

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT7458269

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER AND CHANGE OF NAME
EFFECTIVE DATE:	06/08/2020
CONVEYING PARTY DATA	
Name	Execution Date
FLOW FORWARD MEDICAL, INC.	06/08/2020
NEWLY MERGED ENTITY DATA	
Name	Execution Date
ARTIO MEDICAL, INC.	06/08/2020
MERGED ENTITY'S NEW NAME (RECEIVING PARTY)	
Name:	ARTIO MEDICAL, INC.
Street Address:	4220 SHAWNEE MISSION PARKWAY, SUITE B350
City:	FAIRWAY
State/Country:	KANSAS
Postal Code:	66205
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	15607198
CORRESPONDENCE DATA	
Fax Number:	
<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>	
Email:	LAHO@POL SINELLI.COM, PATENTDOCKETING@POL SINELLI.COM
Correspondent Name:	POL SINELLI
Address Line 1:	THREE EMBARCADERO CENTER, SUITE 2400
Address Line 4:	SAN FRANCISCO, CALIFORNIA 94111
ATTORNEY DOCKET NUMBER:	078498-571241
NAME OF SUBMITTER:	LINDSAY AHO
SIGNATURE:	/LINDSAY AHO/
DATE SIGNED:	07/28/2022
Total Attachments: 21	

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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:

"FLOW FORWARD MEDICAL, INC.", A DELAWARE CORPORATION,
WITH AND INTO "ARTIO MEDICAL, INC." UNDER THE NAME OF "ARTIO
MEDICAL, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE
LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS
OFFICE ON THE EIGHTH DAY OF JUNE, A.D. 2020, AT 4:50 O`CLOCK
P.M.



5442915 8100M
SR# 20205566472

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

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

Authentication: 203069984
Date: 06-08-20

PATENT
REEL: 061003 FRAME: 0642

CERTIFICATE OF MERGER

OF

FLOW FORWARD MEDICAL, INC.,
a Delaware corporation

WITH AND INTO

ARTIO MEDICAL, INC.,
a Delaware corporation

June 8, 2020

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:50 PM 06/08/2020
FILED 04:50 PM 06/08/2020
SR 20205566472 - File Number 5442915

Artio Medical, Inc., a Delaware corporation (the “**Surviving Corporation**”), for purposes of filing the certificate of merger pursuant to Title 8, Section 251(c), of the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby affirm, execute, certify and deliver the following certificate of merger (this “**Certificate of Merger**”) to be filed with the Secretary of State of the State of Delaware as follows:

FIRST: That the name and state of incorporation of each of the constituent corporations (the “**Constituent Corporations**”) is as follows:

<u>NAME</u>	<u>STATE OF INCORPORATION</u>
Artio Medical, Inc.	Delaware
Flow Forward Medical, Inc.	Delaware

SECOND: That an Agreement and Plan of Merger by and among Artio Medical, Inc. and Flow Forward Medical, Inc. (the “**Merger Agreement**”) has been approved, adopted, executed and acknowledged by each of the Constituent Corporations in accordance with Title 8, Section 251 of the DGCL.

THIRD: That the name of the surviving corporation in the merger is Artio Medical, Inc.

FOURTH: That the Certificate of Incorporation of the Surviving Corporation, as in effect immediately prior to the Merger, shall be amended and restated in its entirety as set forth in Annex A attached hereto and, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Corporation until further amended pursuant to the DGCL.

FIFTH: That this Certificate of Merger and the merger of the constituent entities, as described herein and in the Agreement and Plan of Merger, will be effective as of the date this Certificate of Merger is filed with the Secretary of State of the State of Delaware.

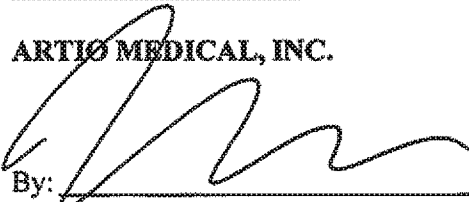
SIXTH: The executed Merger Agreement is on file at the office of the Surviving Corporation, which is located at 4220 Shawnee Mission Parkway, Suite B350, Fairway, KS 66205.

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

IN WITNESS WHEREOF, said corporation has caused this Certificate of Merger to be signed by an authorized officer on the date set forth above.

SURVIVING ENTITY:

ARTIO MEDICAL, INC.

A handwritten signature in black ink, appearing to read 'F. Nicholas Franano', written over a horizontal line.

By:

F. Nicholas Franano, President and Chief
Executive Officer

PATENT

REEL: 061003 FRAME: 0644

ANNEX A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

See attached.

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ARTIO MEDICAL, INC.**

FIRST: The name of this corporation is Artio Medical, Inc.

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

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

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is:

- (i) 80,000,000 shares of Common Stock \$0.01 par value per share (the “**Common Stock**”);
- (ii) 65,000,000 shares of Preferred Stock \$0.01 par value per share (the “**Preferred Stock**” and together with the Common Stock, the “**Corporation Stock**”; the holders of the Corporation Stock being the “**Stockholders**”).

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

A. COMMON STOCK

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

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of Stockholders (and written actions in lieu of meetings); *provided, however,* that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation of the Corporation (this “**Amended and Restated Certificate of Incorporation**”) that relates solely to the terms of Series A Preferred Stock or one or more other outstanding series of Preferred Stock, if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock can be increased or decreased (but not below the number of shares thereof then outstanding) by (i) the affirmative vote of the holders of a majority of Series A Preferred Stock entitled to vote; *and* (ii) the affirmative vote of the holders of a majority of all outstanding shares of Corporation Stock entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

1. Series A Preferred Stock. 41,000,000 shares of the authorized and unissued Preferred Stock of the Corporation, *plus* at any given time the number of additional authorized shares of Preferred Stock that have not been designated for issuance pursuant to a Certificate of Designation adopted by the Board and filed with the Delaware Secretary of State, and that has not subsequently been amended, pursuant to Article Fifth, are hereby designated as “**Series A Preferred Stock**” with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to “Sections” or “Subsections” in this Part B of this Article **Error! Reference source not found.** refer to sections and subsections of Part B of this Article Fourth.

2. Dividends.

(a) The holders of Series A Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive, upon a redemption pursuant to Section 7 below but only out of funds that are legally available therefor, an annual and cumulative cash dividend of \$0.07 per each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), accruing from the Series A Original Issuance Date (as defined below) through and including the applicable Redemption Date (as defined in Section 7 below). For the avoidance of doubt, the cumulative cash dividend described in this Section 2(a) shall be part of the Redemption Price and shall be payable only upon a redemption of Series A Preferred Stock in accordance with Section 7.

(b) The holders of Series A Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive when and as declared by the Board, but only out of funds that are legally available therefor, a non-cumulative cash dividend of \$0.07 per each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) payable only when, as and if declared by the Board.

(c) The Corporation shall not declare, pay, or set aside any dividends on Common Stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (i) any consents required in this Amended and Restated Certificate of Incorporation have been obtained; and (ii) the holders of Series A Preferred Stock then outstanding have first received, or will simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to or greater than the product of (1) the dividend payable on each share of Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock calculated on the record date for determination of holders entitled to receive such dividend.

(d) The “**Series A Original Issuance Date**” shall mean, for each share of Series A Preferred Stock, the date on which such share was issued by the Corporation to the holder thereof.

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

3.1 Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to Stockholders before any payment shall be made to the holders of Common Stock, by reason of their ownership thereof, an amount per share equal to the Series A Original Issue Price, together with any dividends declared but unpaid thereon (the “**Series A Preference Payment**”). If, upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to Stockholders shall be insufficient to pay the Series A Preference Payment, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective Series A Preference Payment amounts which would otherwise be payable if the Series A Preference Payment were paid in full.

The “**Series A Original Issue Price**” shall mean \$1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or recapitalization with respect to the Series A Preferred Stock.

3.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of the Series A Preference Payment along with all other preferential amounts required to be paid to the holders of shares of the Series A Preferred Stock, the remaining assets of the Corporation available for distribution to Stockholders shall be distributed among the holders of the shares of Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation or Deemed Liquidation Event. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Section 3.1 and this Section 3.2 is hereinafter referred to as the “**Series A Liquidation Amount.**”

3.3 Deemed Liquidation Events.

3.3.1. Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock elect otherwise by written notice sent to the Corporation at least one (1) business day prior to the effective date of any such event:

(a) a merger or consolidation in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, an amount exceeding fifty percent (50%), by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (*provided that* for the purpose of this Subsection 3.3.1, all shares of Common Stock issuable upon exercise of Options (as hereinafter defined)

outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as hereinafter defined) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary 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 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.

3.3.2. Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 3.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to Stockholders shall be allocated among the holders of Corporation Stock in accordance with Subsections 3.1 and 3.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 3.3.1(a)(i) or 3.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of at least a majority of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event, net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board, (the “**Net Proceeds**”), to the extent legally available therefor, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder’s shares of Series A Preferred Stock to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Subsections 7.2 through 7.4 shall apply, with such necessary changes in the details thereof as are needed to align the redemption of Series A Preferred Stock with this Subsection 3.3.2(b). Prior to the distribution or redemption provided for in this Subsection 3.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event,

except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

3.3.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of Corporation Stock upon any merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board.

3.3.4. Allocation of Escrow. In the case of a Deemed Liquidation Event pursuant to Subsection 3.3.1(a)(i), if any portion of the consideration payable to Stockholders of the Corporation is placed into escrow or is payable to Stockholders subject to contingencies, the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “**Initial Consideration**”) shall be allocated among the holders of Corporation Stock in accordance with Subsections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to Stockholders upon release from escrow or satisfaction of contingencies shall be allocated among the holders of Corporation Stock in accordance with Subsections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. The result of this approach is that, for certain transactions, the portion of the transaction consideration that is subject to an escrow or other contingencies may be allocated disproportionately to the holders of Common Stock.

4. Voting.

4.1 General. On any matter presented to Stockholders for their action or consideration at any meeting of Stockholders (or by written consent of Stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining Stockholders entitled to vote on such matter. Except, as provided by law, by the other provisions of this Amended and Restated Certificate of Incorporation, or other agreements, holders of Series A Preferred Stock shall vote together with the holders of Common Stock as a single class.

4.2 Election of Directors.

(a) The number of Directors constituting the whole Board shall be five (5).

(b) The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) Directors of the Corporation (the “**Series A Directors**”).

(c) The person then serving as the Chief Executive Officer of the Corporation will serve as a Director (the “**CEO Director**”).

(d) The “**Key Holder**” (as defined in the Amended and Restated Voting Agreement by and among the Corporation and certain Stockholders, dated as of June 8, 2020)

shall be entitled to elect one (1) Director of the Corporation (the “**Common Director**”) based on a majority vote of the Common Stock held by the Key Holder.

(e) A majority of the four (4) Directors described above will be entitled to elect one (1) person who is not an Affiliate of the Corporation or investor of the Corporation, (the “**Independent Director**”), such majority including at least one (1) Series A Director. For the purpose of this Amended and Restated Certificate of Incorporation, the term “**Affiliate**” means with respect to any individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (each, a “**Person**”), any other Person who or which, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, including, without limitation, any partner, officer, director, member or employee of such Person and any venture capital fund now or hereafter existing that is controlled by or under common control with one or more general partners of, or shares the same management company with, such Person.

(f) At any meeting held for the purpose of electing a Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such Director shall constitute a quorum for the purpose of electing such Director. Any Director elected as provided in this section may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of Corporation Stock entitled to elect such Director or Directors, given either at a special meeting of such Stockholders duly called for that purpose or pursuant to a written consent of such Stockholders. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series.

4.3 Series A Preferred Stock Protective Provisions. At any time when shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

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

4.3.2. amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or the Amended and Restated Bylaws of the Corporation (the “**Amended and Restated Bylaws**”) in a manner that adversely affects the powers, preferences, or rights of the Series A Preferred Stock;

4.3.3. create, authorize the creation of, issue, or obligate itself to issue shares of any additional class or series of Corporation Stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or a Deemed Liquidation Event;

- 4.3.4. pay dividends or rights of redemption;
- 4.3.5. increase the authorized number of shares of Series A Preferred Stock;
- 4.3.6. increase the authorized number of shares of any additional class or series of Corporation Stock;
- 4.3.7. reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, or a Deemed Liquidation Event, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock in respect of any such right, preference, or privilege;
- 4.3.8. reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series A Preferred Stock in respect of any such right, preference or privilege;
- 4.3.9. purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of Corporation Stock other than (i) redemptions of, dividends on, or distributions on Corporation Stock as expressly authorized herein, (ii) dividends or other distributions payable on Common Stock solely in the form of additional shares of Common Stock; and (iii) repurchases of stock from (current and former) Directors, officers of the Corporation (“**Officers**”), employees of the Corporation (“**Employees**”), consultants providing services for the Corporation (“**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;
- 4.3.10. create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed \$250,000.00, unless such debt security has received the prior approval of the Board, including the approval of at least one (1) of the Series A Directors;
- 4.3.11. create or hold Corporation Stock in any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any Corporation Stock of any direct or indirect subsidiary of the Corporation;
- 4.3.12. permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary; or
- 4.3.13. increase or decrease the authorized number of Directors constituting the Board.

5. Optional Conversion.

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

5.1 Right to Convert.

5.1.1. Conversion Ratio. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The “**Series A Conversion Price**” shall initially be equal to \$1.00. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

5.1.2. Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 7, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation, or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

5.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

5.3 Mechanics of Conversion.

5.3.1. Notice of Conversion. In order for a holder of Series A Preferred Stock to voluntarily convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder’s name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written

instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her, or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the “**Conversion Time**”), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver to such holder of Series A Preferred Stock, or to his, her, or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof, a certificate for the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, cash as provided in Subsection 5.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion, and cash payment of any declared but unpaid dividends on the shares of Series A Preferred Stock converted.

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

5.3.3. Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only (i) the right of the holders thereof to receive shares of Common Stock in exchange therefor; (ii) the right of the holders thereof to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 5.2; and (iii) the right of the holders thereof to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for Stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

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

5.3.5. Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

5.4 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issuance Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issuance Date combine the outstanding shares of Common Stock, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this Section 5.4 shall become effective at the close of business on the date the subdivision or combination becomes effective.

5.5 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 Common Stock in additional shares of Common Stock, then and in each such event, the Series A Conversion Price 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 Series A Conversion Price then in effect by a fraction:

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

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

Notwithstanding the foregoing, 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 Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this Section 5.5 as of the time of actual payment of such dividends or distributions. No such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

5.6 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 Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 2 do not apply to such dividend or distribution, then and in each such event the holders of Series A 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.

5.7 Adjustment for Merger or Reorganization. etc. Subject to the provisions of Subsection 3.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 5.4, 5.5, or 5.6), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter *be* applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

5.8 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 5, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

5.9 Notice of Record Date. In the event of (i) any capital reorganization of the Corporation; (ii) any reclassification of Series A Preferred Stock, Preferred Stock, Common Stock, other capital stock of any class; (iii) any Deemed Liquidation Event; or (iv) the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, then the Corporation shall:

(a) make a record of the holders of Corporation Stock for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for, or purchase, any shares of Corporation Stock, collectively (the “**Notified Parties**”); and

(b) send or cause to be sent to Notified Parties a notice (the “**Notice**”) at least ten (10) days prior to the record date or effective date for the event specified in such Notice specifying, as the case may be:

(i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right (the “**Record Date**”), and

(ii) the effective date on which such capital reorganization, reclassification of Corporation Stock, Deemed Liquidation Event, or voluntary or involuntary dissolution, liquidation or winding-up of the Corporation is proposed to take place, and the time, if any is to be fixed, as of which the Notified Parties shall be entitled to exchange their Corporation Stock for securities or other property deliverable upon such capital reorganization, reclassification of Corporation Stock, Deemed Liquidation Event, or voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, and the amount per share and character of such exchange applicable to each class or series of Corporation Stock.

6. Mandatory Conversion.

6.1 Trigger Events. Upon either (i) the closing of the sale of shares of Common Stock to the public at a price of at least \$3.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$15,000,000 of proceeds, net of the underwriting discount and commissions, to the Corporation; or (ii) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and such shares may not be reissued by the Corporation. For this Amended and Certified Certificate of Incorporation, the time of the closing described in clause 6.1(i), the date or time specified in the vote or written consent described in clause 6.1(ii), or the time of the event specified in the vote or written consent described in clause 6.1(ii) shall all be a “**Mandatory Conversion Time**”.

6.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock shall be sent written notice of a Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 6. Such notice need not be sent in advance of the occurrence of a Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost *certificate* affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which

such holder is entitled pursuant to this Section 7. At a Mandatory Conversion Time, all outstanding shares of Series A Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series A Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the last sentence of this Subsection 6.2. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after a Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 5.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Series A Preferred Stock so converted.

6.3 Effect of Mandatory Conversion. All shares of Series A Preferred Stock shall, from and after a Mandatory Conversion Time, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at a Mandatory Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any cash in lieu of any fractional shares and any dividends declared but unpaid thereon. Such converted Series A Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for Stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

7. Redemption.

7.1 Redemption. Shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series A Original Issue Price per share, plus any dividends accrued but unpaid thereon, whether or not declared, (the “**Redemption Price**”), in three annual installments commencing sixty (60) days after receipt by the Corporation at any time on or after the tenth (10th) anniversary of the Series A Original Issue Date, from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the date of each such installment being referred to as, a “**Redemption Date**”). The Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware law governing distributions to Stockholders. On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock owned by each holder, that number of outstanding shares of Series A Preferred Stock determined by dividing (i) the total number of shares of Series A Preferred Stock outstanding immediately prior to such Redemption Date (numerator) by (ii) the number of remaining Redemption Dates, including the Redemption Date to which such calculation applies (denominator); provided, however, that Excluded Shares (as such term is defined in Section 7.2) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. If the

Corporation does not have sufficient funds legally available therefor to redeem on any Redemption Date, all shares of Series A Preferred Stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of Series A Preferred Stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

7.2 Redemption Notice. Written notice of a redemption (the "**Redemption Notice**") shall be sent to each holder of record of Series A Preferred Stock not less than forty (40) days prior to each Redemption Date. Each Redemption Notice shall state:

- (a) the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;
- (b) the Redemption Date and the Redemption Price;
- (c) the date upon which the holder's right to convert such shares terminates, as determined in accordance with Subsection 5.1; and
- (d) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the twentieth (20th) day after the date of delivery of the Redemption Notice to a holder of Series A Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 7, then the shares of Series A Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be excluded (the "**Excluded Shares**"). Excluded Shares shall not be redeemed or redeemable pursuant to this Section 7, whether on such Redemption Date or thereafter. Excluded Shares shall automatically be converted into shares of Common Stock on the first Redemption Date, at the then effective conversion rate. No holder of Series A Preferred Stock that was included in the majority of Series A Preferred Stock requesting the redemption in accordance with this section may elect to be excluded from the redemption and all of such holder's shares of Series A Preferred Stock shall be redeemed in accordance with this section.

7.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 5, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series A

Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

7.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series A Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series A Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

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

9. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative vote or written consent of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding.

10. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law or given in any manner in which electronic communications are authorized to be given or delivered pursuant to the Amended and Restated Bylaws of the Corporation from time to time, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: By majority vote, the Board is hereby expressly authorized to provide, from time to time out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock in addition to the Series A Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, if any, of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series, all of the foregoing to be set forth in one or more Certificates of Designation to be filed with the Delaware Secretary of State in accordance with the General Corporation Law (each, a “**Certificate of Designation**”). The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding, and the Certificate of Designation shall constitute an amendment of this Amended and Restated Certificate of Incorporation.

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

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

EIGHTH: Elections of Directors need not be by written ballot unless the Amended and Restated Bylaws shall so provide.

NINTH: Meetings of Stockholders may be held within or without the State of Delaware, as the Amended and Restated Bylaws may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Amended and Restated Bylaws.

TENTH: To the fullest extent permitted by law, a Director shall not be personally liable to the Corporation or Stockholders for monetary damages for breach of fiduciary duty as a Director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by Stockholders of this Article Tenth to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article Tenth by Stockholders shall not adversely affect any right or protection of a Director of the Corporation existing at the time of, or increase the liability of any Director with respect to any acts or omissions of such Director occurring prior to, such repeal or modification.

ELEVENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of, and advancement of expenses to, Directors and Officers in excess of the indemnification and advancement of expenses otherwise permitted by Section 145 of the General Corporation Law through (i) provisions the Amended and Restated Bylaws may provide; (ii) agreements between the Corporation and such Directors, Officers agents, and other persons; (iii) vote of Stockholders; or (iv) vote of the Board by disinterested Directors. To the fullest extent permitted by applicable law, the Corporation may provide indemnification of, and advancement of expenses to, agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification or advancement of expenses) in excess of the indemnification and advancement of expenses otherwise permitted by Section 145 of the General Corporation Law through (i) provisions the Amended and Restated Bylaws may provide; (ii) agreements between the Corporation and such Directors, Officers agents, and other persons; (iii) vote of Stockholders; or (iv) vote of the Board by disinterested Directors. Any amendment, repeal or modification of the foregoing provisions of this Article Eleventh shall not (i) 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;

or (ii) increase the liability of any Director, Officer, other agent of the Corporation, or other indemnified party with respect to any acts or omissions of such Director, Officer, agent of the Corporation, or indemnified party occurring prior to such amendment, repeal or modification.

TWELFTH: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered, an opportunity to participate in any matter, transaction or interest that is presented to, acquired, created or developed by, or which otherwise comes into the possession of (i) any Director who is not an Employee or Consultant of the Corporation or any of its subsidiaries, or (ii) any Stockholder or any partner, member, director, stockholder, employee, Affiliate or agent of any such Stockholder who is not an Employee or Consultant of the Corporation or any of its subsidiaries (collectively, “**Covered Persons**”), unless such matter, transaction or interest is presented to, acquired by, created by, developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a Director or Stockholder while such Covered Person is performing services to the Corporation in such capacity. Any repeal or modification of this Article Twelfth will only be prospective and will not affect the rights under this Article Twelfth in effect at the time of the occurrence of any actions or omissions to act giving rise or potentially giving rise to liability.

THIRTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any Stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of fiduciary duty owed by any Director, Officer, Employee, Consultant, or Stockholder; (iii) any action asserting a claim against the Corporation, Directors, Officers, Employees, Consultants, and Stockholders arising pursuant to any provision of the Delaware General Corporation Law, this Amended and Restated Certificate of Incorporation or the Amended and Restated Bylaws; or (iv) any action asserting a claim against the Corporation, Directors, Officers, Employees, and Consultants governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Thirteenth (including, without limitation, each portion of any sentence of this Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons, entities and circumstances shall not in any way be affected or impaired thereby.