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**PHONE: (800) 435-9371; FAX: (866) 860-8395**

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**DATE: 1/22/16**

**NAME: POWERCHORD, INC**

**TYPE OF FILING: CONVERSION**

**COST: 43.75**

**RETURN: CERTIFIED COPY PLEASE**

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**ACCOUNT: FCA000000015**

**AUTHORIZATION: ABBIE/PAUL HODGE**

*Attoeh*

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**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** PowerChord, Inc.

Name of Florida Profit Corporation

The enclosed Certificate of Conversion and fee(s) are submitted to convert a Florida Profit Corporation into an "Other Business Entity" in accordance with s. 607.1113, F.S.

Please return all correspondence concerning this matter to:

Zachary D. Crowe

Contact Person

Morris, Manning & Martin, LLP

Firm/Company

1600 Atlanta Financial Center, 3343 Peachtree Road, NE

Address

Atlanta, GA 30326

City, State and Zip Code

zcrowe@mmmlaw.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Zachary Crowe

Name of Contact Person

at ( 404 ) 504-5486

Area Code and Daytime Telephone Number

Enclosed is a check for the following amount:

\$35.00 Filing Fee

\$43.75 Filing Fee  
and Certificate of  
Status

\$43.75 Filing Fee  
and Certified Copy

\$52.50 Filing Fee,  
Certified Copy, and  
Certificate of Status

**STREET ADDRESS:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

Amendment Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

FILED  
16 JAN 22 AM 11:29  
ALABAMA

Certificate of Conversion  
For  
Florida Profit Corporation  
Into  
"Other Business Entity"

This Certificate of Conversion is submitted to convert the following **Florida Profit Corporation into an "Other Business Entity"** in accordance with s. 607.1113, Florida Statutes.

1. The name of the Florida Profit Corporation converting into the "Other Business Entity" is:

PowerChord, Inc.

Enter Name of Florida Profit Corporation

2. The name of the "Other Business Entity" is:

PowerChord, Inc.

Enter Name of "Other Business Entity"

3. The "Other Business Entity" is a Corporation  
(Enter entity type. Example: limited liability company, limited partnership, general partnership, common law or business trust, etc.)

organized, formed or incorporated under the laws of Delaware  
(Enter state, or if a non-U.S. entity, the name of the country)

4. The above referenced Florida Profit Corporation has converted into an "Other Business Entity" in compliance with Chapter 607, F.S., and the conversion complies with the applicable laws governing the "Other Business Entity."

5. The plan of conversion was approved by the converting Florida Profit Corporation in accordance with Chapter 607, F.S.

6. If applicable, the written consent of each shareholder who, as a result of the conversion, is now a general partner of the surviving entity was obtained pursuant to s. 607.1112(6), F.S.

7. This conversion was effective under the laws governing the "Other Business Entity"

on: 01 | 22 | 16

8. This conversion shall be effective in Florida on: January 22, 2016  
(The effective date: 1) cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State; AND 2) must be the same as the effective date of the conversion under the laws governing the "Other Business Entity.")

9. The "Other Business Entity's" principal office address, if any:  
100 2nd Avenue S, Suite 200-S, St. Petersburg, Florida 33701

10. If the "Other Business Entity" is an out-of-state entity not registered to transact business in Florida, the "Other Business Entity":

a.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of the converting Florida profit corporation, including any appraisal rights of shareholders of the converting Florida profit corporation under ss. 607.1301-607.1333, Florida Statutes.

b.) Lists the following street and mailing address of an office, which the Florida Department of State may use for purposes of s. 607.1114(4), Florida Statutes.

Street Address: 100 2nd Avenue S, Suite 200-S, St. Petersburg, Florida 33701

Mailing Address: 100 2nd Avenue S, Suite 200-S, St. Petersburg, Florida 33701

11. The "Other Business Entity" has agreed to pay any shareholders having appraisal rights the amount to which they are entitled under ss.607-1301-607.1333, F.S.

Signed this 22nd day of January 2016

Signature: Lanny Tucker  
(Must be signed by a Chairman, Vice Chairman, Director, Officer, or, if Directors or Officers have not been selected, an Incorporator.)

Printed Name: Lanny Tucker Title: Chief Executive Officer

Fees: Filing Fee: \$35.00  
Certified Copy: \$8.75 (Optional)  
Certificate of Status: \$8.75 (Optional)

**PLAN OF CONVERSION  
OF  
POWERCHORD, INC.  
a Florida corporation**

into

**POWERCHORD, INC.,  
a Delaware corporation**

This Plan of Conversion, dated as of January 22, 2016 (the "Plan"), is hereby adopted by PowerChord, Inc., a Florida corporation ("PowerChord-Florida"), in order to set forth the terms, conditions and procedures governing the conversion of PowerChord-Florida from a Florida corporation to a Delaware corporation pursuant to Sections 607.1112 and 607.1113 of the Florida Business Corporation Act, as amended (the "FBCA"), and Section 265 of the Delaware General Corporation Law (the "DGCL").

**RECITALS**

**WHEREAS**, PowerChord-Florida was originally formed as a corporation organized under the laws of the State of Missouri on November 10, 1999, and filed its Certificate of Domestication with the Florida Secretary of State on November 17, 2003, pursuant to which it became a corporation organized under the laws of the State of Florida on such date;

**WHEREAS**, PowerChord-Florida is a corporation duly organized and existing under the laws of the State of Florida, with 1,500,000 shares of common stock, no par value per share (the "Florida Common Stock"), authorized, of which 1,250,000 shares are issued and outstanding;

**WHEREAS**, the Board of Directors of PowerChord-Florida (the "Board") has determined that, for the purpose of changing the jurisdiction of incorporation of PowerChord-Florida, it is advisable and in the best interests of PowerChord-Florida to convert to a corporation named PowerChord, Inc. that is organized and validly existing under the laws of the State of Delaware ("PowerChord-Delaware"), pursuant to Sections 607.1112 and 607.1113 of the FBCA and Section 265 of the DGCL, and upon the terms and conditions herein provided; and

**WHEREAS**, the form, terms and provisions of this Plan have been authorized, approved and adopted by (a) the Board and (b) the holders of all of the outstanding shares of the Florida Common Stock by written consent in lieu of a special shareholders' meeting, each in accordance with the requirements of the FBCA and the DGCL;

**NOW, THEREFORE**, PowerChord-Florida hereby adopts this Plan, subject to the terms and conditions hereinafter set forth, as follows:

**1. CONVERSION**

1.1 Conversion. In accordance with the provisions of this Plan, the FBCA and the DGCL, PowerChord-Florida shall be converted into a Delaware corporation, with PowerChord-Delaware as the resulting corporation (the "Conversion"), and the existence of PowerChord-Florida shall continue in the organizational form of PowerChord-Delaware. The converted entity, PowerChord-Delaware, shall be incorporated, formed and organized as a corporation under the DGCL and shall thereafter be subject to all of the provisions of the DGCL, except that notwithstanding Section 106 of the DGCL, the existence of

PowerChord-Delaware shall be deemed to have commenced on the date PowerChord-Florida commenced its existence in the State of Missouri.

1.2 Filing and Effectiveness. The Conversion shall become effective when the following actions shall have been completed:

(a) The execution and filing (or causing the execution and filing) of the Certificate of Conversion pursuant to Section 607.1113 of the FBCA, substantially in the form attached hereto as Exhibit A (the "Florida Certificate of Conversion"), with the Secretary of State of the State of Florida;

(b) The execution and filing (or causing the execution and filing) of a Certificate of Conversion pursuant to Sections 103 and 265 of the DGCL, substantially in the form attached hereto as Exhibit B (the "Delaware Certificate of Conversion"), with the Secretary of State of the State of Delaware;

(c) The execution and filing (or causing the execution and filing) of a Certificate of Incorporation of PowerChord-Delaware, substantially in the form attached hereto as Exhibit C (the "Certificate of Incorporation"), with the Secretary of State of the State of Delaware.

1.3 Effect of the Conversion. Upon the date and time when the Conversion shall become effective (the "Effective Time of the Conversion");

(a) The existence of PowerChord-Florida shall continue as PowerChord-Delaware and PowerChord-Delaware shall (i) continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Time of the Conversion, (ii) be subject to all actions previously taken by the Board, (iii) retain, without transfer or assignment, all of the assets, rights, powers and property of PowerChord-Florida, and (iv) continue to be subject to all of the debts, liabilities and obligations of PowerChord-Florida as constituted immediately prior to the Effective Time of the Conversion, all as more fully provided under the applicable provisions of the DGCL and the FBCA. The rights, privileges, powers and interests in property of PowerChord-Florida existing immediately prior to the Effective Time of the Conversion, as well as the debts, liabilities and duties of PowerChord-Florida existing immediately prior to the Effective Time of the Conversion, shall not be deemed, as a consequence of the Conversion, to have been assigned or similarly transferred to PowerChord-Delaware upon the Effective Time of the Conversion for any purpose of the laws of the State of Delaware;

(b) The Bylaws of PowerChord-Delaware shall be, as of the Effective Time of the Conversion, substantially in the form attached hereto as Exhibit D (the "Bylaws") until amended in accordance with the provisions thereof and the DGCL; and

(c) The directors and officers of PowerChord-Delaware immediately prior to the Effective Time of the Conversion shall be the directors and officers of PowerChord-Florida until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation or the Bylaws.

1.4 Tax Treatment of the Conversion. It is the intent of PowerChord-Florida that the transactions contemplated herein are adopted and approved as a plan of reorganization of PowerChord-Florida within the provisions of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended.

## 2. CAPITAL STOCK

2.1 Florida Common Stock. Upon the Effective Time of the Conversion, each share of Florida Common Stock issued and outstanding immediately prior to the Effective Time of Conversion shall, by virtue of the Conversion and without any action by PowerChord-Florida, PowerChord-Delaware, the holder of such shares or any other person, convert into and exchanged for eight (8) validly issued, fully paid and nonassessable shares of common stock, \$0.0001 par value per share, of PowerChord-Delaware (the "PowerChord-Delaware Common Stock"). All shares of the PowerChord-Delaware Common Stock shall be deemed voting shares, regardless of whether such shares of Florida Common Stock were classified as voting or non-voting shares. No fractional share interests of PowerChord-Delaware Common Stock shall be issued. In lieu thereof, if applicable, any fractional share interests to which a holder would otherwise be entitled shall be rounded up to the next whole integer.

2.2 Florida Plans. Upon the Effective Time of the Conversion, the obligations of PowerChord-Florida under option plans and all other employee benefit plans of PowerChord-Florida shall be the obligations of PowerChord-Delaware and, to the extent that any such plan provides for the issuance of Florida Common Stock, upon the Effective Time of the Conversion, such plan shall be deemed to provide for the issuance of Delaware Common Stock. Each outstanding and unexercised option, other right to purchase, or security convertible into, capital stock of PowerChord-Florida (a "Right") shall be an option, right to purchase or a security convertible into the same type of capital stock of PowerChord-Delaware on the basis of eight (8) shares of capital stock of PowerChord-Delaware for each one (1) share of the same type of capital stock of PowerChord-Florida issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the applicable exercise price at the Effective Time of the Conversion.

2.3 Exchange of Certificates.

(a) After the Effective Time of the Conversion, each holder of an outstanding certificate representing shares of capital stock PowerChord-Florida may be asked to surrender the same for cancellation to the Secretary of PowerChord-Delaware (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the appropriate number of shares of the same type of capital stock of PowerChord-Delaware into which the surrendered shares were converted as herein provided. Until so surrendered or canceled, each outstanding certificate theretofore representing shares of capital stock of PowerChord-Florida shall be deemed for all purposes to represent the number of shares of the type of capital stock of PowerChord-Delaware into which such shares of capital stock of PowerChord-Florida were converted pursuant to this Section 2.

(b) The registered owner on the books and records of PowerChord-Florida of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to PowerChord-Delaware, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of PowerChord-Delaware represented by such outstanding certificate as provided above.

(c) Each certificate representing capital stock of PowerChord-Delaware so issued in the Conversion shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of such series of capital stock of PowerChord-Florida so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of PowerChord-Delaware in compliance with applicable laws.

(d) If any certificate for shares of PowerChord-Delaware's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that (i) the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, (ii) such transfer otherwise be proper and comply with



applicable securities laws, (iii) such transfer comply with the Shareholders' Agreement of PowerChord-Florida, if applicable, and the applicable requirements for joinder thereof and (iv) the person requesting such transfer pay to PowerChord-Delaware any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of PowerChord-Delaware that such tax has been paid or is not payable.

### 3. GENERAL

3.1 Abandonment. At any time before the Effective Time of the Conversion, this Plan may be terminated and the Conversion may be abandoned for any reason whatsoever by the Board, notwithstanding the approval of this Plan by the shareholders of PowerChord-Florida.

3.2 Amendment. The Board may amend this Plan at any time prior to the filing of this Plan (or certificate in lieu thereof) with the Secretary of State of the State of Delaware or the Secretary of State of the State of Florida, if in the opinion of the Board, such action would be in the best interests of PowerChord-Florida and its shareholders.

3.3 Registered Office. The registered office of PowerChord-Delaware in the State of Delaware is 1675 South State Street, Suite B, City of Dover, County of Kent, State of Delaware and Capitol Services, Inc. is the registered agent of PowerChord-Delaware at such address.

3.4 Plan of Conversion. Executed copies of this Plan will be on file at the principal place of business of PowerChord-Delaware at 100 2<sup>nd</sup> Avenue S, Suite 200-S, St. Petersburg, Florida 33701, and copies thereof will be furnished to any shareholder of PowerChord-Florida and, after the Conversion, PowerChord-Delaware, upon request and without cost.

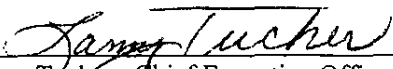
3.5 Governing Law. This Plan shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the conversion provisions of the FBCA.

3.6 Severability. Each provision of the Plan will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Plan is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Plan.

[Signature Page Follows.]

**IN WITNESS WHEREOF**, this Plan of Conversion, having first been approved by the resolutions of the Board and shareholders of PowerChord-Florida, is hereby executed on behalf of such corporation and attested by its officers thereunto duly authorized, as of the date first above written.

POWERCHORD, INC., a Florida corporation

  
\_\_\_\_\_  
Lanny Tucker, Chief Executive Officer

**Exhibit A**

**Florida Certificate of Conversion**

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** PowerChord, Inc.

Name of Florida Profit Corporation

The enclosed Certificate of Conversion and fee(s) are submitted to convert a Florida Profit Corporation into an "Other Business Entity" in accordance with s. 607.1113, F.S.

Please return all correspondence concerning this matter to:

Zachary D. Crowe

Contact Person

Morris, Manning & Martin, LLP

Firm/Company

1600 Atlanta Financial Center, 3343 Peachtree Road, NE

Address

Atlanta, GA 30326

City, State and Zip Code

zcrowe@mmmlaw.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Zachary Crowe

Name of Contact Person

at ( 404 ) 504-5486

Area Code and Daytime Telephone Number

Enclosed is a check for the following amount:



\$35.00 Filing Fee



\$43.75 Filing Fee  
and Certificate of  
Status



\$43.75 Filing Fee  
and Certified Copy



\$52.50 Filing Fee,  
Certified Copy, and  
Certificate of Status

**STREET ADDRESS:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

Amendment Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

**Certificate of Conversion**  
For  
**Florida Profit Corporation**  
Into  
**“Other Business Entity”**

This Certificate of Conversion is submitted to convert the following **Florida Profit Corporation into an “Other Business Entity”** in accordance with s. 607.1113, Florida Statutes.

1. The name of the Florida Profit Corporation converting into the “Other Business Entity” is:

**PowerChord, Inc.**

---

**Enter Name of Florida Profit Corporation**

2. The name of the “Other Business Entity” is:

**PowerChord, Inc.**

---

**Enter Name of “Other Business Entity”**

3. The “Other Business Entity” is a **Corporation**  
(Enter entity type. Example: limited liability company, limited partnership, general partnership, common law or business trust, etc.)

organized, formed or incorporated under the laws of **Delaware**.  
(Enter state, or if a non-U.S. entity, the name of the country)

4. The above referenced Florida Profit Corporation has converted into an “Other Business Entity” in compliance with Chapter 607, F.S., and the conversion complies with the applicable laws governing the “Other Business Entity.”

5. The plan of conversion was approved by the converting Florida Profit Corporation in accordance with Chapter 607, F.S.

6. If applicable, the written consent of each shareholder who, as a result of the conversion, is now a general partner of the surviving entity was obtained pursuant to s. 607.1112(6), F.S.

7. This conversion was effective under the laws governing the “Other Business Entity”

on: \_\_\_\_\_

8. This conversion shall be effective in Florida on: \_\_\_\_\_.  
(The effective date: 1) cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State; AND 2) must be the same as the effective date of the conversion under the laws governing the "Other Business Entity.")

9. The "Other Business Entity's" principal office address, if any:

100 2nd Avenue S, Suite 200-S, St. Petersburg, Florida 33701

10. If the "Other Business Entity" is an out-of-state entity not registered to transact business in Florida, the "Other Business Entity":

a.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of the converting Florida profit corporation, including any appraisal rights of shareholders of the converting Florida profit corporation under ss. 607.1301-607.1333, Florida Statutes.

b.) Lists the following street and mailing address of an office, which the Florida Department of State may use for purposes of s. 607.1114(4), Florida Statutes.

Street Address: 100 2nd Avenue S, Suite 200-S, St. Petersburg, Florida 33701

Mailing Address: 100 2nd Avenue S, Suite 200-S, St. Petersburg, Florida 33701

11. The "Other Business Entity" has agreed to pay any shareholders having appraisal rights the amount to which they are entitled under ss.607-1301-607.1333, F.S.

Signed this \_\_\_\_\_ day of January 2016.

Signature: \_\_\_\_\_

(Must be signed by a Chairman, Vice Chairman, Director, Officer, or, if Directors or Officers have not been selected, an Incorporator.)

Printed Name: Lanny Tucker Title: Chief Executive Officer

**Fees:** Filing Fee: \$35.00  
Certified Copy: \$8.75 (Optional)  
Certificate of Status: \$8.75 (Optional)

**Exhibit B**

**Delaware Certificate of Conversion**

STATE OF DELAWARE  
CERTIFICATE OF CONVERSION  
FROM A NON-DELAWARE CORPORATION  
TO A DELAWARE CORPORATION  
PURSUANT TO SECTION 265 OF THE  
DELAWARE GENERAL CORPORATION LAW

- 1.) The jurisdiction where the Non-Delaware Corporation first formed is Missouri.
  
- 2.) The jurisdiction immediately prior to filing this Certificate is Florida.
  
- 3.) The date the Non-Delaware Corporation first formed is 11/10/1999.
  
- 4.) The name of the Non-Delaware Corporation immediately prior to filing this Certificate is PowerChord, Inc..
  
- 5.) The name of the Corporation as set forth in the Certificate of Incorporation is PowerChord, Inc..

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting Non-Delaware Corporation have executed this Certificate on the \_\_\_\_\_ day of January, A.D. 2016.

By: \_\_\_\_\_

Name: Patrick J. Schunk  
Print or Type

Title: President  
Print or Type



**Exhibit C**

**Certificate of Incorporation**

**CERTIFICATE OF INCORPORATION  
OF  
POWERCHORD, INC.**

The undersigned, for the purpose of creating and organizing a corporation under the provisions of and subject to the requirements of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"), certifies as follows:

**FIRST:** The name of this corporation is POWERCHORD, INC. (the "**Corporation**").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 1675 South State Street, Suite B, in the City of Dover, County of Kent. The name of its registered agent at such address is Capitol Services, Inc.

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

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 40,000,000 shares of Common Stock, \$0.0001 par value per share ("**Common Stock**") and (ii) 5,444,103 shares of Preferred Stock, \$0.0001 par value per share ("**Preferred Stock**").

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

A. COMMON STOCK

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

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. SERIES A PREFERRED STOCK.

5,444,103 shares of the authorized Preferred Stock of the Corporation are designated “**Series A Preferred Stock**”. The rights, preferences, powers, privileges and restrictions, qualifications and limitations of the Series A Preferred Stock are as set forth in this Part B of this Article Fourth. Unless otherwise indicated, references to “Sections” or “Subsections” in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

1. Dividends.

From and after the date of the issuance of any shares of Series A Preferred Stock, non-compounding dividends shall accrue on such shares of Series A Preferred Stock at the rate per annum of seven percent (7%) of the Series A Original Issue Price (the “**Accruing Dividends**”). The “**Series A Original Issue Price**” shall mean \$1.83685 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as expressly set forth in this Part B of this Article Fourth, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. Except with respect to the Dividend Amount (as defined in that certain Series A Preferred Stock Purchase Agreement dated as of January \_\_\_, 2016, by and among the Corporation and the parties named therein), (a) the Corporation shall not declare, pay or set aside any dividends on shares of Common Stock for so long as any shares of Series A Preferred Stock remain outstanding and (b) the Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the sum of (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price; provided that if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series A Preferred Stock dividend.

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

2.1 Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders (on a *pari passu* basis with the holders of any series of Preferred Stock ranking on liquidation on a parity with the Series A Preferred Stock), before any payment shall be made to the holders of Common Stock or any other class or series of capital stock ranking on liquidation junior to the Series A Preferred Stock, by reason of their ownership thereof, an amount per share equal to the Series A Original Issue Price (the “**Base Preference Amount**”), plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon; provided, however, that the holders of Series A Preferred Stock shall only be entitled to receive such portion (if any) of the Base Preference Amount as would not, when taken together with the amounts such holders are entitled to receive under Subsection 2.2 with respect to each share of Series A Preferred Stock, exceed the Preference Threshold Amount (excluding, for purposes of this determination, the payment of any accrued but unpaid dividends on shares of Series A Preferred Stock). The “**Preference Threshold Amount**” means an amount per share of Series A Preferred Stock equal to (a) if the liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event occurs before the fourth (4<sup>th</sup>) anniversary of the Series A Original Issue Date (as defined below), three (3) times the Series A Original Issue Price, or (b) if the liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event occurs on or after the fourth (4<sup>th</sup>) anniversary of the Series A Original Issue Date, four (4) times the Series A Original Issue Price (in each case, subject to appropriate adjustment in the event of a stock split, stock dividend, combination, reclassification, or similar event affecting the Series A Preferred Stock). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series A Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series A Preferred Stock and any class or series of Preferred Stock ranking on liquidation on a parity with the Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Subsections 2.1 and 2.2 is hereinafter referred to as the “**Series A Liquidation Amount.**”

## 2.3 Deemed Liquidation Events.

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

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

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

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

## 2.3.2 Effecting a Deemed Liquidation Event.

- (a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

- (b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the ninetieth (90<sup>th</sup>) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of at least a majority of the then outstanding shares of

Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “**Available Proceeds**”), on the one hundred fiftieth (150<sup>th</sup>) day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, the Corporation shall ratably redeem each holder’s shares of Series A Preferred Stock to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. The provisions of Section 6 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock pursuant to this Subsection 2.3.2(b). Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

### 2.3.3 Amount Deemed Paid or Distributed.

(a) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be its or their fair market value, as determined by the Board of Directors of the Corporation and the holders of a majority of the outstanding shares of Series A Preferred Stock. In the event that the Board of Directors of the Corporation and the holders of a majority of the outstanding shares of Series A Preferred Stock cannot agree on the value, the value of such property, rights or securities shall be its or their fair market value, as determined by independent appraisal by an appraiser experienced in the business of valuing the market value of stock or assets of the type involved, who shall be acceptable to the Corporation and the holders of a majority of the outstanding shares of Series A Preferred Stock. If the parties cannot agree on an appraiser within twenty (20) days after the date that the Section 4.10 Notice is delivered, each of (A) the Corporation and (B) the holders of a majority of the outstanding shares of Series A Preferred Stock shall immediately designate an appraiser experienced in the business of valuing the market value of stock of enterprises similar to the Corporation. The two designated appraisers (the “**Initial Appraisers**”) shall, within twenty (20) days after their selection, appraise the securities or other property as of the latest possible date. If the difference between the resulting appraisals is less than ten percent (10%) of the lower of the two appraisals, the average of the appraisals will be deemed the fair market value; otherwise, the Initial Appraisers shall promptly mutually select an additional appraiser (the “**Additional Appraiser**”), also experienced in a manner similar to the Initial Appraisers. If they fail to select the Additional Appraiser within five (5) days after the date both appraisals are complete, either party may apply, after written notice to the other, to the American Arbitration Association (“**AAA**”) who will then appoint an Additional Appraiser with knowledge and

experience in valuing companies in the Corporation's industry. The Additional Appraiser shall, within ten (10) days after their selection by the AAA, then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the securities or other property, and this value will be the appraised fair market value. The Corporation and the holders of a majority of the Series A Preferred Stock shall each engage and pay the fees and expenses of the respective Initial Appraiser that they designate. The Additional Appraiser, if any, shall be engaged by the Board of Directors of the Corporation and the Corporation and the holders of the majority of the outstanding shares of Series A Preferred Stock shall each pay fifty percent (50%) its fees and expenses. The Corporation shall, upon receipt of the Additional Appraiser's valuation, give prompt written notice to each holder of Series A Preferred Stock.

(b) Any securities shall be valued as follows:

(i) For securities not subject to investment letter or other similar restrictions on free marketability: (A) if traded on a national securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the twenty (20) trading-day period ending three (3) trading-days prior to the closing of the transaction; (B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the twenty (20) trading-day period ending three (3) trading-days prior to the closing of the transaction; or (C) if there is no active public market, the value shall be the fair market value thereof, with the discounts described below for lack of marketability and minority status; and

(ii) For 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), there shall be an appropriate discount from the market value determined as above to reflect the approximate fair market value taking into account the lack of marketability and minority holder status, as mutually determined by the Corporation and the holders of a majority of the outstanding shares of the Series A Preferred Stock or the appraisers contemplated above.

(c) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Deemed Liquidation Event shall be superseded by any determination of such value set forth in definitive agreements governing the Deemed Liquidation Event that are approved by the Board of Directors of the Corporation, including the separate approval of the Series A Director.

2.3.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous

payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

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

3.2 Election of Directors. For so long as at least 1,361,026 shares of Series A Preferred Stock remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), the holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the “**Series A Director**”), the holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation, and the holders of record of the shares of Series A Preferred Stock and Common Stock, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect one (1) director of the Corporation. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series A Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.



3.3 Series A Preferred Stock Protective Provisions. For so long as at least 1,361,026 shares of Series A Preferred Stock remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

3.3.1 liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, engage in any transaction or series of related transactions resulting in the sale or transfer of shares representing more than fifty percent (50%) of the outstanding voting power of the Corporation (a "Stock Sale"), or consent to any of the foregoing; provided, however, that the consent or affirmative vote of the holders of Series A Preferred Stock shall not be required for the Corporation to effect or consent to any Deemed Liquidation Event or Stock Sale if (a) during the period from the Series A Original Issue Date (as defined below) until the fourth (4<sup>th</sup>) anniversary of the Series A Original Issue Date, such Deemed Liquidation Event or Stock Sale would actually result in distributions or payments to the holders of Series A Preferred Stock equal to at least three (3) times the Series A Original Issue Price; or (b) from and after the fourth (4<sup>th</sup>) anniversary of the Series A Original Issue Date, such Deemed Liquidation Event or Stock Sale would actually result in distributions or payments to the holders of Series A Preferred Stock equal to at least five (5) times the Series A Original Issue Price;

3.3.2 amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner that affects the powers, preferences or rights of the Series A Preferred Stock;

3.3.3 create, or authorize the creation of, any additional class or series of capital stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

3.3.4 increase the authorized number of shares of any class or series of capital stock of the Corporation;

3.3.5 issue or obligate itself to issue shares of any class or series of capital stock;

3.3.6 (i) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such

reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series A Preferred Stock in respect of any such right, preference or privilege;

3.3.7 purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Series A Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock, (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the original purchase price thereof or (iv) as approved by the Board of Directors of the Corporation, including the approval of the Series A Director;

3.3.8 create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security in an individual amount in excess of \$1,000,000;

3.3.9 assign, transfer, pledge, hypothecate, mortgage, grant a lien on, or otherwise dispose of, all or substantially all of the assets of the Corporation;

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

3.3.11 enter into or effect any transaction or series of related transactions involving the purchase, lease, license, exchange or other acquisition (including by merger, consolidation, acquisition of stock or acquisition of assets) by the Corporation of any assets or equity interests of any person or entity;

3.3.12 increase or decrease the authorized number of directors constituting the Board of Directors of the Corporation, or change or alter any procedure for the election of directors; or

3.3.13 engage in any other material transaction outside of the ordinary course of business of the Corporation.

#### 4. Optional Conversion.

The holders of the Series A Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**");

##### 4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully

paid and non-assessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The “**Series A Conversion Price**” shall initially be equal to \$1.83685. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

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

#### 4.3 Mechanics of Conversion.

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

record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all unpaid Accruing Dividends (whether or not declared) and all other declared but unpaid dividends on the shares of Series A Preferred Stock converted.

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

4.3.3 Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any unpaid Accruing Dividends (whether or not declared) and any other dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

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

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other

than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

#### 4.4 Adjustments to Series A Conversion Price for Diluting Issues.

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

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

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

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

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

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

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) up to 1,232,000 shares of Common Stock (the “**Plan Shares**”), including Options therefor (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to the PowerChord, Inc. 2016 Stock Incentive Plan; except for any increase in Plan Shares or any other arrangement for the foregoing approved by the Board of Directors of the Corporation, including the Series A Director;

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

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real

property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including the Series A Director that do not exceed an aggregate of one percent (1%) of shares of Common Stock of the Corporation on a fully diluted basis; or

(vi) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the Corporation, including the Series A Director.

4.4.2 No Adjustment of Series A Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

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

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price in effect immediately prior to the original adjustment made as a

result of the issuance of such Option or Convertible Security, or (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

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

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

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

Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

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

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

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

(a) "CP<sub>2</sub>" shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(b) "CP<sub>1</sub>" shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

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

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and

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

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

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and



(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4.4.4, then, upon the final such issuance, the Series A Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

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

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

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

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

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

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

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable

upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. For the avoidance of doubt, nothing in this Subsection 4.8 shall be construed as preventing the holders of Series A Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Subsection 4.8 be deemed conclusive evidence of the fair value of the shares of Series A Preferred Stock in any such appraisal proceeding.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

4.10 Notice of Record Date. In the event:

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

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

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

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice (a "**Section 4.10 Notice**") specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is

proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least thirty (30) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, at a price per share equal to at least five (5) times the Series A Original Issue Price and resulting in at least \$25,000,000 of gross proceeds to the Corporation or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “**Mandatory Conversion Time**”), then (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Subsection 4.1.1, with all accrued but unpaid Accruing Dividends (whether or not declared) and any other declared but unpaid dividends thereon paid in cash, and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of

Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any unpaid Accruing Dividends (whether or not declared) and any other declared but unpaid dividends on the shares of Series A Preferred Stock converted. Such converted Series A Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

6. Redemption.

6.1 Generally.

6.1.1 All shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the greater of (i) the Series A Original Issue Price per share, plus all accrued but unpaid Accruing Dividends and all other declared but unpaid dividends thereon, and (ii) the amount the holder would receive in a Deemed Liquidation Event involving a sale of the Corporation for cash proceeds equal to the Corporation's then current fair market value as determined pursuant to Subsection 6.1.2 below (the "**Redemption Price**"), in three (3) annual installments commencing not more than one year after receipt by the Corporation at any time on or after the fifth anniversary of the Series A Original Issue Date, from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the "**Redemption Request Date**"). The date of each such installment shall be referred to as a "**Redemption Date**". On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock owned by each holder, that number of outstanding shares of Series A Preferred Stock determined by dividing (x) the total number of shares of Series A Preferred Stock outstanding immediately prior to such Redemption Date by (y) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Series A Preferred Stock of any other class or series of capital stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

6.1.2 For purposes of this Section 6, fair market value of the Corporation for determining the Redemption Price shall be determined in the manner set forth in this Subsection 6.1.2. The fair market value shall be determined either (a) by agreement of the Board of Directors of the Corporation and holders of at least a majority of the outstanding shares of Series A Preferred Stock, or (b) by independent appraisal by an appraiser, who shall be mutually acceptable to the Board of Directors and such holders of at least a majority of the outstanding shares of Series A Preferred Stock, which appraiser shall be experienced in the business of valuing enterprises similar to the Corporation based on an assumed Deemed Liquidation Event involving an interested strategic or financial purchaser in an arms-length transaction, taking into full account the Accruing Dividends and the rights of the Series A Preferred Stock, to receive the amounts set forth in Subsections 2.1 and 2.2 hereof in connection

with any distributions to be made thereunder. If the parties cannot agree on an appraiser within twenty (20) days after the Redemption Request Date, each of (A) the Board of Directors of the Corporation and (B) the holders of a majority of the outstanding shares of Series A Preferred Stock shall immediately designate an appraiser experienced in the business of valuing enterprises similar to the Corporation. The two designated appraisers shall, within twenty (20) days after their selection, value the Corporation as of the date of the Redemption Request Date. If the difference between the resulting appraisals is less than ten percent (10%) of the lower of the two appraisals, the average of the appraisals will be deemed the fair market value; otherwise such appraisers shall promptly mutually select an additional appraiser also experienced in the business of valuing enterprises similar to the Corporation. If they fail to select such appraiser within five (5) days after the date both appraisals are complete, either party may apply, after written notice to the other, to the AAA who will then appoint the additional appraiser with knowledge and experience in valuing companies in the Corporation's industry. Such appraiser shall, within ten (10) days after their selection by the AAA, then choose from the values determined by the initial appraisers the value that it considers closest to the fair market value of the Corporation, and such value will be the appraised fair market value. The Corporation and the holders of a majority of the Series A Preferred Stock shall each engage and pay the fees and expenses of the respective initial appraiser that they designate. The third appraiser, if any, shall be engaged by the Board of Directors of the Corporation and its fees and expenses shall be paid equally by the Corporation and the holders of a majority of the Series A Preferred Stock. The Corporation shall, upon receipt of such appraisers' valuation, give prompt written notice to each holder of Series A Preferred Stock.

6.2 Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the "**Redemption Notice**") to each holder of record of Series A Preferred Stock not less than forty (40) days prior to each Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(b) the Redemption Date and the Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection 4.1); and

(d) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the

Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series A Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

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

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

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

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

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

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

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

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the Corporation or in the Bylaws of the Corporation.

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

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

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

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

**ELEVENTH:** The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series A Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee 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, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

\* \* \*

[Signature Page Follows]



**IN WITNESS WHEREOF**, this Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this \_\_ day of January, 2016.

By: \_\_\_\_\_  
Name: Lanny Tucker  
Title: Chief Executive Officer

**Exhibit D**

**Bylaws**

**BYLAWS**  
**OF**  
**POWERCHORD, INC.**

Adopted as of January \_\_, 2016

## ARTICLE I

### STOCKHOLDERS

1.1 Place of Meetings All meetings of stockholders of POWERCHORD, INC. (the "*Corporation*") shall be held at such place as may be designated from time to time by the board of directors of the Corporation (the "*Board of Directors*"), the chairman of the Board of Directors (the "*Chairman of the Board*") or the president of the Corporation (the "*President*"), at the principal office of the Corporation. The Board of Directors may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication in a manner consistent with the General Corporation Law of the State of Delaware.

1.2 Annual Meeting The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman of the Board, or the President (which date shall not be a legal holiday in the place where the meeting is to be held).

1.3 Special Meetings Special meetings of stockholders for any purpose or purposes may be called at any time by only the Board of Directors, the Chairman of the Board or the President, and may not be called by any other person or persons. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the General Corporation Law of the State of Delaware) by the stockholder to whom the notice is given. The notices of all meetings shall state the place, if any, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the General Corporation Law of the State of Delaware.

1.5 Voting List The Secretary shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting; or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a physical location (and not solely by means of remote communication), then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The list shall

presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 Quorum— Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the Corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments— Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by the chairman of the meeting or by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place, if any, of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies— Each stockholder entitled to vote shall have one vote for each share of stock held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law, the Certificate of Incorporation or these Bylaws. Each stockholder of record entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action without a meeting, may vote or express such consent or dissent in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote or act for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of the State of Delaware by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the Corporation. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting— When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the vote of the holders of shares of stock having a majority in voting power of the votes cast by the holders of all of the shares of stock present or represented at the meeting and voting affirmatively or negatively on such matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each such class or series, the holders of a majority in voting power of the shares of stock of that class or series present or represented at the meeting and voting affirmatively or negatively on such matter), except when a different vote is required by law, the Certificate of Incorporation or these Bylaws. When a quorum is present at any meeting, any election by stockholders of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

#### 1.10 Conduct of Meetings.

(a) Chairman of Meeting. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the President, or in the President's absence by the Treasurer, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation, by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

#### 1.11 Action without Meeting.

(a) Taking of Action by Written Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on such action were present and voted. Except as otherwise provided by the Certificate of Incorporation, stockholders may act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

(b) Electronic Transmission of Consents. Any electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 1.11, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder, and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced

in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(c) Notice of Taking of Corporate Action. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

## ARTICLE II

### DIRECTORS

2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the Corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Qualification. The Board of Directors shall consist of one or more members. The initial number of directors shall be three (3), and thereafter, unless otherwise required by law or the Certificate of Incorporation, shall be fixed from time to time by resolution of the Board of Directors. The directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. Election of directors need not be by written ballot. Directors need not be stockholders of the Corporation.

2.3 Chairman of the Board; Vice Chairman of the Board. The Board of Directors may appoint from its members a Chairman of the Board and a Vice Chairman of the Board, neither of whom need be an employee or officer of the Corporation. If the Board of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. If the Board of Directors appoints a Vice Chairman of the Board, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. Unless otherwise provided by the Board of Directors, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors.

2.4 Tenure. Each director shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until the earlier of such director's death, resignation or removal.

2.5 Quorum. A majority of the directors at any time in office shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.6 Action at Meeting□ Every act or decision done or made by a majority of the directors present at a meeting of the Board of Directors duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number is required by law or by the Certificate of Incorporation.

2.7 Removal□ Except as otherwise provided by the General Corporation Law of the State of Delaware, any one or more or all of the directors of the Corporation may be removed, with or without Cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except that the directors elected by the holders of a particular class or series of stock may be removed without cause only by vote of the holders of a majority of the outstanding shares of such class or series. For purposes of this Section 2.7 and Section 3.5 (related to officers), the term "**Cause**" means only: (a) a material breach by the applicable director (or officer) of his duties under the Certificate of Incorporation or these Bylaws, or a material violation by the director (or officer) of applicable law, that in either event has a material adverse effect on the business of the Corporation or the ability of the director (or officer) to perform his duties under the terms of the Certificate of Incorporation, these Bylaws or applicable law; or (b) willful misconduct, fraud or a criminal act by the director (or officer) in connection with the performance of his duties under the terms of the Certificate of Incorporation or these Bylaws. The director (or officer) shall have the opportunity to cure any such Cause before removal can occur.

2.8 Vacancies□ Unless and until filled by the stockholders, any vacancy or newly-created directorship on the Board of Directors, however occurring, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office, and a director chosen to fill a position resulting from a newly-created directorship shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until the earlier of such director's death, resignation or removal.

2.9 Resignation□ Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairman of the Board, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

2.10 Regular Meetings□ Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.11 Special Meetings□ Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman of the Board, the President, two or more directors, or by one director in the event that there is only a single director in office.

2.12 Notice of Special Meetings□ Notice of the date, place, if any, and time of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (a) in person or by telephone at least 24 hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, facsimile or electronic transmission, or delivering written notice by hand, to such director's last known business, home or electronic transmission address at least 48 hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.



2.13 Meetings by Conference Communications Equipment□ Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.14 Action by Written Consent□ Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.15 Committees□ The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation with such lawfully delegable powers and duties as the Board of Directors thereby confers, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

2.16 Compensation of Directors□ Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service.

### ARTICLE III

#### OFFICERS

3.1 Titles□ The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election□ The Chief Executive Officer, President, Treasurer and Secretary may be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 Qualification— No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure— Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until the earlier of such officer's death, resignation or removal.

3.5 Resignation and Removal— Any officer may resign by delivering a written resignation to the Corporation at its principal office or to the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without Cause, by vote of a majority of the directors then in office. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the Corporation.

3.6 Vacancies— The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

3.7 Chief Executive Officer— The Chief Executive Officer is the chief executive officer of the Corporation and shall have such duties as customarily pertain to that office. The Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers, may appoint and remove assistant officers and other agents and employees and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.

3.8 President— The President shall, subject to the direction of the Board of Directors and the Chief Executive Officer, have active management and supervision of the property, business and affairs of the Corporation and such other powers and duties as the Board of Directors or Chief Executive Officer may from time to time designate. The President may execute and deliver in the name of the Corporation powers of attorney, contracts and bonds and other obligations and instruments. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the President. In the event of the absence, inability or refusal to act of the Vice President, the Treasurer shall perform the duties of the President and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the President.

3.9 Vice Presidents— Each Vice President, if any, shall perform such duties and possess such powers as the Board of Directors or the President may from time to time prescribe. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.10 Secretary and Assistant Secretaries— The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary,

including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 Treasurer and Assistant Treasurers□ The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the President. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the Corporation.

Any Assistant Treasurer shall perform such duties and possess such powers as the Board of Directors, the President or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurer in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer. In the event of the absence, inability or refusal to act of the Assistant Treasurer, the Secretary shall perform the duties and exercise the powers of the Treasurer.

3.12 Salaries□ Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.13 Delegation of Authority□ The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

## ARTICLE IV

### CAPITAL STOCK

4.1 Issuance of Stock□ Subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any shares of the authorized capital stock of the Corporation held in the Corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

4.2 Stock Certificates; Uncertificated Shares□ The shares of the Corporation may be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares.

Every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the General Corporation Law of the State of Delaware.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151(f), 202(a) or 218(a) of the General Corporation Law of the State of Delaware or, with respect to Section 151 of General Corporation Law of the State of Delaware, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3 Transfers Shares of stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation or by transfer agents designated to transfer shares of stock of the Corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

4.4 Lost, Stolen or Destroyed Certificates The Corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Board of Directors may require for the protection of the Corporation or any transfer agent or registrar.

4.5 Record Date The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not precede the date on which the resolution fixing the record date is adopted, and such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 10 days after the date of adoption of a record date for a consent without a meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders entitled to express consent to corporate action without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first consent is properly delivered to the Corporation. If no record date is fixed, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

4.6 Regulations The issue, transfer, conversion and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board of Directors may establish.

## ARTICLE V

### GENERAL PROVISIONS

5.1 Fiscal Year Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities Except as the Board of Directors may otherwise designate, the President or the Treasurer may waive notice of, vote, or appoint any person or persons to vote, on behalf of the Corporation at, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for

this Corporation (with or without power of substitution) at, any meeting of stockholders or securityholders of any other entity, the securities of which may be held by this Corporation.

5.5 Evidence of Authority□ A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation□ All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and in effect from time to time.

5.7 Severability□ Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.8 Pronouns□ All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9 Indemnification□ Each person who was or is a party to, or is threatened to be made a party to, or is involved in, any action, suit or proceeding, whether civil, criminal, administrative or investigative ("Proceeding"), including without limitation Proceedings by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he or she or a person for whom he or she is the legal representative is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer, employee or agent of another Corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith. Such right shall be a contract right and shall include the right to be paid by the Corporation for expenses incurred in defending any such Proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a director or officer of the Corporation in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such Proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Section 5.9 or otherwise. Any amendment, repeal or modification of this Section 5.9 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

5.10 Right of Claimant to Bring Suit□ If a claim under Section 5.9 of these Bylaws is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the

required undertaking has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant had not met such applicable standard of conduct, shall create a presumption that claimant had not met the applicable standard of conduct.

5.11 Non-Exclusivity of Rights—The rights conferred by Sections 5.9 and Section 5.10 of these Bylaws shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

5.12 Insurance—The Corporation may maintain insurance, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

## ARTICLE VI

### AMENDMENTS

6.1 By the Board of Directors—These Bylaws may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted by the Board of Directors.

6.2 By the Stockholders—These Bylaws may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted by the affirmative vote of the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at any annual meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new bylaws shall have been stated in the notice of such special meeting.

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