

STATE OF ALABAMA

DOMESTIC ENTITY CONVERSION TO  
REGISTERED FOREIGN ENTITY

PURPOSE: In order to change a domestic entity (any entity formed in Alabama) to a registered foreign entity (an entity formed outside of Alabama and desiring to transact business in Alabama), the entity must deliver the documentation in this form pursuant to 10A-1-8.04(a)(2), Code of Alabama 1975.

INSTRUCTIONS: Mail two (2) signed copies of the completed Conversion/Registration package, the standard filing fee of \$150.00 (filing time is not guaranteed and is dependent on volume and staffing) or the expedited filing fee of \$250.00 (guaranteed processing within approximately 3 days after receipt of filing) payable by credit card, check, or money order to the **Secretary of State, Business Services, P.O. Box 5616, Montgomery, Alabama, 36103-5616, and a check or money order made out to the Judge of Probate in the county where the converting/terminating domestic entity's formation documents were recorded (contact the Office of the Judge of Probate for the county fees)**. The Secretary of State will file, certify, and transmit the copy and funds to the Judge of Probate in accordance with 10A-1-4.02(g). The Conversion/Registration will not be registered if the credit card does not authorize and will be removed from the index if the check is dishonored. If you desire a stamped copy returned to you, supply a third copy and a pre-addressed postage paid return envelope. All instructions are included in this form: cover letters/sheets are not necessary and will not be reviewed.

**The information completing this form must be typed or it will be returned without review.  
Faxed and emailed transmissions will not be acknowledged, processed, or returned.**

1. **Information on the converting domestic entity (entity will cease to exist as an Alabama Domestic Entity at conversion/termination):**

Alabama Entity ID number of converting entity: 248 - 044 (Format 000-000) \* This is not a tax id number or federal employer id number. This number is required to process the filing.

**\*INSTRUCTION TO OBTAIN ID NUMBER TO COMPLETE FORM:** If you do not have this number immediately available, you may obtain it on our website at [www.sos.alabama.gov](http://www.sos.alabama.gov) under the Government Records tab. Click on Business Entity Records, click on Entity Name, enter the registered name of the entity in the appropriate box, and enter. The six (6) digit number containing a dash to the left of the name is the entity ID number. If you click on that number, you can check the details page to make certain that you have the correct entity – this verification step is strongly recommended.

The name of the converting domestic entity as currently recorded with the Secretary of State of Alabama:

BiscuitBrain Management Corporation

**This Document was prepared by:**

Kelly A. Christian  
Morris, Manning & Martin, LLP  
3343 Peachtree Road, NE  
Atlanta, GA 30326

(For County Probate Court Office Use Only)

20161018000382340 1/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT

Alabama  
Sec. Of State  
Entity Change D/C  
248-044  
Date 10/12/2016  
Time 15:56  
161012 34 Pg  
File \$100.00  
Ackn \$.00  
Exp \$100.00  
Total \$200.00  
09/003

(For SOS Office Use Only)

**DOMESTIC ENTITY CONVERSION TO REGISTERED FOREIGN ENTITY**

County Probate Office in Alabama where the formation documents/articles of this domestic entity were recorded and where the recorded conversion document will be forwarded by SOS: Shelby County

**2. Information on the converted foreign entity(formed/created on conversion) – this entity will be registered as an authorized foreign entity in the State of Alabama under the same entity ID number as the converting entity:**

Converted entity will be (check one):

- |                                                                         |                                                                       |
|-------------------------------------------------------------------------|-----------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Business Corporation                | <input type="checkbox"/> Limited Partnership (LP)                     |
| <input type="checkbox"/> Nonprofit Corporation                          | <input type="checkbox"/> Limited Liability Limited Partnership (LLLP) |
| <input type="checkbox"/> Professional Corporation (PC)                  | <input type="checkbox"/> Employee Cooperative Corporation             |
| <input type="checkbox"/> Limited Liability Company (LLC)                | <input type="checkbox"/> Real Estate Investment Trust                 |
| <input type="checkbox"/> Registered Limited Liability Partnership (LLP) |                                                                       |

**3. The name of the new foreign entity resulting from this conversion:**

BiscuitBrain, Inc.

The name must conform to the name requirements detailed in *Code of Alabama 1975* Title 10A, Chapter 1, Article 5 (see attached filing information sheet for details).

**4. If the name in item number 3 above is identical to the name in item number 1 above, or if only the entity identifier (i.e., Inc., LLC, LP, etc.) changes, no name reservation certificate is required. If, however, the name differs in any way other than the identifier a name reservation certificate issued by the Office of the Alabama Secretary of State must be attached to this filing instrument (Name Reservation can be obtained online under Business Services at [www.sos.alabama.gov](http://www.sos.alabama.gov)).**

**5. Street (No PO Boxes) Address of principal office of new foreign/converted entity:\_\_\_\_\_**

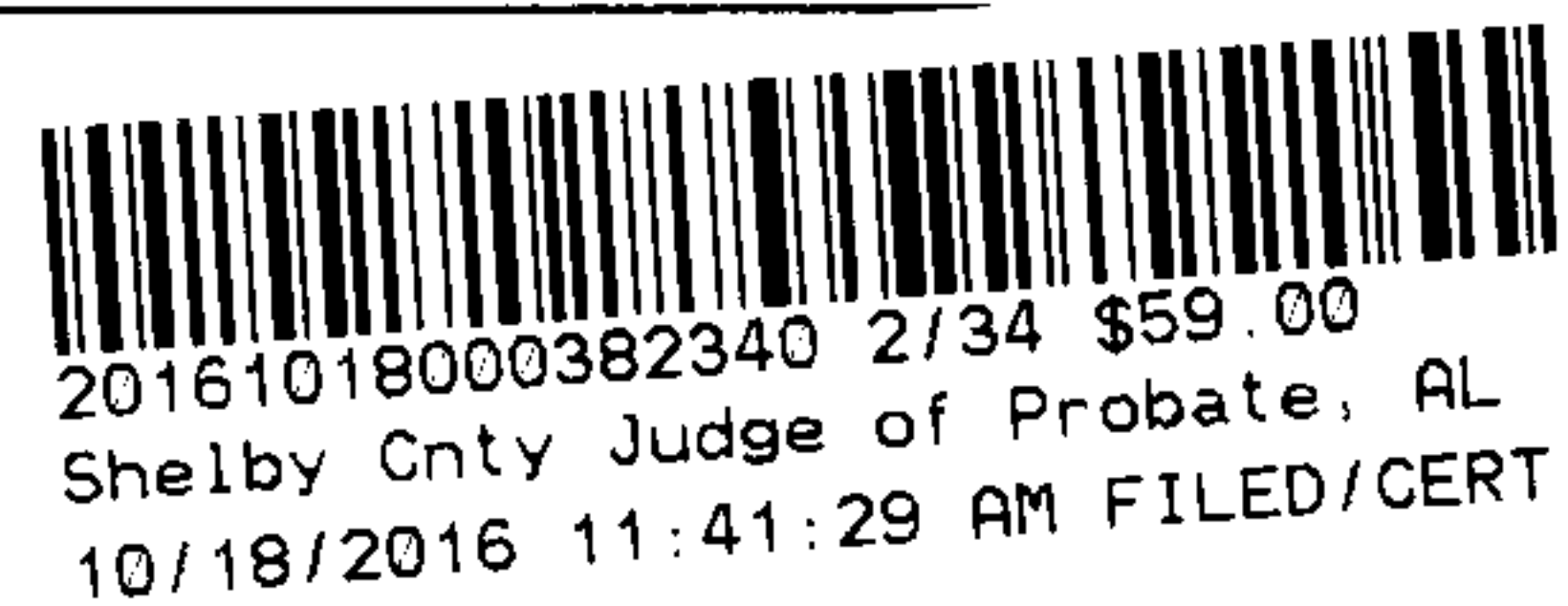
5120 Cyrus Circle, Birmingham, AL 35242

Mailing Address (if different)\_\_\_\_\_

**6. The foreign entity has been filed in the public office of (name of agency and street address):\_\_**

Delaware Division of Corporations, 401 Federal Street - Suite 4

of State/Country: Delaware





## DOMESTIC ENTITY CONVERSION TO REGISTERED FOREIGN ENTITY

7. A certified copy of the filed conversion certificate/formation document for the new jurisdiction must be attached (evidences compliance with 10A-1-8.04(a)(1)). The document must include the formation document for corporations. If the conversion document is filed in the foreign jurisdiction is dated more than one year prior to the filing date/receipt by the Alabama Secretary of State of this document, you must provide a current certificate of existence or good standing if the entity is a Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership.

8. Name of registered agent for service of process in Alabama (must be an individual who is a resident of Alabama or an entity registered to do business in the state and maintaining a physical location within Alabama):\_\_\_\_\_

Individual Name: Jeff Gale \_\_\_\_\_ **OR**

Organization/Entity Name: \_\_\_\_\_

If an organization/entity is indicated you must provide the entity's Alabama Entity ID Number (see page 1 for search instructions or obtain the number from the entity): \_\_\_\_\_ - \_\_\_\_\_ (Format 000-000)

9. Street (No PO Boxes) Address of registered office (MUST be physically located in Alabama and the location of the registered agent):

621 Oak Glen Dr., Hoover, AL 35244

Mailing Address in Alabama (if different) \_\_\_\_\_

10. If the converted entity is one in which one or more owners lack limited liability protection, a statement that each owner of the converting entity who is to become a owner without limited liability protection of the resulting entity has consented in writing to the conversion as required by 10A-1-8.01 is attached.

11. The undersigned certify that the conversion was approved pursuant to *Code of Alabama 1975*, Title 10A, Chapter 1, Article 8 (specifically 10A-1-8.01) and that the information included in or attached to this conversion form are true and correct.

12. The converted foreign entity agrees to promptly pay to dissenting owners of the domestic entity that is a party to the conversion/termination of the domestic entity the amount, if any, to which they are entitled under Alabama Law (*Code of Alabama 1975*, 10A-1-8.04).

13. The converted foreign entity consents that service of process in a proceeding to enforce any obligation or any dissenter's rights of owners of the converted/terminated Alabama domestic entity may be made by registered mail addressed to the principal address of the surviving entity provided in this document or by any method provided by the Alabama Rules of Civil Procedure. Also, any notice or demand required or permitted by law to be served on the domestic entity terminated by this conversion may be served on the surviving or resulting foreign entity by registered mail addressed to the principal office of the surviving entity as provided in this document or in any other manner similar to the procedure provided by the Alabama Rules of Civil Procedures for the process of service.

14. The undersigned certify that signatures are in accordance with the requirements of 10A-1-4.01 of the *Code of Alabama 1975*.



20161018000382340 3/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT

10-12-2016  
Date

Typed Name and Title of Signature Below

Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed Name and Title of Signature Below

Signature

Date \_\_\_\_\_

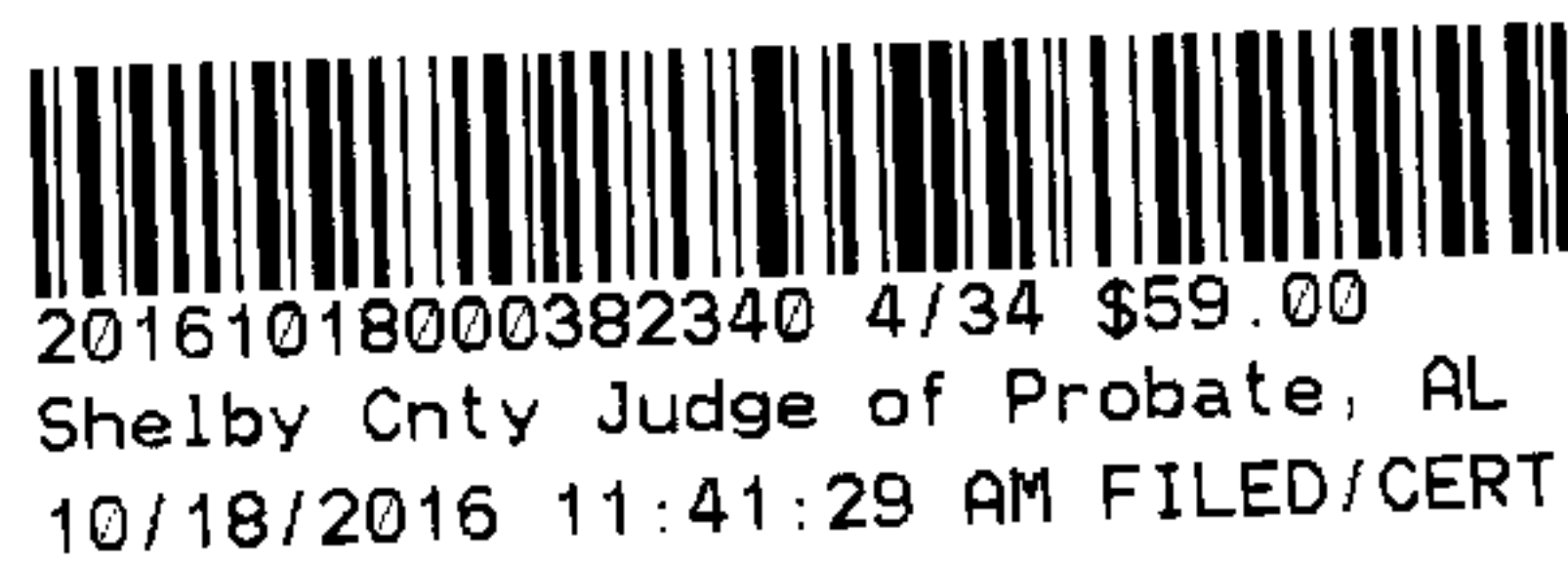
Typed Name and Title of Signature Below

Signature

Date \_\_\_\_\_

Typed Name and Title of Signature Below

Signature





John H. Merrill  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

**BiscuitBrain, Inc.**

This name reservation is for the exclusive use of Morris, Manning & Martin, LLP, 3343 Peachtree Road, NE, Suite 1600, Atlanta, GA 30326 for a period of one year beginning October 12, 2016 and expiring October 12, 2017



20161018000382340 5/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT



RES738097

**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.**

October 12, 2016

Date

*J. H. Merrill*

John H. Merrill

Secretary of State

Alabama  
Sec. Of State

Entity Change	
248-044	D/C
Date 10/12/2016	
Time 11:56	
161012	34 Pg
File	\$100.00
Ackn	1.00
Exp	\$100.00
Total	\$200.00
097003	



20161018000382340 6/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT

Secretary of State

State of Alabama

I hereby certify that this is a true and complete  
copy of the document filed in this office on

October 12, 2016  
DATE: October 12, 2016 (2)

J. H. Merrill  
Secretary of State

# Delaware

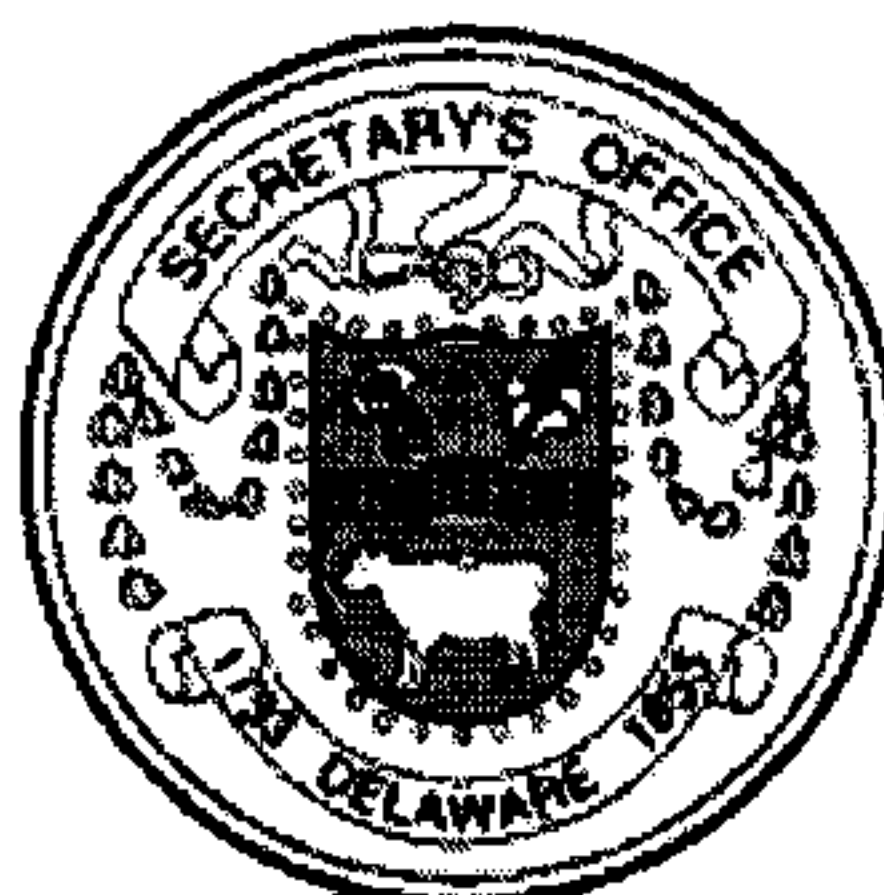
The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF AN ALABAMA CORPORATION UNDER THE NAME OF "BISCUITBRAIN MANAGEMENT CORPORATION" TO A DELAWARE CORPORATION, CHANGING ITS NAME FROM "BISCUITBRAIN MANAGEMENT CORPORATION" TO "BISCUITBRAIN, INC.", FILED IN THIS OFFICE ON THE TWELFTH DAY OF OCTOBER, A.D. 2016, AT 12:56 O`CLOCK P.M.

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

20161018000382340 7/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT



  
Jeffrey W. Bullock, Secretary of State

6180316 8100F  
SR# 20166169247

Authentication: 203147866  
Date: 10-12-16

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



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

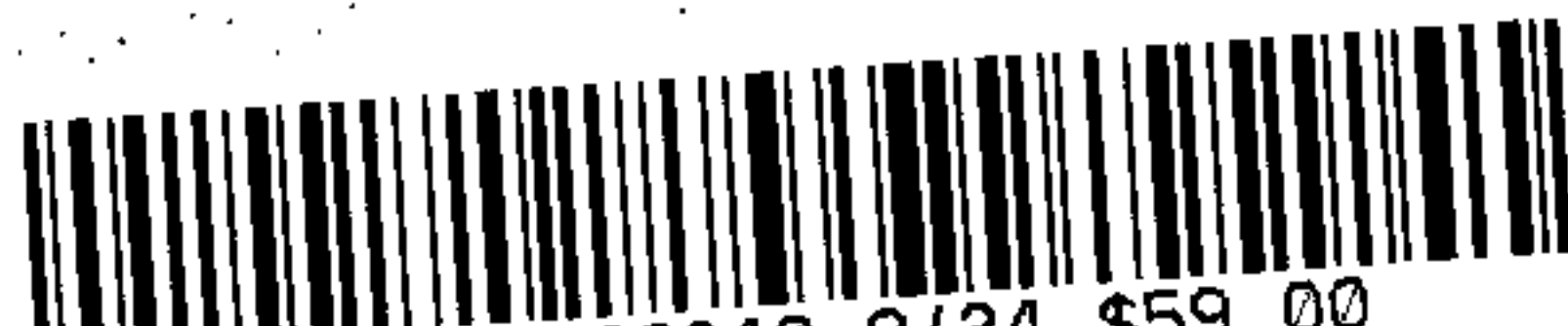
- 1.) The jurisdiction where the Non-Delaware Corporation first formed is Alabama.
- 2.) The jurisdiction immediately prior to filing this Certificate is Alabama.
- 3.) The date the Non-Delaware Corporation first formed is June 30, 2006.
- 4.) The name of the Non-Delaware Corporation immediately prior to filing this Certificate is BiscuitBrain Management Corporation.
- 5.) The name of the Corporation as set forth in the Certificate of Incorporation is BiscuitBrain, 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 12th day of October, A.D. 2016.

By: 

Name: Jeff Gale  
Print or Type

Title: Chief Executive Officer  
Print or Type

  
20161018000382340 8/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT



# Delaware

The First State

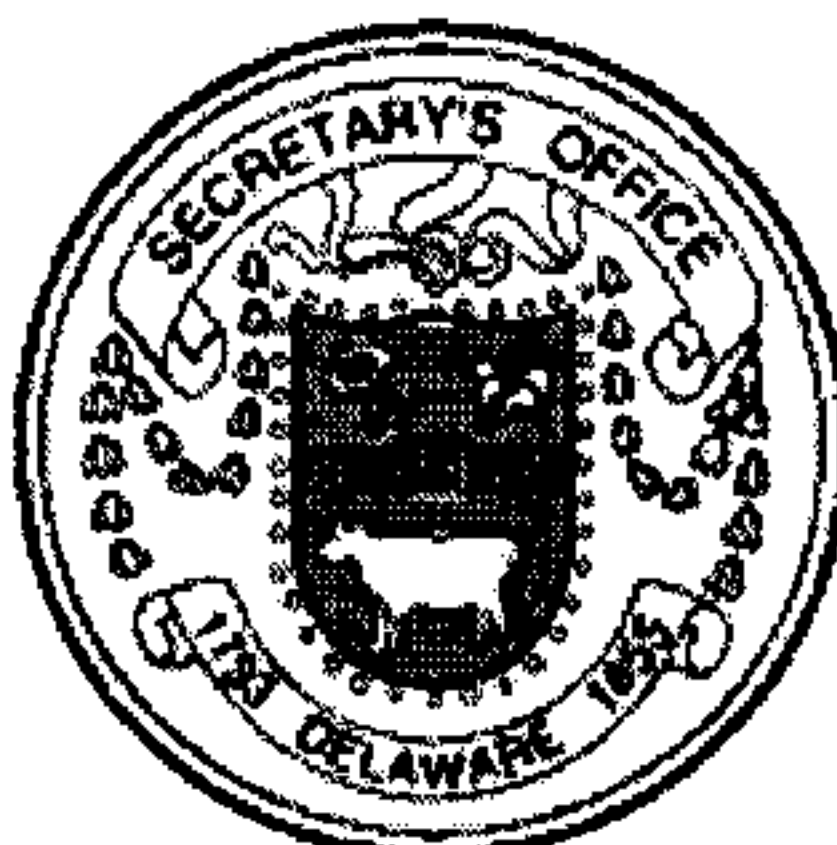
Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND  
CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF  
"BISCUITBRAIN, INC." FILED IN THIS OFFICE ON THE TWELFTH DAY  
OF OCTOBER, A.D. 2016, AT 12:56 O'CLOCK P.M.

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



20161018000382340 9/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT



6180316 8100F  
SR# 20166169247

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



Jeffrey W. Bullock, Secretary of State

Authentication: 203147866  
Date: 10-12-16

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:56 PM 10/12/2016  
FILED 12:56 PM 10/12/2016  
SR 20166169247 - File Number 6180316

**CERTIFICATE OF INCORPORATION  
OF  
BISCUITBRAIN, 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 BiscuitBrain, 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 19901. 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) 4,425,396 shares of Common Stock, \$0.0001 par value per share ("Common Stock") and (ii) 1,319,004 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 this 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 this 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 this 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.

  
20161018000382340 10/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT



## B. SERIES A PREFERRED STOCK.

1,319,004 shares of the authorized Preferred Stock of the Corporation are designated as Series A Convertible Participating Preferred Stock ("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 \$3.790739 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 after the Series A Original Issue Date. 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 of the Corporation and the Corporation shall be under no obligation to pay such Accruing Dividends. For so long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not declare, pay or set aside any dividends on shares of Common Stock or 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 this 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) a cash dividend, on an as-converted to Common Stock basis, equal to the cash dividend paid on the Common Stock, (B) 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 (C) 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; Public Offering; 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, public offering of shares of the Corporation's capital stock 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 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 1.0 times 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. If upon any such liquidation, dissolution or winding up of the Corporation, public offering of shares of the Corporation's capital stock 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 the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective 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 this Certificate of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation, public offering of shares of the Corporation's capital stock 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 then 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 or purchase agreement for such transaction (the "Acquisition 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 the 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 including, without limitation, the Available Proceeds, 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, lease, 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 at least 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 at least 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 property, rights or securities of the type involved, who shall be acceptable to the Corporation and the holders of at least a majority of the outstanding shares of Series A Preferred Stock. If the Board of Directors of the Corporation and the holders of at least a majority of the outstanding shares of the Series A Preferred Stock cannot agree on an appraiser within twenty (20) days after the date that the Section 4.10 Notice is delivered, each of (A) the Board of Directors of the Corporation and (B) the holders of at least 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 property, rights or securities of the type involved. The two designated appraisers (the "Initial Appraisers") shall, within twenty (20) days after their selection, appraise the property, rights or securities 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 the Board of Directors of the Corporation or the holders of at least a majority of the outstanding shares of Series A Preferred Stock may apply, after written notice to the other, to the American Arbitration Association ("AAA") who will then appoint an Additional Appraiser also experienced in a manner similar to the Initial Appraisers. The Additional Appraiser shall, within ten (10) days after its 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 property, rights or securities, and this value will be the appraised fair market value. The Corporation and the holders 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, on the one hand, and the holders of at least a majority of the outstanding shares of Series A Preferred Stock, on the other hand. The Corporation, on the one hand, and the holders of at least a majority of the outstanding shares of Series A Preferred Stock, on the other hand, 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:

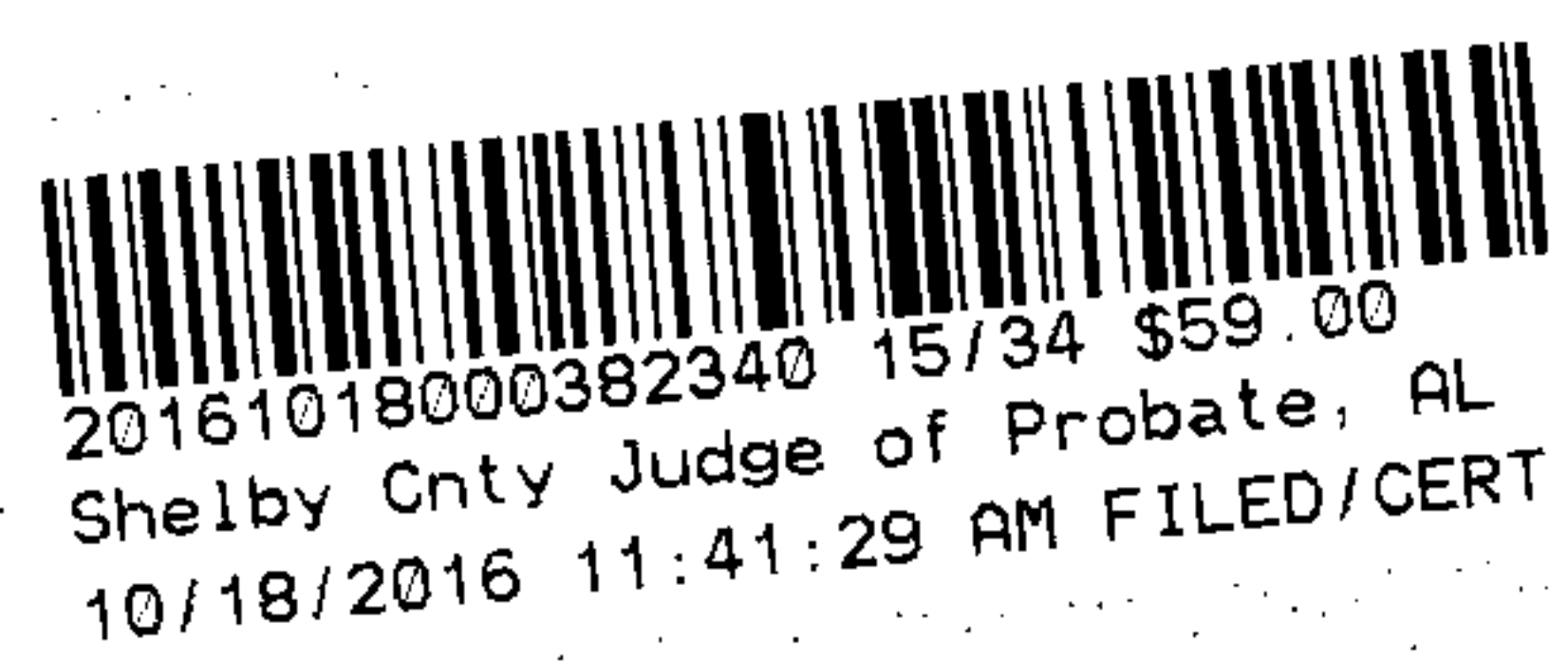
(i) For securities not subject to investment letter or other similar restrictions on free marketability: (A) if traded on a national securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the twenty (20) trading-day period ending 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 at least a majority of the outstanding shares of the Series A Preferred Stock or the appraisers contemplated in Subsection 2.3.3(a).

(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 Acquisition 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.

**2.3.5 Equity Sale.** For the avoidance of doubt, upon the sale of substantially all of the then outstanding shares of capital stock of the Corporation, the purchase price for such sale shall be paid in accordance with the relative liquidation preferences to which





the holders of Series A Preferred Stock are entitled in accordance with this Certificate of Incorporation.

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 this 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 100,000 shares of Series A Preferred Stock remain outstanding (as adjusted for any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock after the Series A Original Issue Date), 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 (the "Management Director"). The holders of record of shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation, which election shall be subject to the approval of the holders of record of a majority of the shares of Series A Preferred Stock, exclusively and as a separate class, which approval shall not be unreasonably withheld (the "Approved Director"). The initial Series A Director shall be Robert Faber, the initial Management Director shall be Jeff Gale, and the initial Approved Director shall be John Burdett. 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 on an as-converted to Common Stock basis, 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 100,000 shares of Series A Preferred Stock remain outstanding (as adjusted for any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock after the Series A Original Issue Date), 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 this 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, transfer or issuance of shares of capital stock of the Corporation representing more than fifty percent (50%) of the outstanding voting power of the Corporation (a "Stock Sale"), or consent to any of the foregoing;

3.3.2 amend, alter or repeal any provision of this 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 of the Corporation;

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

3.3.5 unless approved by the Board of Directors of the Corporation (including the Series A Director), issue or obligate itself to issue shares of any class or series of capital stock of the Corporation, grant or obligate itself to grant any Options (other than pursuant to the BiscuitBrain 2016 Stock Incentive Plan (the "Stock Plan") or issue or obligate itself to issue any Convertible Securities);

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, whether voluntary or involuntary, dissolution or winding up of the Corporation, public offering of shares of the Corporation's capital stock or Deemed Liquidation Event, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock in respect of any such right, preference, or privilege 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, whether voluntary or involuntary, dissolution or winding up of the Corporation, public offering of shares of the Corporation's capital stock or Deemed Liquidation Event, the payment of dividends or rights of redemption, if such reclassification, alteration or





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

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) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary of the Corporation in connection with the cessation of such employment or service at a price not to exceed the original purchase price thereof or (iii) as approved by the Board of Directors of the Corporation, including the approval of the Series A Director;

3.3.8 make any public offering of capital stock or other securities of the Corporation, unless such public offering is a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act in which shares of Common Stock are sold at a minimum offering price of five hundred percent (500%) of the Series A Original Issue Price and that results in at least \$25,000,000 of gross proceeds to the Corporation;

3.3.9 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 \$250,000;

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

3.3.11 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;

3.3.12 enter into or effect any transaction or series of related transactions involving the purchase, lease, license (other than nonexclusive licenses granted to customers in the ordinary course of business), exchange or other acquisition (including by merger, consolidation, acquisition of stock, acquisition of assets or otherwise) by the Corporation of any assets or equity interests of any person or entity;

3.3.13 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

3.3.14 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 \$3.790739. 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 (excluding Additional Consideration).

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 reasonably 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 accrued but 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 this 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 all accrued but unpaid Accruing Dividends (whether or not declared) and all 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 reasonable 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 and elsewhere in this Certificate of Incorporation, as applicable, 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.

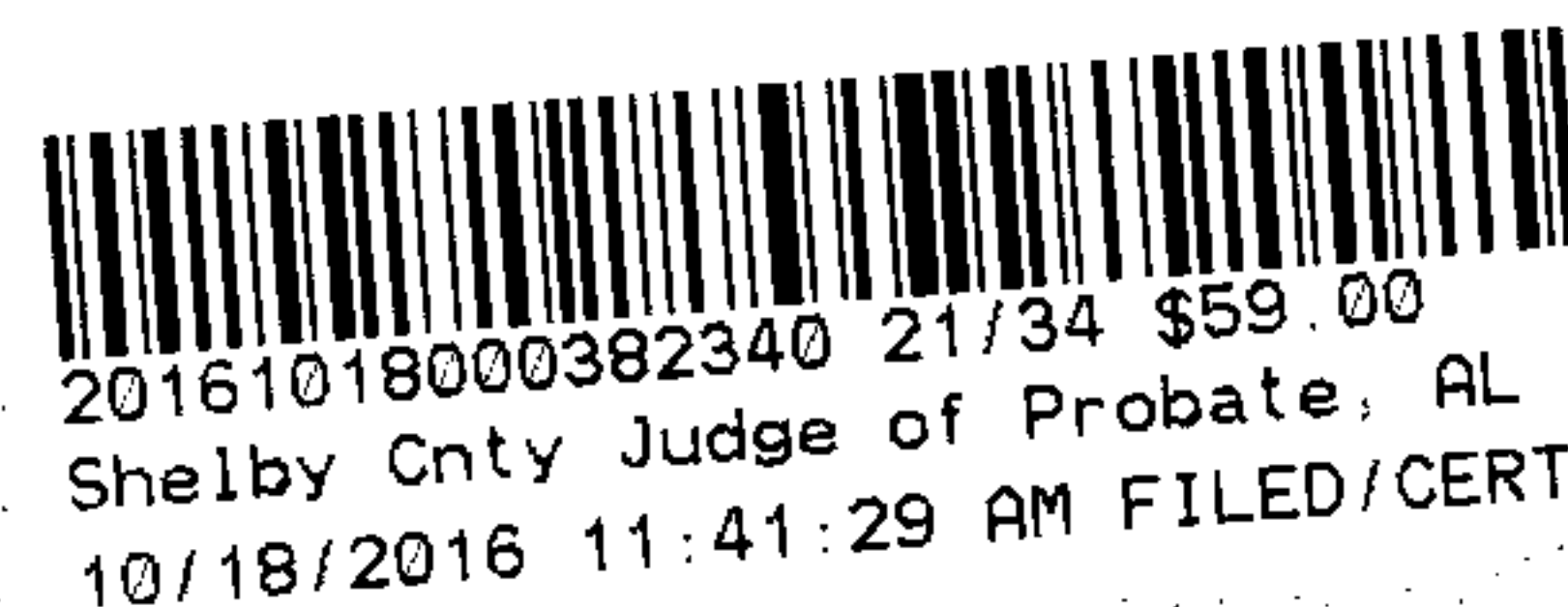
(c) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(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) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to the Stock Plan, or any plan, agreement, or arrangement approved by the Board of Directors of the Corporation, including the approval of 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 been 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 been 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 4.5 shall become effective at the close of business on the date the subdivision or combination becomes effective.

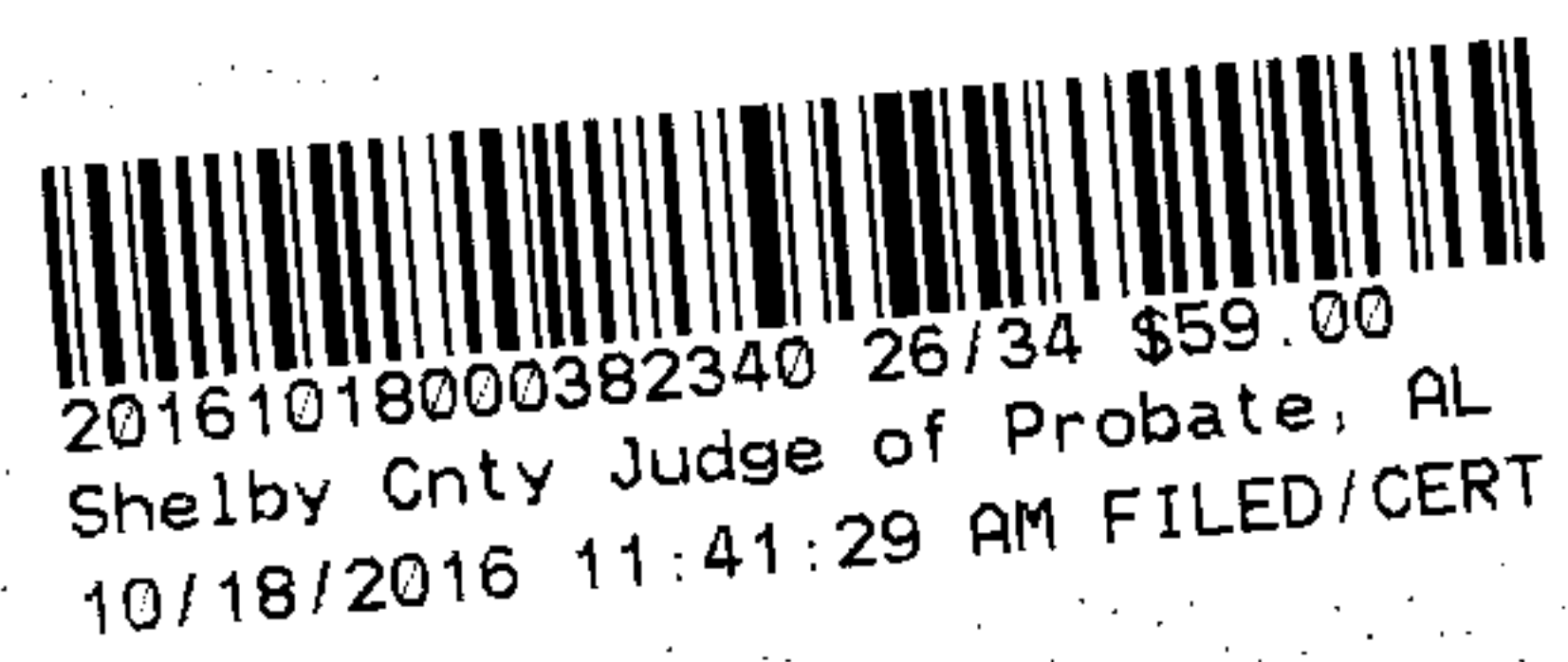
4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution 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 4.6 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 (whether voluntary or involuntary), sale 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 (whether voluntary or involuntary), winding-up or other Deemed Liquidation Event 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 (whether voluntary or involuntary), winding-up or other Deemed Liquidation Event, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock (or such other capital stock or securities). A Section 4.10 Notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such Section 4.10 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 (the "Securities Act"), at a minimum offering price of 500% of 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 all other declared but unpaid dividends thereon paid in cash to the extent not already paid in full in accordance with Subsection 2.1, 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 for the payment of all unpaid Accruing Dividends (whether or not declared) and all other declared but unpaid dividends on the shares of Series A Preferred Stock converted to the extent not already paid in full in accordance with Subsection 2.1. 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 (a) the Series A Original Issue Price per share plus all accrued but unpaid Accruing Dividends (whether or not declared) and all other declared but unpaid dividends thereon and (b) 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 (collectively, the "Redemption Price") in three (3) annual installments commencing not more than one (1) year after receipt by the Corporation, at any time on or after the fifth (5<sup>th</sup>) anniversary of the Series A Original Issue Date, from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the date of receipt by the Corporation of such written notice, 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 or 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 of the Corporation shall be as determined either (a) by agreement of the Board of Directors of the Corporation and the holders of at least a majority of the outstanding shares of Series A Preferred Stock or (b) in the event that the Board of Directors of the Corporation and the holders of at least a majority of the outstanding shares of Series A Preferred Stock cannot agree on the fair market value of the Corporation, by independent appraisal by an appraiser, who shall be mutually acceptable to the Board of Directors of the Corporation and the holders of at least a majority of the then 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 sale of the Corporation to 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 Board of Directors of the Corporation and the holders of at least a majority of the then outstanding shares of Series A Preferred Stock 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 at least 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 based on an assumed sale of the Corporation to an interested strategic or financial purchaser in an arms-length transaction. 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 based on an assumed sale of the Corporation to an interested strategic or financial purchaser in an arms-length transaction. If they fail to select such additional appraiser within five (5) days after the date both appraisals are complete, either the Board of Directors of the Corporation or the holders of at least a majority of the then outstanding shares of Series A Preferred Stock may apply, after written notice to the other, to the AAA who will then appoint the additional appraiser also experienced in a manner similar to the two initially designated appraisers. Such appraiser shall, within ten (10) days after its 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 of the Corporation. The Corporation and the holders of at least 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, on the one hand, and the holders of at least a majority of the Series A Preferred Stock, on the other hand. 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 provided for in Subsection 6.1 (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) for holders of shares in certificated form, 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 (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).

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 this Certificate of Incorporation or the Bylaws of the Corporation, 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 this 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 amendment, 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 amendment, 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.

**TWELFTH:** The name of the incorporator of the Corporation shall be Jeff Gale. The mailing address of the incorporator of the Corporation shall be 5120 Cyrus Circle, Birmingham, Alabama 35242.


**THIRTEENTH:** The name and mailing address of the person who is to serve as the director of the Corporation until the first annual meeting of the stockholders of the Corporation or until such person's successor is elected and qualified are:

Name  
Jeff Gale

Address  
5120 Cyrus Circle  
Birmingham, Alabama 35242

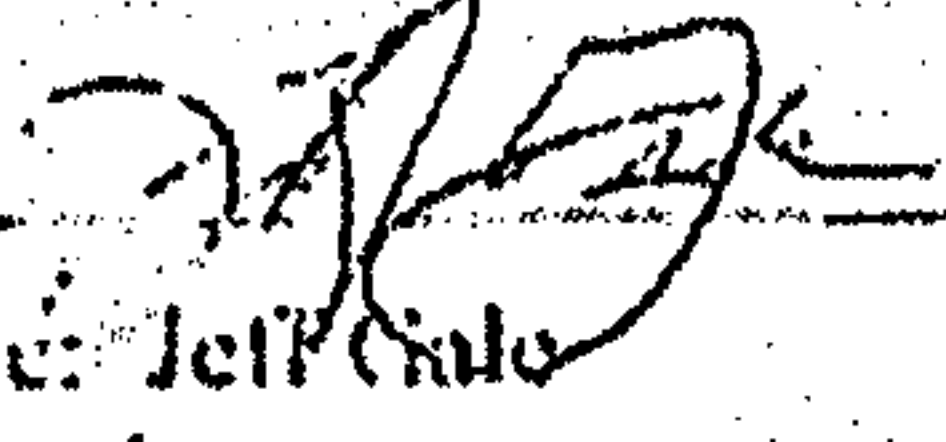
\* \* \*


[Signature Page Follows]

  
20161018000382340 33/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT



IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by the  
incorporator on this 12th day of October, 2016.

By:   
Name: Jeff Cade  
Title: Incorporator

  
20161018000382340 34/34 \$59.00  
Shelby Cnty Judge of Probate, AL  
10/18/2016 11:41:29 AM FILED/CERT

[Signature Page to Certificate of Incorporation]