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DATE: 6/13/19

NAME: GENICON, INC.

TYPE OF FILING: AMENDMENT

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AUTHORIZATION: ABBIE/PAUL HODGE



**AMENDMENT TO AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
GENICON, INC.**

Genicon, Inc. (the "**Corporation**"), a corporation organized and existing under and by virtue of the provisions of the Florida Business Corporation Act (the "**Act**"),

DOES HEREBY CERTIFY:

1. That the name of the Corporation is Genicon, Inc. and that the Corporation was originally incorporated pursuant to the Act on December 17, 2013.

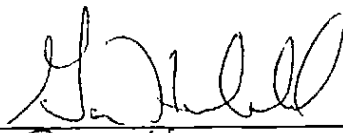
2. That the Board of Directors duly adopted resolutions proposing that the Corporation's Amended and Restated Articles of Incorporation executed on April 19, 2015 be amended as set forth on Exhibit A hereto (the "**Amendment**"), declaring said Amendment to be advisable and in the best interests of the Corporation and its shareholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the shareholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Board of Directors hereby approves the Amendment.

3. That the foregoing Amendment was approved by the holders of the requisite number of shares of the Corporation in accordance with of the Act.

4. That the Amendment has been duly adopted by the shareholders. The number of votes cast for the Amendment by the shareholders was sufficient for approval.

IN WITNESS WHEREOF, this Amendment to the Amended and Restated Articles of Incorporation has been executed by a duly authorized officer of the Corporation on this 13th day of June, 2019.

By: 
Name: Gary Haberman
Title: President

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EXHIBIT A

Article Third Subsection 3.2 of Article Third hereby is amended and restated in its entirety as follows:

3.2 **Election of Directors.** 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 shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation ("**Series B Directors**") and the holders of record of shares of Common Stock and Preferred Stock, exclusively and voting together as a single class and on an as-converted basis, shall be entitled to elect two (2) directors of the Corporation, one (1) of whom shall be the Corporation's Chief Executive Officer (the "**Common Directors**"). 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 shareholders duly called for that purpose or pursuant to a written consent of shareholders. If the holders of shares of Series A Preferred Stock, Series B 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, Series B 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 shareholders of the Corporation other than by the shareholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. 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.

Article Third Subsection 3.4 of Article Third hereby is amended and restated in its entirety as follows:

3.4 **Series B Preferred Stock Protective Provisions.** At any time when at least 50% of the maximum shares of Series B Preferred Stock issued (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Articles of Incorporation) the written consent or affirmative vote of the holders of at least 51% of the then outstanding shares of Series B 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.

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

3.4.2 amend, alter or repeal any provision of the Articles of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series B Preferred Stock;

3.4.3 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) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (ii) 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 lower of the original purchase price or the then-current fair market value thereof or (iii) as approved by the Board of Directors, including the approval of at least one Series B Director;

3.4.4 create, or authorize the creation of, or issue, or authorize the issuance of any debt security or encumber the assets of the Corporation (other than in the ordinary course of the Corporation's business), or permit any subsidiary to take any such action with respect to any debt security unless such debt security has received the prior approval of the Board of Directors, including the approval at least one Series B Director;

3.4.5 materially change the Corporation's lines of business;

3.4.6 increase or decrease the authorized number of directors constituting the Board of Directors;

3.4.7 increase or decrease the authorized number of shares of Series B Preferred Stock.

3.4.8 issue additional shares of capital stock or other securities of the Corporation, or authorize any issuance, in each case which are senior to or pari passu with the Series B Preferred Stock;

3.4.9 approve, authorize or adopt any option plan, restricted stock purchase agreement or other equity or phantom equity incentive program or any material amendment thereto (other than increases in the number of shares of capital stock or other securities of the Corporation covered thereby to the extent unanimously approved by the Board of Directors);

3.4.10 effect any merger, reorganization or sale of the Corporation or a sale, license, lease or disposition of all or a substantial portion of the Corporation's assets;

3.4.11 effect any material change to the Corporation's fundamental business or a change to the location of the Corporation's principal office to a location outside of the United States or to a different region within the United States;

3.4.12 effect any reclassification or recapitalization of the Corporation's capital stock;

3.4.13 contribute any capital or assets, or make any loans, to any subsidiary, joint venture or third party, except loans which do not exceed, when aggregated with other loans (direct or indirect) made by the Corporation, \$10,000 in outstanding principal at any one time;

3.4.14 enter into any transaction with any member of the Board of Directors or management, or with any employee or officer of the Corporation or any of its affiliated companies, unless at arm's length or approved by the Board of Directors with approval of at least one Series A Director and one Series B Director;

3.4.15 enter into or engage in any transaction or activity outside of the ordinary course of the business engaged in by the Corporation;

3.4.16 commence or settle any legal, administrative or arbitration action, suit, complaint, charge or proceeding where the amount of the claim exceeds, or would reasonably be expected to exceed, \$1,000,000;

3.4.17 guarantee, directly or indirectly, any indebtedness, other than trade accounts arising in the ordinary course of business;

3.4.18 incur capital expenditures in excess of 110% of the annual capital budget as approved by the Board of Directors;

3.4.19 incur any indebtedness in excess of 110% of the budgeted amount in any fiscal year as approved by the Board of Directors;

3.4.20 enter into any agreement or commitment or otherwise become bound or obligated to do or perform any of the foregoing actions;

3.4.21 enter into any transaction with any affiliate or subsidiary of the Corporation (which, for the avoidance of doubt, shall include Genicon, LLC and Genicon Funding); or

3.4.22 permit a subsidiary to take any action which the Corporation would be permitted from taking pursuant to the foregoing.

Article Third Subsection 6.1 of Article Third hereby amended and restated in its entirety as follows:

6.1 **Series B Preferred Stock.** Unless prohibited by Florida law governing distributions to shareholders, shares of Series B Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor as provided herein. Shares of Series B Preferred Stock shall be redeemable at any time after the sixth anniversary of the Series B Original Issue Date (the "**Redemption Eligibility Date**") at a price per share equal to the greater of (i) the Series B Original Issue Price per share, plus any Accruing Series B Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon; (ii) the Fair Market Value (as determined below) of a single share of Series B Preferred Stock, as of the date of the

Company's receipt of a Redemption Request; and (iii) the Enterprise Value (as determined below) of a single share of Series B Preferred Stock, as of the date of the Corporation's receipt of a Redemption Request (the "**Redemption Price**"). After the Redemption Eligibility Date, shares of Series B Preferred Stock shall be redeemable at any time following upon written notice to the Corporation from the holders of a majority of the then outstanding shares of Series B Preferred Stock requesting redemption of all of the Series B Preferred Stock (the "**Redemption Request**"). Upon receipt of a Redemption Request, the Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Florida law governing distributions to shareholders. The date of redemption of Series B Preferred Stock by the Corporation shall be the "**Redemption Date**," and shall be the first business day which is not more than at least sixty (60) days after the date of delivery of a Redemption Request. On the Redemption Date, the Corporation shall redeem all of the outstanding shares of Series B Preferred Stock. If on the Redemption Date Florida law governing distributions to shareholders prevents the Corporation from redeeming all shares of Series B Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. For purposes hereof, "**Fair Market Value**" of a single share of Series B Preferred Stock shall be the value of a single share of Series B Preferred Stock as mutually agreed upon by the Corporation and the holders of a majority of the shares of Series B Preferred Stock then outstanding, and, in the event that they are unable to reach agreement, by an independent third-party appraiser agreed to by the Corporation and the holders of a majority of the shares of Series B Preferred Stock then outstanding. For purposes hereof, the "**Enterprise Value**" of a single share of Series B Preferred Stock means the dollar amount per share of Series B Preferred Stock suggested by an enterprise valuation of the Corporation equal to the Corporation's EBITDA (meaning earnings before interest, taxes, depreciation, and amortization according to the Corporation's historical practices and derived from the Corporation's financial statements prepared in accordance with United States generally accepted accounting principles) for the twelve (12) consecutive full months of the Corporation most recently ended prior to the date of the Redemption Request, multiplied by six (6).