*lease*” and “*exclusive license*” shall mean, and be limited to, respectively, a lease or a license of assets which has the same functional effect as a sale or disposition of such assets); or

(c) a Company Share Exchange.

**7.8 “Distribution”** shall mean the transfer of cash or other property (including without limitation capital stock of the Corporation) without consideration whether by way of dividend or otherwise on any shares of capital stock of the Corporation, other than (a) dividends or distributions on the Preferred Stock as expressly authorized in the Corporation’s Certificate of Incorporation, (b) dividends or other distributions payable on the Series A Common Stock solely in the form of additional shares of Series A Common Stock to the extent expressly permitted under, and made in accordance with, the Corporation’s Certificate of Incorporation, (c) repurchases of Series B Gold Common Stock and/or Series A Common Stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof as determined in good faith by the Corporation’s Board of Directors; (d) repurchases of Series B Gold Common Stock and/or Series A Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in the Corporation’s Bylaws or in agreements providing for such right if such repurchase is approved by the Corporation’s Board of Directors; and (e) any other repurchase or redemption of capital stock of the Corporation approved by the holders of both (i) a majority of the outstanding shares of Series B Gold Common Stock, and (ii) the holders of a majority of the outstanding shares of the Series A Preferred Stock of the Corporation, voting as separate classes.

**7.9 “Dividend Rate”** shall mean an annual rate of \$0.865597 per share for the Series A Preferred Stock (with such per share amount to be proportionally adjusted to reflect any stock splits, combinations, reclassifications and the like with respect to the outstanding Series A Preferred Stock, any dividends paid on the outstanding Series A Preferred Stock in shares of Series A Preferred Stock and other recapitalizations of the Series A Preferred Stock as set forth elsewhere herein).

**7.10 “Founders”** shall mean the initial two (2) registered holders of any share or shares of Series B Gold Common Stock that are originally issued by the Corporation to such registered holders pursuant to the K/Z Merger; and the term “*Founder*” shall mean any one of the Founders individually.

**7.11 “Liquidation Preference”** shall mean \$10.819962 per share for the Series A Preferred Stock (with such per share amount to be proportionally adjusted to reflect any stock splits, combinations, reclassifications and the like with respect to the outstanding Series A Preferred Stock, any

dividends paid on the outstanding Series A Preferred Stock in shares of Series A Preferred Stock and other recapitalizations of the Series A Preferred Stock as set forth elsewhere herein).

**7.12 “Marital Dissolution Transfer”** shall mean any Transfer of outstanding shares of Series B Gold Common Stock held by a Qualified Stockholder to a spouse or former spouse of such Qualified Stockholder in connection with (a) the divorce, annulment or other legal dissolution of such Qualified Stockholder’s marriage to such spouse or former spouse (other than a dissolution of marriage resulting solely from such Qualified Stockholder’s death), or (b) the legal separation of such Qualified Stockholder from such Qualified Stockholder’s spouse, whether such Transfer is effected pursuant to a judgment, decree or other judicial order, pursuant to an assignment, separation agreement, a property settlement agreement or other agreement, voluntarily, involuntarily or otherwise.

**7.13 “Mental Incapacity”** shall mean, with respect to an individual, a deficit in the mental functions of such individual, whether due to mental disorder, mental retardation, aging, senility, dementia, stroke, Alzheimer’s disease, or other physical, psychological or mental illness, that: (i) substantially diminishes and impairs such individual’s ability or capacity to carry on and manage the everyday affairs of such individual’s life or to protect, preserve or manage such individual’s person, property or general welfare with reasonable prudence, care or discretion; or (ii) significantly impairs such individual’s ability to understand and appreciate the consequences of his or her actions or to make informed decisions with respect to such individual’s person, property or welfare.

**7.14 “K/Z Merger”** means the merger of Kitty Hawk Corporation, a formerly existing Delaware corporation, with and into the Corporation, in connection with which merger the Corporation changed its name from “Zee.Aero Inc.” to “Kitty Hawk Corporation”.

**7.15 “K/Z Merger Effective Time”** mean the time and date on which the K/Z Merger was consummated and became effective.

**7.16 “Merger Transaction”** shall mean: (i) a merger or consolidation in which the Corporation merges or consolidates with or into one or more other entities (whether or not the Corporation is the surviving entity of such merger or consolidation) or in which the Corporation issues any securities or in which security holders of the Corporation receive cash or other property; or (ii) a conversion of the Corporation into another form or type of entity pursuant to any statutory authority.

**7.17 “Options”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

**7.18 “Original Issue Price”** shall mean, with respect to the Series A Preferred Stock, \$10.819962 per share for the Series A Preferred Stock (with such per share amount to be proportionally adjusted to reflect any stock splits, combinations, reclassifications and the like with respect to the outstanding Series A Preferred Stock, any dividends paid on the outstanding Series A Preferred Stock in shares of Series A Preferred Stock and other recapitalizations of the Series A Preferred Stock as set forth elsewhere herein).

**7.19 “Person”** shall mean any individual, corporation, limited liability company, partnership (including without limitation a general or limited partnership), trust or other legal entity, firm, association or organization of any kind whatsoever.

**7.20 “Permitted Transfer”** shall mean any Transfer of a share or shares of Series B Gold Common Stock to any Person or Persons if such Transfer is affirmatively approved in writing (either prospectively, currently or retroactively) by the holder or holders of a majority of all then

outstanding shares of Series B Gold Common Stock in accordance with the provisions of this Section and the applicable provisions of Section 8.2(c) of this Article V (i) at any time prior to, (ii) upon, or (iii) at any time within thirty (30) days after, the occurrence of such Transfer; provided however, that notwithstanding the foregoing, a Marital Dissolution Transfer of a share or shares of Series B Gold Common Stock to a spouse or former spouse of an individual who, directly or indirectly, controls the ownership and voting of at least a majority of all then outstanding shares of Series B Gold Common Stock (such an individual, a "**Controlling Holder Spouse**") will be a Permitted Transfer only if (in addition to being approved by the holder or holders of a majority of all then outstanding shares of Series B Gold Common Stock as provided above in this Section) such Marital Dissolution Transfer is also affirmatively approved (either prospectively, currently or retroactively) by a Disinterested Board Majority (as defined below) in accordance with Section 8.2(c)(iii) of this Article V (i) at any time prior to, (ii) upon, or (iii) at any time within thirty (30) days after, the occurrence of such Marital Dissolution Transfer. As used herein, a "**Disinterested Board Majority**" means, at a given time, the members of the Corporation's Board of Directors who then constitute a majority of all the members of the Corporation's Board of Directors other than the Controlling Holder Spouse (if the Controlling Holder Spouse is then a member of the Corporation's Board of Directors). For the avoidance of doubt, a Permitted Transfer may include (i) a Transfer approved as provided above that is intended to take place at a future time, or (ii) a Transfer approved as provided above in this Section 7.20 as to which any transferor and/or any or all of the transferee(s) is not identified by name in the approval thereof but rather is identified in such approval by a more general description (which description may include a more general classification or categorization of transferor(s) or transferee(s)), or by reference to external facts, events or circumstances, so long as such transferor(s) and such transferee(s) will be reasonably determinable at the time the Transfer occurs, with the following being only examples of such types of Transfers and not intended to limit the foregoing provision of this sentence (i.e. for example, "all heirs of the Qualified Stockholder at the time of his death" or "any and all Persons who would be entitled to receive the shares of Series B Gold Common Stock under John Doe's will, revocable trust or estate plan in effect immediately prior to or at the time of John Doe's death").

**7.21** "**Permitted Transferee**" shall mean any transferee of shares of Series B Gold Common Stock received in a Transfer that is a Permitted Transfer.

**7.22** "**Preferred Stock**" shall mean the Series A Preferred Stock.

**7.23** "**Qualified Stockholder**" shall mean (a) the initial registered holder of any shares of Series B Gold Common Stock that were originally issued by the Corporation to such initial registered holder pursuant to the K/Z Merger; and (b) any Permitted Transferee.

**7.24** "**Series A Original Issue Date**" means the first date on which a share of Series A Preferred Stock is issued by the Corporation.

**7.25** "**Transfer**" of a share of Series B Gold Common Stock shall mean any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law. A "**Transfer**" shall also include, without limitation: (i) a transfer of a share of Series B Gold Common Stock to a broker or other nominee (regardless of whether or not there is a corresponding change in beneficial ownership); (ii) the transfer of, or entering into a binding agreement or voting trust with respect to, Voting Control over a share of Series B Gold Common Stock by proxy or otherwise, including without limitation any such agreement or voting trust that binds the transferor to vote any share or shares of Series B Gold Common Stock for or against, or to abstain from voting for or against, any matter or matters; provided, however that, notwithstanding the foregoing, the following shall not be considered a "**Transfer**" within the meaning of this Article V:

(a) the grant of a revocable proxy to officers or directors of the Corporation at the request of the Corporation's Board of Directors in connection with actions to be taken at an annual or special meeting of stockholders or in connection with any action by written consent of the stockholders solicited by the Corporation's Board of Directors;

(b) entering into or being bound by a voting trust, voting agreement or voting arrangement (with or without granting a revocable or irrevocable proxy) regarding the voting of such share or shares of Series B Gold Common Stock (i) if such voting trust, voting agreement or voting arrangement is disclosed in writing to and approved by the Corporation's Board of Directors or (ii) is made and entered into solely between the Founders while they are each Qualified Stockholders;

(c) any transfer or grant to a Custodian or Custodians of (x) any Qualified Stockholder who is an individual or (y) any individual who is a trustee of, or who otherwise controls, any Qualified Stockholder (any individual described in the foregoing clause (x) or clause (y), a "**Covered Individual**") of (i) record or beneficial title to any share or shares of Series B Gold Common Stock, (ii) any right, power or proxy to vote any share or shares of Series B Gold Common Stock, or (iii) any other rights or incidents of ownership (or any power to exercise any such rights), with respect to any share or shares of Series B Gold Common Stock held by such Covered Individual or by any Qualified Stockholder of which such Covered Individual is a trustee or which is otherwise controlled by such Covered Individual) if at least two (2) physicians licensed to practice medicine in any State of the United States have determined in writing that such Covered Individual is subject to Mental Incapacity;

(d) an encumbrance, hypothecation or pledge of shares of Series B Gold Common Stock by a Qualified Stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction so long as the Qualified Stockholder continues to exercise exclusive Voting Control over such pledged shares; *provided, however*, that a foreclosure on, or sale of, such shares of Series B Gold Common Stock or other similar action by the pledgee or other party holding a security interest in such shares of Series B Gold Common Stock shall constitute a "**Transfer**" unless such foreclosure or similar action qualifies as a "Permitted Transfer" at such time.

**7.26 "Voting Control"** with respect to a share of Series B Gold Common Stock shall mean the power (whether exclusive or shared) to vote or direct the voting of such share of Class B Gold Common Stock by proxy, voting agreement or otherwise with respect to any matter or matters.

## **8. Conversion.**

**8.1 Preferred Stock.** The holders of the Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Series A Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Series A Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "**Conversion Rate**" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 8, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Series A Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “*Securities Act*”), covering the offer and sale of the Corporation’s Common Stock and resulting in at least \$50,000,000 of gross proceeds, to the Corporation (a “*Qualified Public Offering*”), or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of at least a majority of the shares of Series A Preferred Stock then outstanding (voting as a single class and on an as-converted basis), or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an “*Automatic Conversion Event*”).

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

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 8.1(d), “*Additional Shares of Common*” shall mean all shares of Common Stock issued (or, pursuant to paragraph 8.1(d)(iii) deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation and the K/Z Merger Effective Time, other than the issuances or deemed issuances of the following shares described below in this Subsection 8.1(d)(i) (collectively, the “*Exempted Securities*”):

(1) shares of Series A Common Stock issued upon the conversion of the Preferred Stock in accordance with the Corporation's Certificate of Incorporation;

(2) shares of Series A Common Stock and options, warrants or other rights to purchase Series A Common Stock issued or issuable to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary of the Corporation pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar compensatory arrangements, unanimously approved by the Corporation's Board of Directors;

(3) shares of Common Stock actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(4) shares of Series A Common Stock issued upon a conversion of Series B Gold Common Stock in accordance with the provisions of the Corporation's Certificate of Incorporation;

(5) shares of Series A Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made to the Conversion Price of the Preferred Stock pursuant to the Corporation's Certificate of Incorporation;

(6) shares of Series A Common Stock issued or issuable in a Qualified Public Offering (as defined above in Section 8.1(b) of this Article V);

(7) shares of Series A Common Stock issued or issuable pursuant to the acquisition of another corporation or other entity by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, *provided*, that such issuances and such transactions are approved by the Corporation's Board of Directors and by the holders of a majority of the outstanding share of Series B Gold Common Stock;

(8) shares of Series A Common Stock issued or issuable to banks, equipment lessors, real property lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing, commercial leasing or real property leasing transaction whose proceeds are payable to the Corporation and/or a subsidiary of the Corporation and which is approved by the Corporation's Board of Directors;

(9) shares of Series A Common Stock issued or issuable in connection with any bona fide settlement of any action, suit, proceeding or litigation unanimously approved by the Corporation's Board of Directors and by and by the holders of a majority of the outstanding share of Series B Gold Common Stock;

(10) shares of Series A Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Corporation's Board of Directors; and

(11) shares of Series A Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services to the Corporation pursuant to transactions approved by the Corporation's Board of Directors.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 8.1(d)(iv) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the date of the filing of this Amended and Restated Certificate of Incorporation shall issue any Options or Convertible 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 (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability, but without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been 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, *provided* that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or the conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 8 or pursuant to recapitalization provisions of such Options or Convertible Securities), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each Series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if;

a. in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the

Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

b. in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 8.1(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 8.1(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 8.1(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued (or deemed issued pursuant to paragraph 8.1(d)(iii)). Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this paragraph 8.1(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this subsection 8.1(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors with reference to then-current market prices; and

c. in the event Additional Shares of Common 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 (a) and (b) above, as reasonably determined in good faith by the Corporation's Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 8.1(d)(iii) shall be determined by dividing

a. 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 full exercise of such Options or the full conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the full exercise of such Options for Convertible Securities and the full conversion or exchange of such Convertible Securities, by

b. 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 full exercise of such Options or the full conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities the full exercise of such Options for Convertible Securities and the full conversion or exchange of such Convertible Securities.

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

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

immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to the provisions of Section 4 of this Article ("*Liquidation and Deemed Liquidation Events*"), if the Series A Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above or a Deemed Liquidation Event (in which case the provisions of Section 4 hereof shall apply)), then, in any such event, in lieu of the number of shares of Series A Common Stock which the holders would otherwise have been entitled to receive, each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Series A Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization, reclassification or other event, all subject to further adjustment as provided herein with respect to such other shares

(h) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A 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 Series A Common Stock in additional shares of Series A Common Stock, or on the Series B Gold Common Stock payable in additional shares of Series B Gold Common Stock, then and in each such event the Conversion Price of each 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 the Conversion Price for such series of Preferred Stock then in effect by a fraction (i) the numerator of which shall be the total number of shares of Series A Common Stock and Series B Gold Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which shall be the total number of shares of Series A Common Stock and Series B Gold 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 Series A Common Stock and Series B Gold Common Stock issuable in payment of such dividend or distribution. Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price of each series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price of each series of Preferred Stock shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders 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 Series A Common Stock as they would have received if all outstanding shares of Stock had been converted into Series A Common Stock on the date of such event.

(i) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Series A Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Series A Common Stock in respect of outstanding shares of Series A Common Stock) or of holders of Series B Gold Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Series B Gold Common Stock in respect of outstanding shares of Series B Gold Common Stock) or in other property and the provisions of Section 2 of this Article do not apply to such dividend or distribution, then and in each such event the holders of

Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

(j) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 4 ("*Liquidation and Deemed Liquidation Events*"), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger (other than a Deemed Liquidation Event) involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by subsections 8.1(d), 8.1(g), 8.1(h) or 8.1(i)), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of such series of Preferred Stock shall thereafter be convertible, in lieu of the Series A Common Stock into which it was convertible prior to such event, into the kind and amount of securities, cash or other property which a holder of the number of shares of Series A Common Stock of the Corporation issuable upon conversion of one share of such series of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Corporation's Board of Directors) shall be made in the application of the provisions in this Section 8 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 8 (including provisions with respect to changes in and other adjustments of the Conversion Price of such series of Preferred Stock) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such series of Preferred Stock

(k) 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 8; provided however, that notwithstanding the foregoing or anything in this Section 8 to the contrary, the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Series A Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered and held of record, and the Corporation shall have no obligation to make any such issuance or delivery, 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 in full.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 8.1(h), the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Series A Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock

(m) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of the majority of the outstanding shares of such series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock

**8.2**     Series B Gold Common Stock. The holders of the Series B Gold Common Stock shall have conversion rights as follows:

(a)     Optional Conversion. Each share of Series B Gold Common Stock shall be convertible into one (1) fully paid and nonassessable share of Series A Common Stock at the option of the holder thereof at any time upon written notice to the Corporation as provided herein. Before any holder of Series B Gold Common Stock shall be entitled to voluntarily convert any shares of such Series B Gold Common Stock at such holder's option pursuant to this Section 8.2, such holder shall surrender the certificate or certificates for such shares of Series B Gold Common Stock (if any), duly endorsed, at the principal corporate office of the Corporation or of any transfer agent for the Series B Gold Common Stock or the Series A Common Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names (i) in which the certificate or certificates representing the shares of Series A Common Stock into which the shares of Series B Gold Common Stock are so converted are to be issued if such shares are certificated or (ii) in which such shares are to be registered in book entry if such shares are uncertificated. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Gold Common Stock, or to the nominee or nominees of such holder, a certificate or certificates representing the number of shares of Series A Common Stock to which such holder shall be entitled as aforesaid (if such shares are certificated) or, if such shares are uncertificated, register such shares in book-entry form. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Gold Common Stock to be converted following or contemporaneously with the written notice of such holder's election to convert required by this Section 8.1, and the person or persons entitled to receive the shares of Series A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Series A Common Stock as of such date.

(b)     Automatic Conversion. After the occurrence of a Transfer of any outstanding share of Series B Gold Common Stock (other than a Transfer that is a "Permitted Transfer"), such outstanding share of Series B Gold Common Stock shall, without the need for any further action by the holder thereof, automatically be converted into one (1) fully paid and nonassessable share of Series A Common Stock thirty (30) days after the date of the occurrence of such Transfer. For the avoidance of doubt, a Permitted Transfer of any share or shares of Series B Gold Common Stock shall not result in, or cause, any automatic or other conversion of such share or shares of Series B Gold Common Stock into Series A Common Stock or any other capital stock.

(c)     Matters Concerning Permitted Transfers. For purposes of determining whether a Transfer of a share or shares of Series B Gold Common Stock is a Permitted Transfer:

(i)       Such Transfer shall be deemed to have been approved by a holder or holders of a majority of all then outstanding shares of Series B Gold Common Stock when the approval of such Transfer by a holder or holders of a majority of all then outstanding shares of Series B Gold Common Stock is delivered to the Corporation in writing (as provided in subsection 8.2(c)(ii) below) by physical delivery or is transmitted by telegram, cablegram, telex, electronic mail or other electronic transmission to either (i) the Corporation's registered office in the State of Delaware, (ii) the Corporation's principal place of business, (iii) any officer or registered agent of the Corporation (including, but not limited to, the Corporation's Chairperson of the Board, Chief Executive Officer, President, Chief Financial Officer, Treasurer, Assistant Treasurer, any Vice President, Secretary, Assistant Secretary or the General Counsel) or (iv) the then-current outside corporate legal counsel to the Corporation (if any).

(ii) Approval of such Transfer of a share or shares of Series B Gold Common Stock by a holder or holders of an outstanding share or shares of Series B Gold Preferred Stock shall be deemed to be “*in writing*” if such approval is either (x) set forth on paper or in any other tangible medium and signed (including without limitation by an electronic signature through DocuSign or a similar electronic signature service) by the holder or holders of Series B Gold Common Stock approving such Transfer (in which case such approval on paper or any other tangible medium may be delivered to the location(s) or Person(s) indicated in subsection 8.2(c)(i) above by hand-delivery, mail, courier, messenger or any other delivery service), or (y) sent by telegram, cablegram, telex, electronic mail or any other form of electronic transmission, that sets forth or is delivered with information from which the Corporation can determine that the telegram, cablegram, telex, electronic mail or other form of electronic transmission was transmitted by the holder of then outstanding Series B Gold Preferred Stock (or by a proxy or other Person or Persons authorized to act for such holder of Series B Gold Preferred Stock). For purposes of this subsection 8.2(c)(ii) any copy, facsimile, .pdf file or other reliable reproduction of any approval may be substituted or used in lieu of the original writing.

(iii) If such Transfer is a Marital Dissolution Transfer by a Controlling Holder Spouse requiring approval of a Disinterested Board Majority under Section 7.20 of this Article V, then approval of such Marital Dissolution Transfer by a Disinterested Board Majority may be obtained (i) in any manner permitted by applicable law, (ii) in any manner permitted by the Corporation’s Bylaws, or (iii) by the written consent (which need not be unanimous) of a Disinterested Board Majority.

(d) Policies and Procedures. The Corporation may, from time to time, establish such policies and procedures, not in violation of applicable law or the other provisions of the Corporation’s Certificate of Incorporation, relating to the conversion of the Series B Gold Common Stock to Series A Common Stock and the general administration of this dual class common stock structure, including the issuance of stock certificates with respect thereto, as it may deem necessary or advisable. If the Corporation has reason to believe that a Transfer giving rise to a conversion of shares of Series B Gold Common Stock into Series A Common Stock has occurred but has not theretofore been reflected on the books of the Corporation, the Corporation may request that the holder of such shares furnish affidavits or other evidence to the Corporation as the Corporation reasonably deems necessary to verify the ownership of such shares and to determine whether a conversion of shares of Series B Gold Common Stock to Series A Common Stock has occurred and by accepting shares of Series B Gold Common Stock each holder thereof agrees to use diligent efforts to promptly furnish such affidavits or other evidence to the Corporation. A good faith determination by the Corporation’s Board of Directors that a Transfer results in a conversion of Series B Gold Common Stock into Series A Common Stock, made with the advice of legal counsel to the Corporation, shall be conclusive, absent manifest error or the contrary ruling of a court of competent jurisdiction. In connection with any action of stockholders taken at a meeting or by written consent, the stock ledger of the Corporation shall be presumptive evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders or in connection with any such written consent and the class or classes or series of shares held by each such stockholder and the number of shares of each class or classes or series held by such stockholder.

(e) Effect of Conversion. Upon any conversion of any share of Series B Gold Common Stock into Series A Common Stock pursuant to this Section 8, all rights of the holder of such converted share of Series B Gold Common Stock shall cease and the person or persons in whose names or names such converted share of Series B Gold Common Stock was registered immediately prior to the time of such conversion shall be treated for all purposes as having become the record holder or holders of such share(s) of Series A Common Stock issuable upon such conversion.

(f) Retirement of Converted Series B Gold Common Shares. Each outstanding share of Series B Gold Common Stock that is converted into Series A Common Stock pursuant to this Article V, or that is repurchased by the Corporation, shall be retired by the Corporation and shall not be available for reissuance.

(g) Effect of Conversion on Payment of Dividends. Notwithstanding anything to the contrary in this Article V, if the date on which any outstanding share of Series B Gold Common Stock is converted into Series A Common Stock pursuant to the provisions of this Article V occurs after the record date for the determination of the holders of Series B Gold Common Stock entitled to receive any dividend or distribution to be paid on the shares of Series B Gold Common Stock, then the holder of such outstanding shares of Series B Gold Common Stock as of such record date will be entitled to receive such dividend or distribution on such payment date notwithstanding such conversion; *provided, however,* that, notwithstanding the foregoing or any other provision of the Corporation's Certificate of Incorporation, to the extent that any such dividend or distribution is payable in shares of Series B Gold Common Stock (or in the Voting Securities or Exchangeable Securities payable on shares of Series B Gold Common Stock), such dividend or distribution shall instead be deemed to have been declared, and shall instead be payable in, shares of Series A Common Stock (or, if applicable, the Voting Securities or Exchangeable Securities payable on shares of Series A Common Stock) and no shares of Series B Gold Common Stock (or the Voting Securities or Exchangeable Securities payable on shares of Series B Gold Common Stock) shall be issued in payment thereof.

**8.3** Reservation of Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series A Common Stock, solely for the purpose of effecting the conversion of the shares of Series B Gold Common Stock and Series A Preferred Stock, such number of its shares of Series A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B Gold Common Stock and Series A Preferred Stock into shares of Series A Common Stock.

**9.** Equal Status. Except as otherwise required by law or as expressly otherwise set forth in this Article V, the Common Stock and Preferred Stock shall have the same rights and privileges and rank equally, share ratably and be identical in all respects as to all matters.

## ARTICLE VI

Subject to any additional vote, approval or consent required by the Corporation's Certificate of Incorporation or Bylaws or by applicable law, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation shall have the power to adopt, amend or repeal Bylaws of the Corporation.

## ARTICLE VII

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

## ARTICLE VIII

**1.** Limitation of Liability. To the fullest extent permitted by law, no director of the Corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the

liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. **Change in Rights.** Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VIII, shall eliminate, reduce or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such amendment, repeal or adoption of such an inconsistent provision.

## ARTICLE IX

To the fullest extent permitted by applicable law, the Corporation is authorized, subject to the approval of its Board of Directors, to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which Delaware General Corporation Law permits the Corporation to provide indemnification) through provisions of the Bylaws, 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 Delaware General Corporation Law.

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

## ARTICLE X

To the fullest extent permitted by the Delaware General Corporation Law, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "*Excluded Opportunity*" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, any Founder (as defined in Article V) who, at the time in question, is a member of the Corporation's Board of Directors and is not then an employee of the Corporation or any of its subsidiaries unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, such Founder expressly and solely in such person's capacity as a member of the Board of Directors of the Corporation.

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