

Delaware

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The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE RESTATED CERTIFICATE OF "SPACE EXPLORATION
TECHNOLOGIES CORP.", FILED IN THIS OFFICE ON THE FOURTH DAY OF
AUGUST, A.D. 2020, AT 12:49 O'CLOCK P.M.*



Jeffrey W. Bullock, Secretary of State



3500808 8100
SR# 20206566382

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

Authentication: 203403354
Date: 08-04-20

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:49 PM 08/04/2020
FILED 12:49 PM 08/04/2020
SR 20206566382 - File Number 3500808

**OF
SPACE EXPLORATION TECHNOLOGIES CORP.**

The undersigned, Elon Musk, hereby certifies that:

1. The undersigned is the duly elected Chief Executive Officer of Space Exploration Technologies Corp., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on March 14, 2002.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I.

The name of this corporation is Space Exploration Technologies Corp. (the "*Corporation*").

ARTICLE II.

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

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 Delaware.

ARTICLE IV.

(A) Classes of Stock. The Corporation is authorized to issue four classes of stock to be designated, respectively, "*Class A Common Stock*," "*Class B Common Stock*," "*Class C Common Stock*" and "*Preferred Stock*." The total number of shares which the Corporation is authorized to issue is six hundred five million seven hundred eighty-six thousand (605,786,000) shares, each with a par value of \$0.001 per share. Two hundred forty-two million six hundred forty-three thousand (242,643,000) shares shall be Class A Common Stock, one hundred six million five hundred thousand (106,500,000) shares shall be Class B Common Stock, fifty million (50,000,000) shares shall be Class C Common Stock and Two hundred six million six hundred forty-three thousand (206,643,000) shares shall be Preferred Stock. As used in this Amended and

Restated Certificate of Incorporation, “***Common Stock***” shall refer collectively to the Class A Common Stock, the Class B Common Stock and the Class C Common Stock, each as applicable.

(B) **Powers, Preferences and Special Rights of Preferred Stock.** The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. Of the authorized Preferred Stock, sixty-one million (61,000,000) shares shall be designated “***Series A Preferred Stock***”, sixty-one million (61,000,000) shares shall be designated “***Series A-1 Preferred Stock***”, five million five hundred thousand (5,500,000) shares shall be designated “***Series B Preferred Stock***”, five million five hundred thousand (5,500,000) shares shall be designated “***Series B-1 Preferred Stock***”, ten million five hundred thousand (10,500,000) shares shall be designated “***Series C Preferred Stock***”, seven million five hundred thousand (7,500,000) shares shall be designated “***Series D Preferred Stock***”, ten million five hundred thousand (10,500,000) shares shall be designated “***Series E Preferred Stock***”, six million seven hundred fifty thousand (6,750,000) shares shall be designated “***Series F Preferred Stock***”, thirteen million (13,000,000) shares shall be designated “***Series G Preferred Stock***”, three million three hundred fifty thousand (3,350,000) shares shall be designated “***Series H Preferred Stock***”, three million (3,000,000) shares shall be designated “***Series I Preferred Stock***”, two million six hundred ninety thousand (2,690,000) shares shall be designated “***Series J Preferred Stock***”, two million six hundred fifty-one thousand (2,651,000) shares shall be designated “***Series K Preferred Stock***”, one million four hundred sixty-eight thousand (1,468,000) shares shall be designated “***Series L Preferred Stock***”, two million seven hundred twenty-eight thousand (2,728,000) shares shall be designated “***Series M Preferred Stock***” and nine million five hundred six thousand (9,506,000) shares shall be designated “***Series N Preferred Stock***” (individually and collectively, the Series A Preferred Stock, the Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock, the Series I Preferred Stock, the Series J Preferred Stock, the Series K Preferred Stock, the Series L Preferred Stock, the Series M Preferred Stock and the Series N Preferred Stock are referred to as the “***Series Preferred Stock***”). The powers, preferences, special rights, and restrictions granted to and imposed on the Series Preferred Stock are as set forth below in this Article IV(B). Any shares of Preferred Stock (other than High Vote Preferred Stock (as defined in Article IV(B), Section 4(a))) that may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or by the terms of any series of Preferred Stock. Notwithstanding anything to the contrary in this Amended and Restated Certificate of Incorporation, the Series A-1 Preferred Stock and the Series B-1 Preferred Stock shall be reserved for and issued only in accordance with Article IV(B), Section (4)(b)(iii).

1. **Dividend Provisions.** Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the holders of shares of Series Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in a class of Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or

indirectly, additional shares of a class of Common Stock of the Corporation) on any class of Common Stock of the Corporation, at the following rates:

(a) Holders of shares of Series A Preferred Stock shall be entitled to receive \$0.05 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A Preferred Stock.

(b) Holders of shares of Series A-1 Preferred Stock shall be entitled to receive \$0.05 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series A-1 Preferred Stock.

(c) Holders of shares of Series B Preferred Stock shall be entitled to receive \$0.10 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series B Preferred Stock.

(d) Holders of shares of Series B-1 Preferred Stock shall be entitled to receive \$0.10 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series B-1 Preferred Stock.

(e) Holders of shares of Series C Preferred Stock shall be entitled to receive \$0.15 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series C Preferred Stock.

(f) Holders of shares of Series D Preferred Stock shall be entitled to receive \$0.194 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series D Preferred Stock.

(g) Holders of shares of Series E Preferred Stock shall be entitled to receive \$0.225 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series E Preferred Stock.

(h) Holders of shares of Series F Preferred Stock shall be entitled to receive \$0.375 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series F Preferred Stock.

(i) Holders of shares of Series G Preferred Stock shall be entitled to receive \$3.873 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series G Preferred Stock.

(j) Holders of shares of Series H Preferred Stock shall be entitled to receive \$6.75 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series H Preferred Stock.

(k) Holders of shares of Series I Preferred Stock shall be entitled to receive \$8.45 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series I Preferred Stock.

(l) Holders of shares of Series J Preferred Stock shall be entitled to receive \$9.30 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series J Preferred Stock.

(m) Holders of shares of Series K Preferred Stock shall be entitled to receive \$10.20 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series K Preferred Stock.

(n) Holders of shares of Series L Preferred Stock shall be entitled to receive \$10.70 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series L Preferred Stock.

(o) Holders of shares of Series M Preferred Stock shall be entitled to receive \$11.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series M Preferred Stock.

(p) Holders of shares of Series N Preferred Stock shall be entitled to receive \$13.50 per share (as adjusted for stock splits, stock dividends, reclassification and the like) per annum on each outstanding share of Series N Preferred Stock.

Any such dividends shall be payable when, as and if declared by the Board of Directors of the Corporation (the “*Board of Directors*”). Such dividends shall not be cumulative. Subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, any dividends paid to the holders of shares of Series Preferred Stock shall be paid pro rata, on an equal priority, pari passu basis (in proportion to the aggregate amount of all declared and unpaid dividends on all Series Preferred Stock) in accordance with the provisions set forth in this Article IV(B)(1).

2. Liquidation.

(a) Preference.

(i) **Series N Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock, the Series I Preferred Stock, the Series J Preferred Stock, the Series K Preferred Stock, the Series L Preferred Stock and

the Series M Preferred Stock or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series N Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$270.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series N Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series N Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series N Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series N Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ii) **Series M Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock, the Series I Preferred Stock, the Series J Preferred Stock, the Series K Preferred Stock and the Series L Preferred Stock or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series M Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$220.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series M Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series M Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series M Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series M Preferred Stock ratably, on an

equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iii) **Series L Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above and the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock, the Series I Preferred Stock, the Series J Preferred Stock and the Series K Preferred Stock or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series L Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$214.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series L Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series L Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series L Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred, Series M Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series L Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(iv) **Series K Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, and the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock, the Series I Preferred Stock and the Series J Preferred Stock or any class of Common Stock by reason of their ownership

thereof: (x) the holders of the Series K Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$204.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series K Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series K Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series K Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of the Series N Preferred, Series M Preferred Stock, Series L Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series K Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(v) **Series J Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above and the Series K Preferred Stock liquidation preference described in Section 2(a)(iv) above, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock and the Series I Preferred Stock, or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series J Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$186.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series J Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series J Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series J Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with

the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series J Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(vi) **Series I Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above, the Series K Preferred Stock liquidation preference described in Section 2(a)(iv) above and the Series J Preferred Stock liquidation preference described in Section 2(a)(v) above, and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock, the Series G Preferred Stock and the Series H Preferred Stock, or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series I Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$169.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series I Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series I Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series I Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series I Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(vii) **Series H Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above, the Series K Preferred Stock

liquidation preference described in Section 2(a)(iv) above, the Series J Preferred Stock liquidation preference described in Section 2(a)(v) above and the Series I Preferred Stock liquidation preference described in Section 2(a)(vi) above, and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock and the Series G Preferred Stock, or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series H Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$135.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series H Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series H Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series H Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series H Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(viii) **Series E, F, and G Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation and, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above, the Series K Preferred Stock liquidation preference described in Section 2(a)(iv) above, the Series J Preferred Stock liquidation preference described in Section 2(a)(v) above and the Series I Preferred Stock liquidation preference described in Section 2(a)(vi) above and the Series H Preferred Stock liquidation preference described in Section 2(a)(vii) above, and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, or any class of Common Stock by reason of their ownership thereof: (x) the holders of the Series E Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$4.50 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series E Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to

which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series E Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation; (y) the holders of the Series F Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$7.50 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series F Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series F Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation; and (z) the holders of the Series G Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$77.46 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series G Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series G Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock, Series H Preferred Stock and series of Preferred Stock that may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series E Preferred Stock, Series F Preferred Stock, and Series G Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(ix) **Series D Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence, after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above, the Series K Preferred Stock liquidation preference described in Section 2(a)(iv) above, the Series J Preferred Stock liquidation preference described in Section 2(a)(v) above, the Series I Preferred Stock liquidation preference described in Section 2(a)(vi) above, the Series H Preferred Stock liquidation preference described in Section 2(a)(vii) above, and the Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock liquidation preferences described in Section 2(a)(viii) above, and prior and in

preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock, the Series C Preferred Stock or any class of Common Stock by reason of their ownership thereof, the holders of the Series D Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$7.76 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series D Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series D Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series D Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock, Series F Preferred Stock, Series E Preferred Stock and series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series D Preferred Stock ratably, on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(x) **Series A, A-1, B, B-1 and C Preferred Stock.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, subject to the rights of series of Preferred Stock that may from time to time come into existence and after full payment of the Series N Preferred Stock liquidation preference described in Section 2(a)(i) above, the Series M Preferred Stock liquidation preference described in Section 2(a)(ii) above, the Series L Preferred Stock liquidation preference described in Section 2(a)(iii) above, the Series K Preferred Stock liquidation preference described in Section 2(a)(iv) above, the Series J Preferred Stock liquidation preference described in Section 2(a)(v) above, the Series I Preferred Stock liquidation preference described in Section 2(a)(vi) above, the Series H Preferred Stock liquidation preference described in Section 2(a)(vii) above the Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock liquidation preferences described in Section 2(a)(viii) above and the Series D Preferred Stock liquidation preference described in Section 2(a)(ix) above, prior and in preference to any distribution of any of the assets of the Corporation to the holders of any class of Common Stock by reason of their ownership thereof, (v) the holders of the Series A Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$1.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series A Preferred Stock were converted into shares of Class B Common Stock immediately prior to such liquidation, dissolution or winding up of the

Corporation, (w) the holders of the Series A-1 Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$1.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series A-1 Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series A-1 Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation, (x) the holders of the Series B Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$2.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series B Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series B Preferred Stock were converted into shares of Class B Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation, (y) the holders of the Series B-1 Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$2.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series B-1 Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series B-1 Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation, and (z) the holders of the Series C Preferred Stock by reason of their ownership thereof shall be entitled to receive an amount per share equal to the greater of (A) \$3.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) for each share of Series C Preferred Stock then held by them, plus declared but unpaid dividends and (B) the amount to which such holders would be entitled to receive per share upon such liquidation, dissolution or winding up of the Corporation (including, without limitation, any such deemed liquidation events as provided in Section 2(b)(i)) if all outstanding shares of Series C Preferred Stock were converted into shares of Class A Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock, the Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock and the Series C Preferred Stock by reason of their ownership thereof shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock, Series F Preferred Stock, Series E Preferred Stock, Series D Preferred Stock and series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series A Preferred Stock, the Series A-1 Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock and the Series C Preferred Stock ratably,

on an equal priority, pari passu basis, in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Certain Acquisitions.**

(i) **Deemed Liquidation.** Without the consent of the holders of a majority of the Preferred Stock, the Corporation shall not (A) sell, convey, or otherwise dispose of all or substantially all of its property or business (determined on a consolidated basis with all of the Corporation's Subsidiaries), (B) merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a merger with a wholly-owned subsidiary corporation in which the Corporation is the surviving corporation, the terms of the Series Preferred Stock are not changed and the Series Preferred Stock is not exchanged for other securities, cash or other property) or (C) effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, unless the holders of Preferred Stock receive in connection therewith consideration in an amount equal to the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation (a "***Deemed Liquidation Event***"); provided, however, that, subject to the rights of series of Preferred Stock that may from time to time come into existence, (p) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series N Preferred Stock, the holders of the Series N Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (q) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series M Preferred Stock, the holders of the Series M Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (r) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series L Preferred Stock, the holders of the Series L Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (s) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series K Preferred Stock, the holders of the Series K Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (t) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series J Preferred Stock, the holders of the Series J Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (u) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series I Preferred Stock, the holders of the Series I Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (v) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series H

Preferred Stock, the holders of the Series H Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (w) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series G Preferred Stock, the holders of the Series G Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (x) without the consent of the holders of at least two-thirds (2/3) of the then outstanding shares of Series F Preferred Stock, the holders of the Series F Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, (y) without the consent of the holders of a majority of the then outstanding shares of Series E Preferred Stock, the holders of the Series E Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation, and (z) without the consent of the holders of a majority of the then outstanding shares of Series D Preferred Stock, the holders of the Series D Preferred Stock by reason of their ownership thereof shall not receive consideration in connection with such event in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided further, that this Section 2(b)(i) shall not apply to (i) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (ii) an equity financing in which the Corporation is the surviving corporation, or (iii) a transaction in which the stockholders of the Corporation immediately prior to the transaction continue to own 50% or more of the voting power of the surviving corporation following the transaction. For purposes of this Amended and Restated Certificate of Incorporation, "**Subsidiary**" shall mean with respect to the Corporation, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by the Corporation or one or more other Subsidiaries or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by the Corporation or one or more other Subsidiaries or a combination thereof.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(b)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability;

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(b)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(c) **Effect of Noncompliance.** In the event the requirements of Section 2(b) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such powers, preferences and special rights existing immediately prior to the date of the first notice referred to in Section 2(b)(iii) hereof.

3. **Redemption.** The Preferred Stock is not redeemable.

4. **Conversion.** The holders of Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Subject to and in compliance with the provisions of this Section 4, any shares of Series A Preferred Stock and Series B Preferred Stock (collectively, the “**High Vote Preferred Stock**”) may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Class B Common Stock. Subject to and in compliance with the provisions of this Section 4, any shares of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock, Series I Preferred Stock, Series J Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock and Series N Preferred Stock (collectively, the “**Low Vote Preferred Stock**”) may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Class A Common Stock. The number of shares of Class B Common Stock or Class A Common Stock to which a holder of Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the Conversion Rate (as defined below) that is applicable to each series of Preferred Stock that is then in effect by the number of shares of the applicable series of Preferred Stock being so converted. The conversion rate in effect at any time for conversion of any series of the Preferred Stock (as used herein, the “**Conversion Rate**”) shall be the quotient obtained by dividing the Initial Price (as defined below) of the applicable series of Preferred Stock being converted by the Conversion Price (as defined below and subject to the adjustments described below) in effect on the date of such conversion that is applicable to such series of Preferred Stock being converted. The “**Initial Price**” and “**Conversion Price**” per share for each series of Series Preferred Stock shall initially be as follows: (i) an Initial Price of \$1.00 per share and an initial Conversion Price of \$1.00 per share for the Series A Preferred Stock, (ii) an Initial Price of \$1.00 per share and an initial Conversion Price of \$1.00 per share for the Series A-1 Preferred Stock, (iii) an Initial Price of \$2.00 per share and an initial Conversion Price of \$2.00 per share for the Series B Preferred Stock, (iv) an Initial Price of \$2.00 per share and an initial Conversion Price of \$2.00 per share for the Series B-1 Preferred Stock, (v) an Initial Price of \$3.00 per share and an initial Conversion Price of \$3.00 per share for the Series C Preferred Stock, (vi) an Initial Price of \$3.88 per share and an initial Conversion Price of \$3.88 per share for the Series D Preferred Stock, (vii) an Initial Price of \$4.50 per share and an initial Conversion Price of \$4.50 per share for the Series E Preferred Stock, (viii) an Initial Price of \$7.50 per share and an initial Conversion Price of \$7.50 per share for the Series F Preferred Stock, (ix) an Initial Price of \$77.46 per share and an initial Conversion Price of \$77.46 per share for the Series G Preferred Stock, (x) an Initial Price of \$135.00 per share and an initial Conversion Price of \$135.00 per share for the Series H Preferred Stock, (xi) an Initial Price of \$169.00 per share and an initial Conversion Price of \$169.00 per share for the Series I Preferred Stock, (xii) an Initial Price of \$186.00 per share and an initial Conversion Price of \$186.00 per share for the Series J Preferred Stock, (xiii) an Initial Price of \$204.00 per share and an initial Conversion Price of \$204.00 per share for the Series K Preferred Stock, (xiv) an Initial Price of \$214.00 per share and an initial Conversion Price of \$214.00 per share for the Series L Preferred Stock, (xv) an Initial Price of \$220.00 per share and an initial Conversion Price of \$220.00 per share for the Series M Preferred Stock and (xvi) an Initial Price of \$270.00 per share and an initial Conversion Price of \$270.00 per share for the Series N Preferred Stock. The initial Conversion Price of each series of Preferred Stock shall be subject to any adjustments pursuant to the terms of Section 4(d) below.

(b) **Automatic Conversion.**

(i) **Election of Holders of Preferred.** Each share of High Vote Preferred Stock shall automatically be converted into shares of Class B Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Preferred Stock (excluding the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock and Series E Preferred Stock). Each share of Low Vote Preferred Stock (other than the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock and Series E Preferred Stock) shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Preferred Stock (excluding the Series N Preferred Stock, Series M Preferred Stock, Series L Preferred Stock, Series K Preferred Stock, Series J Preferred Stock, Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock and Series E Preferred Stock). Each share of Series N Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series N Preferred Stock. Each share of Series M Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series M Preferred Stock. Each share of Series L Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series L Preferred Stock. Each share of Series K Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series K Preferred Stock. Each share of Series J Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series J Preferred Stock. Each share of Series I Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series I Preferred Stock. Each share of Series H Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least two-thirds of the then outstanding shares of Series H Preferred Stock. Each share of Series G Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement

of the holders of at least two-thirds of the then outstanding shares of Series G Preferred Stock. Each share of Series E Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the date specified by written consent or agreement of the holders of at least 80% of the then outstanding shares of Series E Preferred Stock.

(ii) **IPO.** Each share of High Vote Preferred Stock shall automatically be converted into shares of Class B Common Stock at the Conversion Rate at the time in effect for such share immediately upon the Corporation's sale of its shares of any class of Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**") (A) in which the pre-public offering market capitalization of the Corporation is at least \$6,000,000,000 (as determined by multiplying all capital stock of the Corporation on a fully diluted basis (including options and warrants and convertible instruments then exercisable or convertible, as applicable, for capital stock of the Corporation) prior to the public offering by the price per share offered to the public as of the closing date of the public offering), and (B) which results in aggregate cash proceeds to the Corporation of not less than \$250,000,000 (net of underwriting discounts and commissions) (a "**Qualified IPO**"). Each share of Low Vote Preferred Stock shall automatically be converted into shares of Class A Common Stock at the Conversion Rate at the time in effect for such share immediately upon the Corporation's sale of its shares of any class of Common Stock in a Qualified IPO.

(iii) **Transfer of High Vote Preferred Stock.** In the event of a Transfer (as defined below) at any time, other than a Permitted Transfer (as defined below), of a share of Series A Preferred Stock (including, for the avoidance of doubt, a Transfer that occurs prior to, upon or following the closing of a Qualified IPO), such share of Series A Preferred Stock shall automatically be cancelled and converted into one fully paid and nonassessable share of Series A-1 Preferred Stock. In the event of a Transfer at any time, other than a Permitted Transfer, of a share of Series B Preferred Stock (including, for the avoidance of doubt, a Transfer that occurs prior to, upon or following the closing of a Qualified IPO), such share of Series B Preferred Stock shall automatically be cancelled and converted into one fully paid and nonassessable share of Series B-1 Preferred Stock.

(c) **Mechanics of Conversion.**

(i) Before any holder of High Vote Preferred Stock shall be entitled to convert the same into shares of Class B Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such High Vote Preferred 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 in which the certificate or certificates for shares of Class B Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of High Vote Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Class B Common Stock to which such holder shall be

entitled as aforesaid. 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 such High Vote Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class B Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class B Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such High Vote Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Class B Common Stock upon conversion of such High Vote Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) Before any holder of Low Vote Preferred Stock shall be entitled to convert the same into shares of Class A Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Low Vote Preferred 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 in which the certificate or certificates for shares of Class A Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Low Vote Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid. 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 such Low Vote Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Low Vote Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Class A Common Stock upon conversion of such Low Vote Preferred Stock shall not be deemed to have converted such Low Vote Preferred Stock until immediately prior to the closing of such sale of securities.

(iii) The conversion of shares of Series A Preferred Stock or Series B Preferred Stock into Series A-1 Preferred Stock or Series B-1 Preferred Stock, as applicable, pursuant to a transaction of the kind described in Section 4(b)(iii) above shall occur automatically without the need for any further action by the holders of such shares or the Corporation and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of the applicable Series A-1 Preferred Stock or Series B-1 Preferred Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement

satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with the issuance of such certificates. Upon the occurrence of such automatic conversion of Series A Preferred Stock or Series B Preferred Stock, the holders of Series A Preferred Stock or Series B Preferred Stock, as applicable, shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the applicable Series A-1 Preferred Stock or Series B-1 Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of the applicable Series A-1 Preferred Stock or Series B-1 Preferred Stock into which the shares of Series A Preferred Stock or Series B Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Conversion Price.** If the Corporation shall issue, after the date upon which any shares of one or more series of Preferred Stock were first issued (the “***Purchase Date***” with respect to any such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for any such series in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for any such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price of a series of Preferred Stock is adjusted pursuant to this Section 4(d)(i), the new Conversion Price for such series of Preferred Stock shall be determined by multiplying the Conversion Price then in effect for such series by a fraction, (x) the numerator of which shall be the aggregate number of shares of all classes of Common Stock outstanding immediately prior to such issuance (the “***Outstanding Common***”) plus the number of shares of the applicable class of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For the purposes of the foregoing calculation, the term “Outstanding Common” shall include shares of any class of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of “Additional Stock”.** For purposes of this Section 4(d)(i), “***Additional Stock***” shall mean any shares of any class of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the applicable Purchase Date other than:

(1) Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,

(2) Shares of any class of Common Stock issuable or issued to employees, consultants or directors of the Corporation and its Subsidiaries directly or pursuant to stock option plans, restricted stock plans, options or other agreements with employees, consultants or directors approved by the Board of Directors,

(3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions, vendors, lenders, purchasers of the Corporation's debt securities, or lessors in connection with commercial credit arrangements, equipment financings, loans and other debt financing transactions, commercial property lease transactions or similar transactions, the terms of which are approved by the Board of Directors,

(4) Shares of any class of Common Stock or Preferred Stock issuable upon exercise of options, warrants, notes or other rights to acquire securities of the Corporation outstanding as of the date of this Amended and Restated Certificate of Incorporation, in each case provided such issuance is pursuant to the current terms of such option, warrant, note or other right,

(5) Capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers, acquisitions of assets, joint venture agreements or similar transactions, the terms of which are approved by the Board of Directors,

(6) Shares of Class A Common Stock issued or issuable upon conversion of shares of Class B Common Stock that are currently outstanding or issued hereafter,

(7) Shares of Class B Common Stock issued or issuable upon conversion of High Vote Preferred Stock after taking into account the operation of Section 4(d)(i)(E)(3), below,

(8) Shares of Class A Common Stock issued or issuable upon conversion of Low Vote Preferred Stock after taking into account the operation of Section 4(d)(i)(E)(3), below,

(9) Shares of Series A-1 Preferred Stock issued or issuable upon the automatic conversion of Series A Preferred Stock pursuant to Section 4(b)(iii) above after taking into account the operation of Section 4(d)(i)(E)(3), below,

(10) Shares of Series B-1 Preferred Stock issued or issuable upon the automatic conversion of Series B Preferred Stock pursuant to Section 4(b)(iii) above after taking into account the operation of Section 4(d)(i)(E)(3), below,

(11) Shares of Class A Common Stock issued or issuable upon conversion of shares of any other class of Common Stock that are currently outstanding or issued hereafter,

(12) Capital stock or warrants or options to purchase capital stock issued in connection with joint ventures, development projects, strategic alliances or other partnering arrangements, or in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements, the terms of which are approved by the Board of Directors, and

(13) Shares of any class of Common Stock issued or issuable upon conversion of Series Preferred Stock in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Class B Common Stock and Class A Common Stock, as applicable.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for a series of Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of shares of any class of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of shares of a class of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors in its reasonable good faith judgment irrespective of any accounting treatment.

(E) **Deemed Issuance of Common Stock.** In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for shares of any class of Common Stock, securities by their terms convertible into or exchangeable for shares of any class of Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4(d)(i):

(1) The aggregate maximum number of shares of all classes of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for shares of any class of Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without

taking into account potential antidilution adjustments) for the class of Common Stock covered thereby.

(2) The aggregate maximum number of shares of all classes of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of a class of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such option or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and the convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) **No Increased Conversion Price.** Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 4(d)(i) shall have the effect of increasing such Conversion Price above the Conversion Price of such series of Preferred Stock in effect immediately prior to such adjustment.

(ii) **Stock Splits and Dividends.** In the event the Corporation should at any time or from time to time after a Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of any class of Common Stock or the determination of holders of shares of any class of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of any class of Common Stock (hereinafter referred to as "***Common Stock Equivalents***") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Class B Common Stock or Class A Common Stock issuable on conversion of each share of each such series shall be increased in proportion to such increase of the aggregate of shares of all classes of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) **Reverse Stock Splits.** If the number of shares of any class of Common Stock outstanding at any time after a Purchase Date is decreased by a combination of the outstanding shares of any class of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Class B Common Stock or Class A Common Stock issuable on conversion of each share of each such series shall be decreased in proportion to such decrease in outstanding shares.

(e) **Other Distributions.** In the event the Corporation shall declare a distribution to holders of any class of Common Stock of the Corporation payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of each series of Preferred Stock shall be entitled to receive, simultaneously with the distribution to the holders of such class of Common Stock of the Corporation, a proportionate share of any such distribution as though they were the holders of the number of shares of Class B Common Stock or Class A Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of such class of Common Stock of the Corporation entitled to receive such distribution.

(f) **Adjustment for Merger or Reorganization, etc.** If at any time after the date hereof there shall be a recapitalization, reorganization, reclassification, consolidation or merger involving the Corporation in which any class of Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than pursuant to a subdivision, combination or merger or sale of assets transaction provided for in Section 4(d)(ii) or Section 2(b)(i)), then following any such recapitalization, reorganization, reclassification, consolidation or merger, each share of Preferred Stock that was convertible into Class B Common Stock or Class A Common Stock prior to such event shall thereafter be convertible in lieu of the Class B Common Stock or Class A Common Stock into the kind and amount of securities, cash or other property which a holder of the number of shares of Class B Common Stock or Class A Common Stock of the Corporation issuable upon conversion of one share of such Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction. In any such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of each series of Preferred Stock after such recapitalization, reorganization, reclassification, consolidation or merger to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect for each series of Preferred Stock and the number of shares purchasable upon conversion of shares of each such series of Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable in relation to any securities or other property thereafter deliverable upon the conversion of such series of Preferred Stock.

(g) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock, and the number of shares of Class B Common Stock or Class A Common Stock to be issued shall be rounded down to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Class B Common Stock or Class A Common Stock and the number of shares of Class B Common Stock or Class A Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of shares of each such series 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 shares of any such series of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) the adjustment and readjustment made to the Conversion Price of such series of Preferred Stock, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Class B Common Stock or Class A Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such Preferred Stock.

(h) **Notices of Record Date.** In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class B Common Stock and Class A Common Stock, solely for the purpose of effecting the conversion of shares of Preferred Stock, such number of its shares of Class B Common Stock and Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Class B Common Stock or Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class B Common Stock or Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(j) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if (A) deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation or (B) waived by the holders of a majority of the outstanding shares of Preferred Stock.

5. **Voting Rights.** Subject to the rights of series of Preferred Stock that may from time to time come into existence, the holder of each share of High Vote Preferred Stock shall have the right to ten votes for each share of Class B Common Stock into which such High Vote Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal (other than with respect to votes per share) to the voting rights and powers of the holders of any class of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of any class of Common Stock, with respect to any question upon which holders of any class of Common Stock have the right to vote, except as required by law. Subject to the rights of series of Preferred Stock that may from time to time come into existence, the holder of each share of Low Vote Preferred Stock shall have the right to one vote for each share of Class A Common Stock into which such Low Vote Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of any class of Common

Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of any class of Common Stock, with respect to any question upon which holders of any class of Common Stock have the right to vote, except as required by law. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

6. Series N Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as at least 50% of the Series N Preferred Stock issued pursuant to the Series N Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series N Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series N Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series N Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series N Preferred Stock shall only be required if required in accordance with Section 2(b) above.

7. Series M Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as at least 50% of the Series M Preferred Stock issued pursuant to the Series M Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series M Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series M Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series M Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in

the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series M Preferred Stock shall only be required if required in accordance with Section 2(b) above.

8. Series L Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as at least 50% of the Series L Preferred Stock issued pursuant to the Series L Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series L Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series L Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series L Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series L Preferred Stock shall only be required if required in accordance with Section 2(b) above.

9. Series K Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as at least 50% of the Series K Preferred Stock issued pursuant to the Series K Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series K Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series K Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series K Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series K Preferred Stock shall only be required if required in accordance with Section 2(b) above.

10. Series J Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as at least 50% of the Series J Preferred Stock issued pursuant to the Series J Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series J Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series J Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series J Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series J Preferred Stock shall only be required if required in accordance with Section 2(b) above.

11. Series I Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as at least 50% of the Series I Preferred Stock issued pursuant to the Series I Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series I Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series I Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series I Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series I Preferred Stock shall only be required if required in accordance with Section 2(b) above.

12. Series H Protective Provisions.

Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate

of Incorporation, so long as at least 50% of the Series H Preferred Stock issued pursuant to the Series H Preferred Stock Purchase Agreement, among the Corporation and the purchasers signatories thereto, as amended from time to time, remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series H Preferred Stock, voting together as a class, (i) alter or change the powers, preferences, or special rights of the shares of Series H Preferred Stock so as to affect them adversely or (ii) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series H Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series H Preferred Stock shall only be required if required in accordance with Section 2(b) above.

13. Series G Protective Provisions.

(a) Subject to the rights of series of Preferred Stock which may from time to time come into existence in accordance with the terms of this Amended and Restated Certificate of Incorporation, so long as either (i) one of the original purchasers of Series G Preferred Stock issued pursuant to that certain Series G Preferred Stock Purchase Agreement among the Corporation and the purchasers signatories thereto (the “*Series G SPA*”) or an affiliate of one of such original purchasers continues to hold at least 50% of the shares of Series G Preferred Stock originally purchased by such purchaser (as adjusted for stock splits, stock dividends, reclassifications, or the like) or (ii) at least 50% of the Series G Preferred Stock issued pursuant to the Series G SPA remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series G Preferred Stock, voting together as a class, alter or change the powers, preferences, or special rights of the shares of Series G Preferred Stock so as to affect them adversely; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series G Preferred Stock shall only be required if required in accordance with Section 2(b) above; and

(b) Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as at least 50% of the Series G Preferred Stock issued pursuant to the Series G SPA remains outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise) do any of the following without first obtaining the approval (by vote

or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series G Preferred Stock, voting together as a class: (i) effect a transaction described in Section 2(b)(i) above if such transaction would result in consideration to the holders of the Series G Preferred Stock in an amount less than the amount they would receive pursuant to Section 2(a) if such event constituted a liquidation of the Corporation; (ii) authorize or designate, whether by reclassification or otherwise, or issue any additional shares of Series G Preferred Stock or shares of any new class or series of capital stock of the Corporation (or any other securities convertible into any class or series of capital stock of the Corporation) ranking senior to, or having a preference over, the Series G Preferred Stock in right of redemption, liquidation preference or dividend rights; (iii) authorize, designate or issue shares of any new class or series of capital stock of the Corporation (or any other securities convertible into any class or series of capital stock of the Corporation) or amend or reclassify any existing class or series of capital stock of the Corporation, in each case with voting rights greater than the voting rights applicable to the Series G Preferred Stock other than Class B Common Stock issuable upon (A) the conversion of High Vote Preferred Stock or (B) the exercise of stock options, in each case outstanding as of the date hereof; (iv) redeem or repurchase (including without limitation by means of an exercise of any right of first refusal or similar right) shares of any class or series of capital stock of the Corporation (other than shares of Common Stock from current or former employees, consultants, advisors, or transferees of such persons who acquired shares pursuant to a permitted estate planning transfer, divorce settlement or similar familial transfer, in each case who are not a Key Holder); or (v) amend Article VII(C) of this Amended and Restated Certificate of Incorporation.

14. **Series F Protective Provisions.** Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as at least 1,000,000 shares of Series F Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds (2/3) of the then outstanding shares of Series F Preferred Stock, voting together as a class, alter or change the powers, preferences, or special rights of the shares of Series F Preferred Stock so as to affect them adversely; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series F Preferred Stock shall only be required if required in accordance with Section 2(b) above.

15. **Series E Protective Provisions.** Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as at least 1,000,000 shares of Series E Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least eighty-five percent (85%) of the then outstanding shares of Series E Preferred Stock, voting together as a class alter or change the powers, preferences, or special rights of the shares of Series E Preferred Stock so as to affect them adversely; provided

that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series E Preferred Stock shall only be required if required in accordance with Section 2(b) above.

16. **Series D Protective Provisions.** Subject to the rights of series of Preferred Stock which may from time to time come into existence, so long as at least 1,000,000 shares of Series D Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series D Preferred Stock, voting together as a class alter or change the powers, preferences, or special rights of the shares of Series D Preferred Stock so as to affect them adversely; provided that in the event of a Deemed Liquidation Event in which proceeds thereof are distributed in accordance with Sections 2(a) and 2(b) above, a separate vote or written consent of the Series D Preferred Stock shall only be required if required in accordance with Section 2(b) above.

17. **Preferred Stock Protective Provisions.** So long as at least 1,000,000 shares of Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassifications, or the like), the Corporation shall not (whether by merger, consolidation, recapitalization, reclassification, amendment of this Amended and Restated Certificate of Incorporation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class:

- (a) effect a transaction described in Section 2(b)(i) above;
- (b) alter or change the powers, preferences, or special rights of the shares of any series of Preferred Stock so as to affect them adversely; provided that in the event of a Deemed Liquidation Event, a separate vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock shall only be required if required in accordance with Section 2(b) above;
- (c) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock; or
- (d) subject to Section 13 above, authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a par with, the existing series of Preferred Stock with respect to dividends, redemptions or upon liquidation.

18. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Amended and Restated Certificate of Incorporation of the

Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Classes of Common Stock**. The respective rights, preferences, privileges, and restrictions granted to and imposed by this Amended and Restated Certificate of Incorporation on the Class A Common Stock, the Class B Common Stock and the Class C Common Stock are as set forth below in this Article IV(C). Any shares of any class of Common Stock (other than Class B Common Stock) that may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or by the terms of any class of Common Stock.

1. **Definitions**. For purposes of this Amended and Restated Certificate of Incorporation, the following definitions shall apply:

(a) "***Family Member***" shall mean with respect to any natural person who is a Qualified Stockholder, the spouse, ex-spouse, parents, grandparents, lineal descendants, siblings and lineal descendants of siblings of such Qualified Stockholder.

(b) "***Permitted Entity***" shall mean with respect to a Qualified Stockholder (i) a Permitted Trust (as defined below) solely for the benefit of (A) such Qualified Stockholder, (B) one or more Family Members of such Qualified Stockholder and/or (C) any other Permitted Entity of such Qualified Stockholder or (ii) any general partnership, limited partnership, limited liability company, corporation or other entity exclusively owned by (A) such Qualified Stockholder, (B) one or more Family Members of such Qualified Stockholder and/or (C) any other Permitted Entity of such Qualified Stockholder.

(c) "***Permitted Transfer***" shall mean, and be restricted to, any Transfer of a share of High Vote Preferred Stock or Class B Common Stock:

(i) by a Qualified Stockholder to (A) one or more Family Members of such Qualified Stockholder, or (B) any Permitted Entity of such Qualified Stockholder;

(ii) by a Permitted Entity of a Qualified Stockholder to (A) such Qualified Stockholder or one or more Family Members of such Qualified Stockholder, or (B) any other Permitted Entity of such Qualified Stockholder; or

(iii) any of the following Transfers by a Qualified Stockholder:

(A) a Transfer to a bona fide trust for the benefit of a charitable organization, contributions to which are deductible for federal income, estate, gift and generation skipping transfer tax purposes; provided such Transfer does not involve any payment of cash, securities, property or other consideration (other than an interest in such trust); provided further that a Qualified Stockholder has dispositive power and exclusive Voting Control with respect to the shares of the High Vote Preferred Stock and/or Class B Common Stock held in such trust and provided, further, that in the event a Qualified Stockholder no longer has dispositive

power and exclusive Voting Control with respect to the shares of High Vote Preferred Stock and/or Class B Common Stock then held in such account, plan or trust, all shares of High Vote Preferred Stock and/or Class B Common Stock then held in such account, plan or trust shall automatically convert into fully paid and nonassessable shares of Low Vote Preferred Stock and/or Class A Common Stock, as applicable;

(B) a Transfer to an Individual Retirement Account, as defined in Section 408(a) of the Internal Revenue Code of 1986, as amended (the “*Code*”), or a pension, profit sharing, stock bonus or other type of plan or trust of which a Qualified Stockholder is a participant or beneficiary and which satisfies the requirements for qualification under Section 401 of the Code; provided that in each case a Qualified Stockholder has dispositive power and exclusive Voting Control with respect to the shares of the High Vote Preferred Stock and/or Class B Common Stock held in such account, plan or trust, and provided, further, that in the event a Qualified Stockholder no longer has dispositive power and exclusive Voting Control with respect to the shares of High Vote Preferred Stock and/or Class B Common Stock then held in such account, plan or trust, all shares of High Vote Preferred Stock and/or Class B Common Stock then held in such account, plan or trust shall automatically convert into fully paid and nonassessable shares of Low Vote Preferred Stock and/or Class A Common Stock, as applicable;

(C) a Transfer effected solely for estate or succession planning to a corporation, limited liability company or partnership (a “*Corporate Entity*”), in which a Qualified Stockholder directly, or indirectly through one or more Permitted Transferees, owns an equity interest with sufficient Voting Control in the corporation, or otherwise has legally enforceable rights, such that a Qualified Stockholder retains dispositive power and exclusive Voting Control with respect to the shares of High Vote Preferred Stock and/or Class B Common Stock held by such Corporate Entity; provided that in the event a Qualified Stockholder no longer owns sufficient shares or no longer has sufficient legally enforceable rights to ensure a Qualified Stockholder retains dispositive power and exclusive Voting Control with respect to the shares of High Vote Preferred Stock and/or Class B Common Stock then held by such Corporate Entity, all shares of High Vote Preferred Stock and/or Class B Common Stock then held by such Corporate Entity shall automatically convert into fully paid and nonassessable shares of Low Vote Preferred Stock and/or Class A Common Stock, as applicable; and

(D) a Transfer, not otherwise deemed a Permitted Transfer herein, that is effected solely for estate or succession planning; provided such Transfer is approved in advance by the Board of Directors (after the Board of Directors has had a reasonable opportunity to review the details of such proposed Transfer and consider any recommended changes to account for the reasonable preservation of appropriate voting and control over such shares of High Vote Preferred Stock and/or Class B Common Stock by a Qualified Stockholder deemed necessary by the Board of Directors).

(d) “*Permitted Transferee*” shall mean a transferee of shares of High Vote Preferred Stock or Class B Common Stock received in a Transfer that constitutes a Permitted Transfer.

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

(f) “**Qualified Stockholder**” shall mean (i) the registered holder of a share of High Vote Preferred Stock or Class B Common Stock immediately following the date hereof; (ii) the initial registered holder of any shares of High Vote Preferred Stock or Class B Common Stock that are originally issued by the Corporation after the date hereof pursuant to the exercise or conversion of options or warrants that, in each case, are outstanding as of the date hereof; (iii) each natural person who Transferred shares of or equity awards for High Vote Preferred Stock or Class B Common Stock (including any option or warrant exercisable or convertible into shares of High Vote Preferred Stock or Class B Common Stock) to a Permitted Entity that is or becomes a Qualified Stockholder pursuant to subclauses (i) or (ii) of this Section 1(f); and (iv) a Permitted Transferee.

(g) “**Transfer**” of a share of High Vote Preferred Stock or Class B Common Stock shall mean any sale, assignment, encumbrance, transfer, conveyance, hypothecation, pledge, gift or other transfer or disposition of any kind of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law, including, without limitation, a transfer of a share of High Vote Preferred Stock or Class B Common Stock to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control (as defined below) over such share by proxy or otherwise; provided, however, that the following shall not be considered a “Transfer” within the meaning of this Article IV:

(1) the granting of a revocable proxy to officers or directors of the Corporation at the request of the Board of Directors in connection with actions to be taken at an annual or special meeting of stockholders;

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

(3) the pledge of shares of High Vote Preferred Stock or Class B Common Stock by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder continues to exercise Voting Control over such pledged shares; provided, however, that a foreclosure on such shares or

other similar action by the pledgee shall constitute a "Transfer" unless such foreclosure or similar action qualifies as a "Permitted Transfer".

A "Transfer" shall also be deemed to have occurred with respect to a share of High Vote Preferred Stock or Class B Common Stock beneficially held by (i) an entity that is a Permitted Entity, if there occurs any act or circumstance that causes such entity to no longer be a Permitted Entity or (ii) an entity that is a Qualified Stockholder, if there occurs a Transfer on a cumulative basis, from and after the date hereof, of a majority of the voting power of the voting securities of such entity or any direct or indirect Parent of such entity, other than a Transfer to parties that are, as of the date hereof, holders of voting securities of any such entity or Parent of such entity. "Parent" of an entity shall mean any entity that directly or indirectly owns or controls a majority of the voting power of the voting securities of such entity.

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

2. **Dividend Rights**. Subject to the prior rights of holders of all classes and series of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors. Any dividends paid to the holders of shares of Common Stock shall be paid pro rata, on an equal priority, pari passu basis.

3. **Liquidation Rights**. Upon the completion of the distributions required with respect to series of Preferred Stock that may from time to time come into existence, if assets remain in the Corporation, the remaining assets of the Corporation legally available for distribution shall be distributed on an equal priority, pro rata basis to the holders of the Common Stock.

4. **Redemption**. The classes of Common Stock are not redeemable.

5. **Voting Rights**.

(a) **Class A Common Stock**. Each holder of shares of Class A Common Stock shall be entitled to one vote for each share thereof held.

(b) **Class B Common Stock**. Each holder of shares of Class B Common Stock shall be entitled to ten votes for each share thereof held.

(c) **Class C Common Stock**. The holders of Class C Common Stock shall have no voting rights, except as required by law.

(d) **General**. Subject to the other provisions of this Amended and Restated Certificate of Incorporation, each holder of Preferred Stock and Class B Common Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of

Class A Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Class A Common Stock, with respect to any question upon which holders of Class A Common Stock have the right to vote, except as may be otherwise required by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock, Class A Common Stock, and Class B Common Stock shall vote together and not as separate series or classes.

(e) **No Class Vote on Change in Authorized Shares of Common Stock.**

The number of authorized shares of Class A Common Stock, Class B Common Stock and Class C Common Stock may be increased or decreased (but not below the number of shares then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of a majority of the voting power of the classes of Common Stock and Preferred Stock entitled to vote, voting together as a single class, irrespective of Section 242(b)(2) of the General Corporation Law of Delaware.

6. **Optional Conversion of the Class B Common Stock.**

(a) At the option of the holder thereof, each share of Class B Common Stock shall be convertible, at any time or from time to time following the closing of a Qualified IPO, into one fully paid and nonassessable share of Class A Common Stock as provided herein.

(b) Each holder of Class B Common Stock who elects to convert the same into shares of Class A Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Class A Common Stock or Class B Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Class B Common Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Class A Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Class B Common Stock to be converted, and the person entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Class A Common Stock on such date. If a conversion election under this Section 6(b) is made in connection with an underwritten offering of the Corporation's securities pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of the holder tendering shares of Class B Common Stock for conversion, be conditioned upon the closing with the underwriters of the sale of the Corporation's securities pursuant to such offering, in which event the holders making such elections who are entitled to receive Class A Common Stock upon conversion of their Class B Common Stock shall not be deemed to have converted such shares of Class B Common Stock until immediately prior to the closing of such sale of the Corporation's securities in the offering.

7. **Automatic Conversion of the Class B Common Stock.** In the event of a Transfer, other than a Permitted Transfer, of a share of Class B Common Stock, each such Transferred share of Class B Common Stock shall automatically be converted into one fully paid and nonassessable share of Class A Common Stock upon the completion of such Transfer without the need for 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, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such conversion unless the certificates evidencing such shares of Class B Common Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Class B Common Stock, the holders of Class B Common Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Class A Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Class A Common Stock into which the shares of Class B Common Stock surrendered were convertible on the date on which such automatic conversion occurred.

8. **Stock Dividends and Distributions.** The Corporation shall not declare or pay any dividend or make any other distribution to the holders of any class of Common Stock payable in securities of the Corporation unless the same dividend or distribution with the same record date and payment date shall be declared and paid on the shares of all other classes of Common Stock; provided, however, that dividends or other distributions payable in shares of a particular class of Common Stock or rights to acquire shares of such class of Common Stock may be declared and paid to the holders of such class of Common Stock without the same dividend or distribution being declared and paid to the holders of the other classes of Common Stock if, and only if, a dividend payable in shares of such other classes of Common Stock, as applicable, or rights to acquire shares of such other classes of Common Stock, as applicable, are declared and paid to the holders of such other classes of Common Stock at the same rate and with the same record date and payment date.

9. **Common Class Stock Splits or Combinations.** If the Corporation in any manner subdivides or combines the outstanding shares of any class of Common Stock, then the outstanding shares of all other classes of Common Stock will be subdivided or combined in the same proportion and manner.

10. **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock and Class B Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock and the Class B Common Stock, as applicable, such number of its shares of Class A Common Stock and Class B Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock and the Class B Common Stock;

and if at any time the number of authorized but unissued shares of Class A Common Stock or Class B Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Preferred Stock and the Class B Common Stock, as applicable, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock or Class B Common Stock, as applicable, to such numbers of shares as shall be sufficient for such purpose.

11. **Identical Rights**. Except as otherwise expressly provided herein or required by applicable law, shares of Class A Common Stock, Class B Common Stock and Class C Common Stock shall have the same rights and privileges and rank equally, share ratably and be identical in all respects as to all matters, including, without limitation:

(a) **Dividends and Distributions**. Shares of Class A Common Stock, Class B Common Stock, and Class C Common Stock shall be treated equally, identically and ratably, on a per-share basis, with respect to any cash distribution paid or distributed by the Corporation, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of the applicable class of Common Stock treated adversely, voting separately as a class.

(b) **Equal Treatment in a Combination Transaction**. In connection with any combination or merger or sale of assets transaction provided for in Article IV(B)(2)(c)(i) (a “**Combination Transaction**”), shares of Class A Common Stock, Class B Common Stock and Class C Common Stock shall be treated equally, identically and ratably, on a per-share basis, with respect to any consideration into which such shares are converted or any consideration paid or otherwise distributed to stockholders of the Corporation, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of the applicable class of Common Stock treated adversely, voting separately as a class. Notwithstanding anything set forth herein to the contrary, in the event of any Combination Transaction to which the Corporation is a party in which the shares of Class A Common Stock, Class B Common Stock or Class C Common Stock will be exchanged for or converted into, or will receive a distribution of, cash or other property or securities of the Corporation or any other person, each share of Class A Common Stock, Class B Common Stock, and Class C Common Stock shall be entitled to receive Equivalent Consideration (as defined herein) on a per-share basis. As used herein, the term “Equivalent Consideration” shall mean consideration in the same form, in the same amount and with the same voting rights on a per-share basis; provided, however, that for the avoidance of doubt, consideration to be paid or received by a holder of Class A Common Stock, Class B Common Stock or Class C Common Stock in connection with any Combination Transaction pursuant to any employment, consulting, severance or other arrangement shall not be deemed to be “consideration” that is included in the determination of “Equivalent Consideration.”

12. **Status of Converted Class B Common Stock**. In the event any shares of Class B Common Stock shall be converted pursuant to Section 6 or 7 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Amended and

Restated Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

ARTICLE V.

The Board of Directors is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI.

(A) Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

(B) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, Section 2115 of the California General Corporation Law ("CGCL") purports to apply to the Corporation. During such time or times that Section 2115(b) of the CGCL purports to apply to the Corporation, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(C) During such time or times that Section 2115(b) of the CGCL purports to apply to the Corporation, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote for that director as provided above; provided, however, that unless the entire Board of Directors is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

ARTICLE VII.

(A) A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation

of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended 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 Delaware General Corporation Law, as so amended.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) The Corporation on behalf of itself and its Subsidiaries renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or being offered an opportunity to participate in, any Excluded Opportunity and waives any claim that such Excluded Opportunity constituted a corporate opportunity that should have been presented to the Corporation or any of its Subsidiaries. As a result of such renunciation, (a) no Covered Person shall have any duty to present any Excluded Opportunity to the Corporation, (b) Covered Persons shall have the right to hold and exploit all Excluded Opportunities for their own account and benefit, or to direct, sell, assign or transfer any Excluded Opportunity to any other person or entity and (c) Covered Persons cannot be, and shall not be, liable to the Corporation, its stockholders or its Subsidiaries for breach of any fiduciary duty to the Corporation, its stockholders or its Subsidiaries by reason of the fact that any Covered Person does not present any Excluded Opportunity to the Corporation or pursues, acquires or exploits any Excluded Opportunity for itself or directs, sells, assigns or transfers any Excluded Opportunity to any other person or entity. An "**Excluded Opportunity**" is any matter, transaction or other opportunity or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director or Board of Directors observer or attendee of the Corporation who is not an employee of the Corporation or any of its Subsidiaries and who is also a partner, member, director, stockholder, employee, representative or agent of the initial holder of a majority of the Series G Preferred Stock (collectively, the "**Initial Majority Series G Holder**") or any of its affiliates or (ii) the Initial Majority Series G Holder or any partner, member, director, stockholder, employee or agent of the Initial Majority Series G Holder or any of its affiliates, other than someone who is an employee or representative of the Corporation or any of its Subsidiaries (collectively, "**Covered Persons**"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, such Covered Person expressly and solely in such Covered Person's capacity as an employee, director, Board of Directors observer or attendee, or stockholder of the Corporation.

(D) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Amended and Restated Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter

occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

* * *

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Hawthorne, California, on August 4, 2020.



Elon Musk, Chief Executive Officer