

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Hungry Machine, Inc.		07/27/2011	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

<b>Name:</b>	LivingSocial, Inc.
<b>Street Address:</b>	1445 New York Avenue NW, Suite 200
<b>City:</b>	Washington
<b>State/Country:</b>	DISTRICT OF COLUMBIA
<b>Postal Code:</b>	20005
<b>Entity Type:</b>	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 12**

Property Type	Number	Word Mark
Serial Number:	85249761	LIVINGSOCIAL
Serial Number:	85020877	FLASHLOCAL
Serial Number:	77788168	DEAL ME IN
Registration Number:	3886244	LIVINGSOCIAL
Registration Number:	3759145	PICK YOUR FIVE
Registration Number:	3668455	LIVINGSOCIAL
Registration Number:	3564334	COCKTAILS ARE ONLY A CLICK AWAY
Registration Number:	3564333	COCKTAILS ARE A CLICK AWAY
Registration Number:	3709310	DRINK BANK
Registration Number:	3568116	BUYYOURFRIENDADRINK
Registration Number:	3458846	BYFAD
Registration Number:	3921220	LIVINGSOCIAL

**CORRESPONDENCE DATA**

**OP \$315.00 85249761**

Fax Number: (202)857-6395  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
Phone: 202-857-8977  
Email: bush.douglas@arentfox.com  
Correspondent Name: Douglas R. Bush  
Address Line 1: 1050 Connecticut Avenue NW  
Address Line 4: Washington, DISTRICT OF COLUMBIA 20036

ATTORNEY DOCKET NUMBER:	032516.00000
NAME OF SUBMITTER:	Douglas R. Bush
Signature:	/D. R. Bush/
Date:	08/09/2011

**Total Attachments: 27**

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# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "HUNGRY MACHINE, INC.", CHANGING ITS NAME FROM "HUNGRY MACHINE, INC." TO "LIVINGSOCIAL, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF JULY, A.D. 2011, AT 4:09 O'CLOCK P.M.

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

4384843 8100

110864233



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8931031

DATE: 07-27-11

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

TRADEMARK  
REEL: 004601 FRAME: 0075

**NINTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

HUNGRY MACHINE, INC.

Tim O'Shaughnessy hereby certifies in his capacity as Chief Executive Officer that:

**ONE:** He is the duly elected and acting Chief Executive Officer of Hungry Machine, Inc., a Delaware corporation.

**TWO:** The original name of this company was Hungry Machine LLC and it was formed as a Delaware limited liability company on July 6, 2007; pursuant to a Certificate of Conversion and original Certificate of Incorporation filed with the Secretary of State of the State of Delaware on December 21, 2007, it converted to a Delaware corporation and changed its name to Hungry Machine, Inc. The date of filing the Amended and Restated Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was June 19, 2008, the date of filing the Second Amended and Restated Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was December 18, 2009, the date of filing of the Third Amended and Restated Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was March 9, 2010, the date of filing of the Fourth Amended and Restated Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was April 15, 2010, the date of filing of the Fifth Amended and Restated Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was July 23, 2010, the date of filing of the Sixth Amended and Restated Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was December 1, 2010 the date of filing of the Seventh Amended and Restated Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was March 15, 2011, and the date of filing of the Eighth Amended and Restated Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was March 31, 2011.

**THREE:** The Certificate of Incorporation of this company is hereby amended and restated to read as follows:

**I.**

The name of this company is **LIVINGSOCIAL, INC.** (the "*Company*").

**II.**

The address of the registered office of this Company in the State of Delaware is 160 Greentree Drive, Suite 101, Dover, County of Kent, and the name of the registered agent of this Company in the State of Delaware at such address is National Registered Agents, Inc.

**III.**

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (“*DGCL*”).

#### IV.

A. The Company is authorized to issue three classes of stock to be designated, respectively, “*Common Stock*”, “*Class B Common Stock*”, and “*Preferred Stock*.” The total number of shares which the Company is authorized to issue is One Billion One Hundred One Million One Hundred Eighty-Six Thousand One Hundred Ten (1,101,186,110) shares, Six Hundred Seventy-Five Million (675,000,000) shares of which shall be Common Stock (the “*Common Stock*”), Four Million Five Hundred Thousand (4,500,000) of which shall be Class B Common Stock (the “*Class B Common Stock*”) and Four Hundred Twenty-One Million Six Hundred Eighty Six Thousand One Hundred Ten (421,686,110) shares of which shall be Preferred Stock (the “*Preferred Stock*”). The Common Stock, the Class B Common Stock and the Preferred Stock shall each have a par value of \$0.0001 per share.

B. Irrespective of any contrary provisions contained in Section 242(b)(2) of the DGCL, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of at least a majority of the stock of the Company entitled to vote (voting together as a single class on an as-if converted to Common Stock basis).

C. Thirty Four Million Four Hundred Eighteen Thousand Four Hundred Fifty (34,418,450) of the authorized shares of Preferred Stock are hereby designated “*Series A Convertible Preferred Stock*” (the “*Series A Preferred*”).

D. Forty Million Seven Hundred Fifty Four Thousand Four Hundred Forty (40,754,440) of the authorized shares of Preferred Stock are hereby designated “*Series A-1 Convertible Preferred Stock*” (the “*Series A-1 Preferred*”).

E. Sixty One Million One Hundred Fifty Eight Thousand Five Hundred Forty (61,158,540) of the authorized shares of Preferred Stock are hereby designated “*Series B Convertible Preferred Stock*” (the “*Series B Preferred*”).

F. Twenty Million Three Hundred Thirty Six Thousand Seven Hundred Eighty (20,336,780) of the authorized shares of Preferred Stock are hereby designated “*Series C Convertible Preferred Stock*” (the “*Series C Preferred*”).

G. Seventeen Million Nine Hundred Thirteen Thousand Two Hundred Ten (17,913,210) of the authorized shares of Preferred Stock are hereby designated “*Series C-1 Convertible Preferred Stock*” (the “*Series C-1 Preferred*” and, collectively with the Series A Preferred, Series A-1 Preferred, Series B Preferred, and Series C Preferred, the “*Prior Preferred Stock*”).

H. Ninety Seven Million One Hundred Eighty One Thousand Two Hundred Eighty (97,181,280) of the authorized shares of Preferred Stock are hereby designated "**Series D Convertible Preferred Stock**" (the "**Series D Preferred**").

I. Forty Nine Million Nine Hundred Twenty Three Thousand Four Hundred Ten (49,923,410) of the authorized shares of Preferred Stock are hereby designated "**Series D-1 Convertible Preferred Stock**" (the "**Series D-1 Preferred**").

J. One Hundred Million (100,000,000) of the authorized shares of Preferred Stock are hereby designated "**Series E Convertible Preferred Stock**" (the "**Series E Preferred**").

K. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock and Class B Common Stock are as follows:

1. **DIVIDEND RIGHTS.**

(a) Holders of Prior Preferred Stock, in preference to the holders of Common Stock or Class B Common Stock, shall be entitled to receive, but only out of funds that are legally available therefor, whether or not in any dividend period there shall have been net profits or surplus of the Corporation legally available for the payment of such dividends, (i) cumulative cash dividends at the rate of eight percent (8%) of the Original Preference Price (as defined below) per annum on each outstanding share of Prior Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) and such dividends shall accrue on each share of Prior Preferred Stock from the date on which such share was issued until December 2, 2010 and shall be paid (A) upon a Liquidation Event or a Deemed Liquidation (each as defined below), (B) upon the automatic conversion of the Preferred Stock pursuant to Section 5(l) below or (C) upon the redemption of the Preferred Stock pursuant to Section 6 below. For the avoidance of doubt, no dividends shall accrue on any share of Preferred Stock after December 2, 2010.

(b) The "**Series A Original Preference Price**" shall be \$0.0716090 per share of Series A Preferred, the "**Series A-1 Original Preference Price**" shall be \$0.1189153 per share of Series A-1 Preferred, the "**Series B Original Preference Price**" shall be \$0.328 per share of Series B Preferred, the "**Series C Original Preference Price**" shall be \$0.49172 per share of Series C Preferred, the "**Series C-1 Original Preference Price**" shall be \$0.57081 per share of Series C-1 Preferred, the "**Series D Original Preference Price**" shall be \$1.076 per share of Series D Preferred, the "**Series D-1 Original Preference Price**" shall be \$0.838 per share of Series D-1 Preferred and the "**Series E Original Preference Price**" shall be \$2.8255 per share of Series E Preferred, each as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof (each of the "**Series A Original Preference Price**", the "**Series A-1 Original Preference Price**", the "**Series B Original Preference Price**", the "**Series C Original Preference Price**", the "**Series C-1 Original Preference Price**", the "**Series D Original Preference Price**", the "**Series D-1 Original Preference Price**" and the "**Series E Original Preference Price**" is an "**Original Preference Price**").

(c) So long as any shares of Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock or Class B Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock or Class B Common Stock until all dividends as set forth in Section 1(a) above on the Prior Preferred Stock shall have been paid or declared and set apart.

(d) In the event dividends are paid or distributions made on any share of Common Stock, whether in cash or property, the Company shall pay an additional dividend or make a distribution on all outstanding shares of Preferred Stock and Class B Common Stock in a per share amount equal (on an as-if converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(e) The provisions of Sections 1(c) and (d) shall not apply to (i) a dividend payable in Common Stock, (ii) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company; (iii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares, provided, that such exercise is approved by the Board of Directors (the "**Board**"), including the affirmative approval of a majority of the Requisite Designees (as such term is defined below), or (iv) any repurchase of any outstanding securities of the Company that is approved by the Board, including the affirmative approval of a majority of the Requisite Designees.

(f) Any dividend on the Preferred Stock as provided in this Section 1 shall be paid, at the option of the holders of a majority of the shares of Preferred Stock, (i) in cash, (ii) by issuing (A) to the holders of shares of Series A Preferred a number of shares (or partial shares) of Series A Preferred for each such share (or partial share) of Series A Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series A Preferred, divided by (2) the fair market value of a share of Series A Preferred, as determined in good faith by the Board, (B) to the holders of shares of Series A-1 Preferred a number of shares (or partial shares) of Series A-1 Preferred for each such share (or partial share) of Series A-1 Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series A-1 Preferred, divided by (2) the fair market value of a share of Series A-1 Preferred, as determined in good faith by the Board, (C) to the holders of shares of Series B Preferred a number of shares (or partial shares) of Series B Preferred for each such share (or partial share) of Series B Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series B Preferred, divided by (2) the fair market value of a share of Series B Preferred, as determined in good faith by the Board, (D) to the holders of shares of Series C Preferred a number of shares (or partial shares) of Series C Preferred for each such share (or partial share) of Series C Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series C Preferred, divided by (2) the fair market value of a share of Series C Preferred, as determined in good faith by the Board, (E) to the holders of shares of Series C-1 Preferred a number of shares (or partial shares) of Series C-1 Preferred for each such share (or partial share) of Series C-1 Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series C-1 Preferred, divided by (2) the fair market value of a share of Series C-1 Preferred, as determined in good

faith by the Board, (F) to the holders of shares of Series D Preferred a number of shares (or partial shares) of Series D Preferred for each such share (or partial share) of Series D Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series D Preferred, divided by (2) the fair market value of a share of Series D Preferred, as determined in good faith by the Board, (G) to the holders of shares of Series D-1 Preferred a number of shares (or partial shares) of Series D-1 Preferred for each such share (or partial share) of Series D-1 Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series D-1 Preferred, divided by (2) the fair market value of a share of Series D-1 Preferred, as determined in good faith by the Board, and (H) to the holders of shares of Series E Preferred a number of shares (or partial shares) of Series E Preferred for each such share (or partial share) of Series E Preferred, then outstanding equal to (1) the dividend then payable on each such share (or partial share) of Series E Preferred, divided by (2) the fair market value of a share of Series E Preferred, as determined in good faith by the Board or (iii) a combination thereof. Dividends paid on the shares of Preferred Stock in an amount less than the total amount of such dividends at the time accrued on such shares shall be allocated pro rata among all such shares at the time outstanding. In the event such dividends are being paid in shares of capital stock upon a conversion pursuant to Section 5(1), then in lieu of receiving shares of Preferred Stock, each holder shall receive the number of shares of Common Stock upon which such series of Preferred Stock is being converted.

(g) Whenever a dividend provided for in this Section 1 shall be payable in property other than cash, the value of such dividend shall be the fair market value of such distribution as determined in good faith by the Board.

## 2. VOTING RIGHTS.

(a) **General Rights.** Each holder of shares of the Preferred Stock and each holder of shares of Class B Common Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock or Class B Common Stock, as applicable, could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock, except that (i) the holders of the Preferred Stock shall not be entitled to vote in connection with any election for or removal of directors elected pursuant to the provisions of Section 2(d)(iv) below, (ii) the holders of the Class B Common Stock shall not be entitled to vote in connection with any election for or removal of directors, and (iii) the holders of the Preferred Stock and the holders of the Class B Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Preferred Stock and the Class B Common Stock shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(b) **Separate Vote of Capital Stock.** For so long as at least 51,500,000 shares of Preferred Stock remain outstanding (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), in addition to any other vote or consent required herein or by law, the vote or written



consent of the holders of a majority of the outstanding shares of the Preferred Stock, Class B Common Stock and Common Stock, voting together as a single class on an as-if converted to Common Stock basis, shall be necessary for the Company to effect or validate any of the following actions (whether by amendment, merger, consolidation, or otherwise) or to permit any subsidiary of the Company to effect or validate any of the following actions (whether by amendment, merger, consolidation, or otherwise):

(i) Any action that materially adversely alters or changes the voting or other powers, preferences, or other special rights or privileges of any of the Preferred Stock;

(ii) Any amendment, alteration, waiver or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation);

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company having rights, preferences and privileges on a parity with or senior to the Preferred Stock with respect to dividends, liquidation preference, voting or antidilution protection;

(iv) Any redemption or repurchase of the Company's Common Stock, Class B Common Stock or Preferred Stock (except for acquisitions of Common Stock by the Company permitted by Section 1(e) hereof);

(v) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4(b) below);

(vi) Any voluntary dissolution or liquidation of the Company;

(vii) Any increase or decrease in the authorized number of members of the Board;

(viii) Any increase or decrease in the authorized number of shares of Common Stock or Class B Common Stock;

(ix) Any action that results in the payment or declaration of a dividend on any shares of Common Stock, Class B Common Stock or Preferred Stock (other than as required pursuant to Section 1 above); or

(x) Any action that results in a security interest being placed on all or substantially all of the Company's assets or intellectual property, other than up to \$8 million in indebtedness incurred in connection with a credit facility with Silicon Valley Bank.

(c) Separate Vote of Each Series of Preferred Stock.

(i) So long as any shares of Series E Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series E Preferred, voting as a separate class, amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series E Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock or increase the number of authorized shares of Series E Preferred.

(ii) So long as any shares of Series D-1 Preferred or Series D Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of a majority of the then outstanding shares of Series D-1 Preferred and Series D Preferred, voting as a single class on as-converted basis (A) amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series D-1 Preferred or Series D Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock, (B) increase the number of authorized shares of Series D-1 Preferred or Series D Preferred, (C) issue any additional shares of Series D-1 Preferred or Series D Preferred, or (D) amend, alter, repeal or waive any portion of Section 5(c)(ii) of the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below).

(iii) So long as any shares of Series C-1 Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of a majority of the then outstanding shares of Series C-1 Preferred, voting as a separate class, amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series C-1 Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock or increase the number of authorized shares of Series C-1 Preferred.

(iv) So long as any shares of Series C Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of a majority of the then outstanding shares of Series C Preferred, voting as a separate class, amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series C Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock or increase the number of authorized shares of Series C Preferred.

(v) So long as any shares of Series B Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of a majority of the then outstanding shares of Series B Preferred, voting as a separate class, amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series B Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock.

(vi) So long as any shares of Series A-1 Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of a majority of the then outstanding shares of Series A-1 Preferred, voting as a separate class, amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series A-1 Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock.

(vii) So long as any shares of Series A Preferred remain outstanding, the Company shall not without the vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred, voting as a separate class, amend, alter, repeal or waive any provision of, or add any provision to the Certificate of Incorporation of the Company (whether by merger, consolidation or otherwise, other than a merger that constitutes an Acquisition and the proceeds of which are to be distributed in accordance with Section 4 below) if such action would amend the rights, preferences or privileges of the Series A Preferred so as to affect them adversely in a different manner than affects all other Series of Preferred Stock.

**(d) Election of Board of Directors.**

(i) For so long as at least 6,937,710 shares (in the aggregate) of Series A Preferred, Series A-1 Preferred, Series B Preferred, Series C Preferred and Series C-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) remain outstanding, the holders of Series A Preferred, Series A-1 Preferred, Series B Preferred, Series C Preferred and Series C-1 Preferred, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect one (1) member of the Board; provided that for so long as at least 17,455,910 shares (in the aggregate) of Series A Preferred, Series A-1 Preferred, Series B Preferred, Series C Preferred and Series C-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) remain outstanding, the holders of Series A Preferred, Series A-1 Preferred, Series B Preferred, Series C Preferred and Series C-1 Preferred, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect one (1) additional member of the Board (each, a "*Series A-C Designee*") at each meeting or pursuant to each consent of the Company's

stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(ii) For so long as at least 12,195,120 shares of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) remain outstanding, the holders of Series B Preferred, voting together as a separate class, shall be entitled to elect one (1) member of the Board (the "*Series B Designee*" and together with the Series A-C Designees, the "*Requisite Designees*") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(iii) For so long as at least 23,870,490 shares (in the aggregate) of Series D Preferred and Series D-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) remain outstanding, the holders of Series D Preferred and Series D-1 Preferred, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect one (1) member of the Board (the "*Series D Designee*") at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(iv) The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and

(v) The holders of Common Stock and Preferred Stock, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect all remaining members of the Board, at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

### 3. LIQUIDATION RIGHTS.

(a) **Preferred Stock.** Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary (a "*Liquidation Event*"), before any distribution or payment shall be made to the holders of any Common Stock or Class B Common Stock, the holders of Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, for each share of Preferred Stock held by them, an amount per share of Preferred Stock, (the "*Liquidation Preference Amount*") equal to the sum of (i) the applicable Original Preference Price of such share of Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) plus (ii) all accrued or declared and unpaid dividends on such share of Preferred Stock. If, upon any such

liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Preferred Stock of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled if such amounts had been paid in full.

(b) **Remaining Assets.** After the payment of the full Liquidation Preference Amount, the remaining assets of the Company legally available for distribution in such Liquidation Event (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock and Class B Common Stock on an as-converted to Common Stock basis.

(c) **Deemed Conversion.** Notwithstanding Sections 3(a) and (b) above, solely for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, the Preferred Stock shall be treated as if all holders of Preferred Stock had converted such holder's shares of Preferred Stock into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion of the Preferred Stock (including taking into account the operation of this paragraph (c) with respect to the Preferred Stock), holders of Preferred Stock would receive, in the aggregate, an amount greater than the Liquidation Preference Amount. If holders of Preferred Stock are treated as if they had converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holders shall not be entitled to receive any distribution pursuant to Section 3(a) above that would otherwise be made to holders of Preferred Stock.

#### 4. ASSET TRANSFER OR ACQUISITION RIGHTS.

(a) An Acquisition or Asset Transfer (each as hereinafter defined) shall be deemed to be a liquidation of the Company (including, without limitation, for the purposes of Section 3 above) (a "**Deemed Liquidation**"), unless the holders of a majority of the outstanding Preferred Stock, voting together as a single class on an as-if converted to Common Stock basis, elect otherwise by written notice given to the Company at least five (5) days prior to the effective date of any such Acquisition or Asset Transfer. The Company shall not have the power to effect any transaction constituting a Deemed Liquidation unless the definitive documents effecting such Deemed Liquidation provide that the consideration payable to the stockholders of the Company shall be allocated among the holders of capital stock of the Company in accordance with Sections 3(a) and (b) above. The amount deemed paid or distributed to holders of capital stock of the Company upon any Deemed Liquidation shall be determined in accordance with Section 4(c) below.

(b) For the purposes of this Section 4: (i) "**Acquisition**" shall mean (A) any consolidation, stock exchange or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving

entity is a wholly-owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred; provided that an Acquisition shall not include (x) any consolidation or merger effected exclusively to change the domicile of the Company, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) "*Asset Transfer*" shall mean a sale, lease or other disposition of all or substantially all of the assets of the Company or the sale, exclusive license, conveyance, exchange or other transfer of all or substantially all of the intellectual property of the Company.

(c) In any Acquisition or Asset Transfer, (i) if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board, including the affirmative approval of a majority of the Requisite Designees, on the date such determination is made, and (ii) any payments or proceeds that could be made or distributed following the closing of any Acquisition or Asset Transfer as the result of termination or expiration of an escrow or operation of an earn-out or similar arrangement or termination of dissenter's or appraisal rights, shall be treated for the purposes of this Section 4 as if paid at the closing of such Acquisition or Asset Transfer; provided, however, that any publicly-traded securities to be distributed to stockholders will be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30)-day period ending three (3) calendar days prior to the closing; and

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever are applicable) over the thirty (30)-day period ending three (3) calendar days prior to the closing.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Sections 4(c)(i)(A) and (B) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

(d) Notwithstanding anything to the contrary in this Section 4, if the definitive transaction documents for an Acquisition or Asset Transfer provide for a different method of valuation, the method of valuation set forth in such documents shall control.

(e) **Allocation of Escrow.** In the event of a Deemed Liquidation, if any portion of the consideration payable to the stockholders of the Company is placed into escrow or is payable to the stockholders of the Company subject to contingencies, the definitive

acquisition agreement relating thereto shall provide that (i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “*Initial Consideration*”) shall be allocated among the holders of capital stock of the Company in accordance with Sections 3(a), (b) and (c) above as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation and (ii) any additional consideration which becomes payable to the stockholders of the Company upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Company in accordance with Sections 3(a), (b), and (c) above after taking into account the previous payment of the Initial Consideration as part of the same transaction.

## 5. CONVERSION RIGHTS.

The holders of the Preferred Stock and the holders of Class B Common Stock shall have the following rights with respect to the conversion of the Preferred Stock or Class B Common Stock, as applicable into shares of Common Stock (the “*Conversion Rights*”):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Preferred Stock or Class B Common Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock or Class B Common Stock shall be entitled upon conversion shall be the product obtained by multiplying the applicable “*Conversion Rate*” then in effect for such series of Preferred Stock or Class B Common Stock (determined as provided in Section 5(b)), as applicable, by the number of shares of the corresponding series of Preferred Stock or Class B Common Stock being converted.

(b) **Conversion Rate.** The conversion rate in effect at any time for conversion of a particular series of the Preferred Stock or the Class B Common Stock (each, a “*Conversion Rate*”) shall be the quotient obtained by dividing the Original Issue Price (as defined below) applicable to such series of the Preferred Stock or the Class B Common Stock, as applicable, by the applicable “*Conversion Price*,” calculated as provided in Section 5(c). The original issue price for each share of (i) the Series E Preferred shall be \$5.651 as adjusted for stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof (the “*Series E Original Issue Price*”), (ii) the Series D-1 Preferred shall be \$1.571 as adjusted for stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof (the “*Series D-1 Original Issue Price*”), (iii) the Class B Common Stock shall be \$7.69 as adjusted for stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof (the “*Series B Common Original Issue Price*”), and (iv) each other series of Preferred Stock shall be the Original Preference Price of such series of the Preferred Stock (together with the Series E Original Issue Price, the Series D-1 Original Issue Price, and the Series B Common Original Issue Price, each, an “*Original Issue Price*”).

(c) **Conversion Price.**

(i) The conversion price for each share of (i) the Series A Preferred shall initially be \$0.0748005 (the "*Series A Conversion Price*") and (ii) each other series of the Preferred Stock and the Class B Common Stock shall initially be the Original Issue Price of such series of the Preferred Stock or the Class B Common Stock, as applicable (together with the Series A Conversion Price, each, a "*Conversion Price*"). Each such initial Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Conversion Price of a particular series of Preferred Stock or the Class B Common Stock herein shall mean the Conversion Price of such series of the Preferred Stock or the Class B Common Stock, as applicable, as so adjusted.

(ii) **Special Adjustment to the Conversion Price of the Series D Preferred and Series D-1 Preferred.** If after November 10, 2010 and prior to June 30, 2012 the Company increases the number of shares of Common Stock reserved for issuance under the Company's 2008 Equity Incentive Plan, the Company's 2010 Equity Incentive Plan or any other successor stock option plan (such additional shares, up to a maximum of 9,477,780 shares, the "*Additional Pool Shares*"), the Conversion Price of the Series D Preferred and the Conversion Price of the Series D-1 Preferred shall automatically be adjusted on the earliest of (1) June 30, 2012, (2) any Liquidation Event or Deemed Liquidation, or (3) immediately prior to the conversion of such series immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company to the Conversion Price that would have then been in effect for each such series if the initial Conversion Price of the Series D Preferred and Series D-1 Preferred, respectively, had initially been equal to the applicable initial Conversion Price times a fraction the numerator of which is 371,731,700 (the "*Outstanding Shares*") and the denominator of which is the Outstanding Shares plus the Additional Pool Shares.

(d) **Mechanics of Conversion.** Each holder of Preferred Stock or Class B Common Stock who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock or Class B Common Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock or Class B Common Stock being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) at the election of each holder of Preferred Stock or Class B Common Stock in his, her or its sole discretion, in cash or in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared but unpaid dividends on the shares of Preferred Stock or Class B Common Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock or Class B Common Stock. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Preferred Stock or Class B Common Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such



date. Upon conversion of a share of Preferred Stock or Class B Common Stock pursuant to this Section 5(d), any accrued but unpaid dividends on such share of Preferred Stock or Class B Common Stock shall expire and be cancelled.

**(e) Adjustment for Stock Splits and Combinations.** If at any time or from time to time after the date that the first share of Series E Preferred is issued (the "**Series E Original Issue Date**") the Company effects a subdivision of the outstanding Common Stock, the applicable Conversion Price for each series of Preferred Stock and the Class B Common Stock shall be proportionately decreased. Conversely, if at any time or from time to time after the Series E Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares, the applicable Conversion Price for each series of Preferred Stock and the Class B Common Stock shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

**(f) Adjustment for Common Stock Dividends and Distributions.** If at any time or from time to time after the Series E Original Issue Date the Company pays to holders of Common Stock a dividend or other distribution on the Common Stock in additional shares of Common Stock without a corresponding dividend or other distribution to holders of each series of Preferred Stock or Class B Common Stock, the Conversion Price of each series of Preferred Stock or Class B Common Stock to whose holders such a dividend or distribution was not paid, that is then in effect shall be decreased as of the time of such issuance, as provided below:

**(i)** The applicable Conversion Price shall be adjusted by multiplying such Conversion Price then in effect by a fraction equal to:

**(A)** the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

**(B)** the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

**(ii)** If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the applicable Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

**(iii)** If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

**(g) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation.** If at any time or from time to time after the Series E Original Issue Date, the Common Stock issuable upon the conversion of the Preferred Stock and Class B Common Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Preferred Stock or Class B Common Stock shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock or Class B Common Stock could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Preferred Stock and Class B Common Stock after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the Conversion Prices then in effect and the number of shares issuable upon conversion of the Preferred Stock and Class B Common Stock) shall be applicable after that event and be as nearly equivalent as practicable.

**(h) Sale of Shares Below Conversion Price.**

**(i)** If at any time or from time to time after the Series E Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 5(h) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f) or 5(g) above, for an Effective Price (as defined below) less than the then effective Conversion Price of any series of Preferred Stock (a "*Qualifying Dilutive Issuance*"), then and in each such case, the then existing Conversion Price of such series of Preferred Stock shall be reduced, as of the opening of business on the date of such issue or sale, to a price (calculated to the eighth (8<sup>th</sup>) digit to the right of the decimal point) determined by multiplying the Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

**(A)** The numerator of which shall be (i) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (ii) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received or deemed received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then-effective Conversion Price for such series of Preferred Stock, and

**(B)** The denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

(ii) For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of actually issued and outstanding shares of Common Stock on the day immediately preceding the given date and (B) the number of shares of Common Stock into which the then-outstanding shares of Preferred Stock and Class B Common Stock could be converted if fully converted on the day immediately preceding the given date.

(iii) No adjustment shall be made to any Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section 5(h) that is not required to be made due to the preceding two sentences shall be included in any subsequent adjustment to the applicable Conversion Price.

(iv) For the purpose of making any adjustment required under this Section 5(h), the aggregate consideration received by the Company for any issue or sale of securities (the "**Aggregate Consideration**") shall be computed as follows: (A) to the extent it consists of cash, Aggregate Consideration shall be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, Aggregate Consideration shall be computed at the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, Aggregate Consideration shall be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(v) For the purpose of the adjustment required under this Section 5(h), if the Company issues or sells (x) Preferred Stock or other stock, options, warrants, purchase rights or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "**Convertible Securities**") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Conversion Price of any series of Preferred Stock, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

(A) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(D) No further adjustment of the Conversion Price of any series of Preferred Stock, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, each Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Preferred Stock.

(vi) For the purpose of making any adjustment to the Conversion Price of the any series of Preferred Stock required under this Section 5(h), "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Preferred Stock;

(B) shares of Common Stock or Convertible Securities and any shares of Common Stock issued upon exercise thereof issued with the consent of the Board (including the affirmative approval of a majority of the Requisite Designees) after the Series E Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary, pursuant to the Company's 2008 Equity Incentive Plan, the Company's 2010 Equity Incentive Plan or such other stock purchase or stock option plan or other arrangements that are approved by the Board (including the affirmative approval of a majority of the Requisite Designees);

(C) shares of Common Stock issued pursuant to the exercise of any other Convertible Securities outstanding as of the Series E Original Issue Date, and shares of Common Stock issued upon exercise of the warrant issued in connection with the initial issuance of the Series D Preferred;

(D) shares of Common Stock or Convertible Securities issued as a dividend or distribution on the Preferred Stock;

(E) shares of Common Stock 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 (including the affirmative approval of a majority of the Requisite Designees);

(F) shares of Common Stock or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board (including the affirmative approval of a majority of the Requisite Designees);

(G) shares of Common Stock or Convertible Securities issued pursuant to the acquisition of another corporation by the Company 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 (including the affirmative approval of a majority of the Requisite Designees); or

(H) shares of Common Stock or Convertible Securities issued in connection with collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board (including the affirmative approval of a majority of the Requisite Designees).

References to Common Stock in the subsections of this clause (vi) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(h). The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 5(h), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(h), for such Additional Shares of Common Stock. In the event that the number of shares of Additional Shares of Common Stock or the Effective Price cannot be

ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the Effective Price, as applicable, ascertainable.

(vii) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance (the "*First Dilutive Issuance*"), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance as a part of the same transaction or series of related transactions (a "*Subsequent Dilutive Issuance*"), then and in each such case upon a Subsequent Dilutive Issuance the Conversion Price of each series of Preferred Stock that was reduced as a result of the First Dilutive Issuance shall be reduced to the Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(i) **Waiver of Antidilution Protection.** Notwithstanding anything to the contrary, any provision of Section 5(h) and any adjustments made or required to be made to the Conversion Price of any series of Preferred Stock or Class B Common Stock pursuant hereto may be waived on behalf of all shares of such series of Preferred Stock or Class B Common Stock, as applicable, by the vote or written consent of the holders of a majority of the then-outstanding shares of such series of Preferred Stock or the Class B Common Stock, as applicable.

(j) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Conversion Price of any series of Preferred Stock or Class B Common Stock for the number of shares of Common Stock or other securities issuable upon conversion of such series of Preferred Stock or Class B Common Stock, if such series of Preferred Stock or Class B Common Stock is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall, upon request, prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of such series of Preferred Stock or Class B Common Stock so requesting at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Conversion Price at the time in effect for such series of Preferred Stock or Class B Common Stock, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of such series of Preferred Stock or Class B Common Stock. Failure to request or provide such notice shall have no effect on any such adjustment.

(k) **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Company, any reclassification or

recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Preferred Stock and each holder of Class B Common Stock at least ten (10) days prior to the record date, if any, specified therein (or if no record date is specified, the date upon which such action is to take effect, or in either case, such shorter period approved by the holders of a majority of the outstanding shares of Preferred Stock) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**(l) Automatic Conversion.**

**(i)** Each share of Preferred Stock and, solely with respect to subclause (B) below, each share of Class B Common Stock, shall automatically be converted into shares of Common Stock, based on the applicable then-effective Conversion Price, (A) at any time upon the affirmative election of the holders of at least ninety percent (90%) of the outstanding shares of Preferred Stock (voting together as a single class on an as-if converted to Common Stock basis), or (B) immediately prior to the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the gross cash proceeds to the Company (after underwriting discounts, commissions and fees) are at least \$30,000,000 (a "*Qualified Public Offering*"). Upon such automatic conversion, any accrued but unpaid dividends and any declared but unpaid dividends shall be paid as set forth in Section 1(f).

**(ii)** Upon the occurrence of either of the events specified in Sections 5(l)(i) (A) or (B) above, the outstanding shares of Preferred Stock and, if it is an event specified in Section 5(l)(i)(B) above, the outstanding shares of Class B Common Stock, shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing shares of Preferred Stock or Class B Common Stock, as applicable, are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock and Class B Common Stock, the holders of Preferred Stock and Class B Common Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock and the Class B Common Stock, as applicable. Thereupon, there shall be issued

and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which such shares of Preferred Stock or Class B Common Stock surrendered were convertible on the date on which such automatic conversion occurred, and any accrued but unpaid and any declared but unpaid dividends shall be paid as set forth in Section I(f).

(iii) Notwithstanding any provision in this Section 5(l) to the contrary, the conversion of any shares of Class B Common Stock shall be effective only after notification is made and any applicable waiting period has expired or been terminated, if required by the Hart-Scott-Rodino Act of 1976, as amended.

(m) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock or Class B Common Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock and/or Class B Common Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock (as determined by the Board) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock and Class B Common Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock and Class B Common Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock and Class B Common Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock or Class B Common Stock, excluding any tax or other charge imposed in connection with any



transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock or Class B Common Stock so converted were registered.

## 6. REDEMPTION OF PREFERRED STOCK.

(a) The Company shall be obligated to redeem the Prior Preferred Stock, the Series D Preferred and the Series D-1 Preferred (the “*Redeemable Preferred Stock*”) as follows:

(i) The holders of a majority of the then-outstanding shares of Preferred Stock, Class B Common Stock and Common Stock, voting as a single class on an as-if converted to Common Stock basis, by delivering written notice to the Company (the “*Redemption Request*”), may require the Company, to the extent it may lawfully do so, to redeem all of the Redeemable Preferred Stock in three (3) annual installments beginning at any date on or after December 2, 2014 (provided that the first installment shall be due ninety (90) days after the Company receives the Redemption Request) and ending on the date two (2) years from such first redemption date (each a “*Redemption Date*”). The Company shall effect the redemptions of the Redeemable Preferred Stock on each applicable Redemption Date by paying in cash in exchange for the shares of Redeemable Preferred Stock to be redeemed on the Redemption Date an amount equal to the applicable Liquidation Preference Amount. The total amount to be paid for the Redeemable Preferred Stock is hereinafter referred to as the “*Redemption Price*.” Shares subject to redemption pursuant to this Section 6(a) shall be redeemed from each holder of Redeemable Preferred Stock on a pro rata basis, based on the number of shares of Redeemable Preferred Stock then held.

(ii) Within ten (10) business days after receipt of the Redemption Request, the Company shall send a notice (the “*Redemption Notice*”) to all holders of Redeemable Preferred Stock setting forth (A) the Redemption Price for the shares to be redeemed, (B) the Redemption Dates, and (C) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date, then it shall so notify such holders and shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or after each such Redemption Date, each holder of shares of Redeemable Preferred Stock to be redeemed shall surrender such holder’s certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after each Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holders of such shares as holders of Redeemable Preferred Stock (except the right to receive the Redemption Price without interest

upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Redeemable Preferred Stock are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Redeemable Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein until redeemed.

(c) If the Company receives, on or prior to any Redemption Date, written notice from a holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Redeemable Preferred Stock registered on the books of the Company in the name of such holder at the time of the Company's receipt of such notice shall thereafter be "*Excluded Shares*". Excluded Shares shall not be redeemed or redeemable pursuant to this Section 6, whether on such Redemption Date or thereafter.

(d) In the event of a call for redemption of any shares of Redeemable Preferred Stock, the Conversion Rights (as defined in Section 5) for the Redeemable Preferred Stock shall terminate as to the shares designated for redemption at the close of business on the fifth (5th) day preceding the Redemption Date, unless default is made in payment of the Redemption Price.

#### 7. NO REISSUANCE OF PREFERRED STOCK.

No shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

L. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

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).

#### V.

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

B. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of, and advancement of expenses to, directors, officers, employees, other agents of the Company and any other persons to which the DGCL permits the Company to provide indemnification.

C. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

## VI.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further *provided* that:

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Ninth Amended and Restated Certificate of Incorporation.

B. The Board is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; *provided however*, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Ninth Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class on an as-if converted to Common Stock basis, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

C. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

## VII.

The Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "*Excluded Opportunity*" is any matter, transaction, opportunity 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 Company who is not an employee of the Company or any of its subsidiaries, or (ii) any holder of Preferred Stock or Class B Common Stock (whether or not such holder also holds Common Stock) or any partner, member, director, stockholder, affiliate, employee or agent of any such holder, other than someone who is an employee of the Company or any of its subsidiaries.

\* \* \* \*

**FOUR:** This Ninth Amended and Restated Certificate of Incorporation has been duly approved by the Board of the Company.

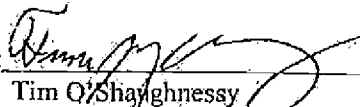
**FIVE:** This Ninth Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with

Section 228 of the DGCL. This Ninth Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, Hungry Machine, Inc. has caused this Ninth Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 27th day of July, 2011.

HUNGRY MACHINE, INC.

By:   
\_\_\_\_\_  
Tim O'Shayghnessy  
Chief Executive Officer